FEDERAL REGISTER

Vol. 88 Friday,

No. 149 August 4, 2023

Pages 51695–52020

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–09512—1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 88, No. 149

Friday, August 4, 2023

Editorial Note: The printed version of the **Federal Register** Table of Contents for August 1, 2023, FR Doc. 2023–16307, was incorrectly indexed under the Department of Health and Human Services. The correct index entry should read Centers for Medicare & Medicaid Services.

Separate Parts In This Issue

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
25.....51695
39.....51695

Proposed Rules:
39 (3 documents) 51739, 51742, 51745

17 CFR
229.....51896
232.....51896
239.....51896
240.....51896
249.....51896

20 CFR

Proposed Rules:
404.....51747
416.....51747
422.....51747

26 CFR

Proposed Rules:
1.....51756

28 CFR

Proposed Rules:
35.....51948

33 CFR
165 (2 documents) 51699, 51701

Proposed Rules:
100.....51763

40 CFR
52 (3 documents) 51702, 51711, 51713

41 CFR
60–1.....51717
60–2.....51717
60–4.....51717
60–20.....51717
60–30.....51717
60–40.....51717
60–50.....51717
60–300.....51717
60–741.....51717

46 CFR
169.....51737

50 CFR
648.....51737

Rules and Regulations

Federal Register
Vol. 88, No. 149
Friday, August 4, 2023

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2023–1442]

Accepted Means of Compliance; Airworthiness Standards: Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of availability.

SUMMARY: This document announces SAE International (SAE) aerospace standard (AS) for use as a means of compliance to the applicable airworthiness standards for transport category airplanes. The FAA accepts SAE Designation AS6960 ''Performance Standards for Seat Furnishings'', section 3.2.3 as a means of compliance with regard to the design of seat furnishings.

DATES: Effective August 4, 2023.

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy & Standards Division, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, telephone 206–231–3208, email *Daniel.Jacquet@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the National Technology Transfer and Advancement Act of 1995 [1] and Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' effective January 27, 2016, the FAA participates in the development of consensus standards and uses consensus standards as a means of carrying out its policy objectives where appropriate. The FAA has been working with industry and other stakeholders through the SAE Aircraft Seat Committee to develop consensus standards for seat furnishings to prevent hazards, such as object entrapment.

This document is the result of a safety recommendation, precipitated by an event where a passenger cell phone was crushed in the mechanism of a first class cabin seat on a British Airways Boeing 747 airplane that caused smoke and fire. A pilot declared an emergency landing due to the fire. The crew used four Bromochlorodifluoromethane (BCF) and two water fire extinguishers to extinguish the cell phone fire.

The FAA investigators found that the first and business class electrical power seats could jam a cell phone or tablet within its mechanism and crush its lithium battery to cause a fire. In the 2017 safety recommendation, the British Airways maintenance department said they saw at least one cell phone per day get jammed in electrically operated seats. Also noted in the safety recommendation, American Airlines maintenance department reported receiving five calls per day to retrieve lost cell phones in seats at John F. Kennedy International Airport alone. According to the FAA website lithium battery incidents continue to be reported and are ongoing. (*https://www.faa.gov/hazmat/resources/lithium_batteries/incidents*)

The FAA determined that seat designs that allow small objects (*e.g.,* cell phones, keys, wallets) to migrate to a location that prevents the return of critical seat features to their taxi, takeoff, and landing position, or be crushed to cause a potential fire hazard, is non-compliant with §§ 25.601 and 25.1301(a)(4). Section 25.601 states, in part, ''The airplane may not have design features or details that experience has shown to be hazardous or unreliable.'' In addition, § 25.1301(a)(4) states, ''Each item of installed equipment must function properly when installed.'' The FAA accepts SAE Designation AS6960 ''Performance Standards for Seat Furnishings'', section 3.2.3 as a means of compliance for Title 14, Code of Federal Regulations (14 CFR) 25.601 and 25.1301(a)(4) with regard to the design of seat furnishings.

Means of Compliance Accepted

The FAA accepts SAE AS6960, ''Performance Standards for Seat Furnishings'', section 3.2.3 as an acceptable means of compliance with §§ 25.601 and 25.1301(a)(4) for preventing hazards, such as stated herein, from object entrapment in seat furnishings. The FAA is notifying the public by publishing the acceptance of this consensus standard in the **Federal Register**.

The means of compliance accepted by this document is one means, but not the only means, of complying with §§ 25.601 and 25.1301(a)(4) with regard to design of seat furnishings. Applicants who desire to use means of compliance reflected by other revisions to SAE standards not previously accepted may seek guidance and possible acceptance from the FAA for the use of those means of compliance on a case-by-case basis. Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Availability

SAE AS6960, ''Performance Standards for Seat Furnishings in Transport Category Aircraft'' is available for purchase at *https://www.sae.org/standards* or by contacting SAE at telephone number (877) 606–7323 or through email at *https://store.sae.org.* To inquire about consensus standard content, contact Nicole Mattern, Aircraft Seat Committee, (724) 772–4039 at *Nicole.Mattern@sae.org.*

Issued in Kansas City, Missouri.

Mary Schooley,

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

[FR Doc. 2023–16094 Filed 8–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0016; Project Identifier MCAI–2022–00416–R; Amendment 39–22506; AD 2023–14–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model EC120B, EC130B4, and EC130T2 helicopters. This AD was prompted by a report of corrosion detected on certain part-numbered landing gear assemblies. This AD requires, for helicopters with certain part-numbered landing gear assemblies installed, visually inspecting for cracks and corrosion; borescope inspecting; and if required, removing corrosion, measuring thickness, interpreting results of the measurements, applying chemical conversion coating and primer, and removing affected parts (landing gear assembly) and affected part sub-assemblies (front or rear crossbeam or left-hand or right-hand skid assembly) from service and replacing with airworthy parts. This AD will allow an affected part or affected part sub-assembly to be installed on a helicopter if certain actions in this AD are accomplished. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 8, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 8, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0016; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, 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 service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0016.

FOR FURTHER INFORMATION CONTACT: Stephanie Sunderbruch, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (817) 222–4659; email: *Stephanie.L.Sunderbruch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model EC120B, EC130B4, and EC130T2 helicopters. The NPRM published in the **Federal Register** on January 19, 2023. The NPRM was prompted by EASA AD 2022–0053, dated March 23, 2022 (EASA AD 2022–0053), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA advises of an occurrence of corrosion found on a landing gear assembly of a Model EC 130 helicopter. EASA further advises that other helicopter models are affected by the same unsafe condition due to design similarity. This condition, if not addressed, could result in the landing gear collapsing, damage to the helicopter, and injury to occupants.

Accordingly, EASA AD 2022–0053 requires, for helicopters with certain part-numbered landing gear assemblies installed, a one-time visual inspection of the external areas of the landing gear tubes for corrosion and cracks, and a borescope inspection of the internal sides of the landing gear tubes for corrosion (including, but not limited to, leafing and exfoliant corrosion) and cracks. EASA AD 2022–0053 also requires contacting Airbus Helicopters for approved corrective action if any crack, or leafing or exfoliant corrosion, is found or if the remaining thickness of affected part sub-assemblies do not meet specified acceptability criteria during any of the inspections. EASA AD 2022–0053 allows replacing the affected part sub-assembly in lieu of contacting Airbus Helicopters for approved corrective action. EASA AD 2022–0053 also requires reporting inspection results to Airbus Helicopters within 30 days after the inspection or within 30 days after the effective date of EASA AD 2022–0053, whichever occurs later.

Additionally, EASA AD 2022–0053 allows credit for certain inspections and corrective actions if those actions were done before the effective date of EASA AD 2022–0053, and allows an affected part or affected part sub-assembly to be installed on a helicopter if certain requirements of EASA AD 2022–0053 are met. EASA considers its AD an interim action and states that further AD action may follow.

In the NPRM, the FAA proposed to require, for helicopters with certain part-numbered landing gear assemblies installed, removing and cleaning certain parts; visually inspecting certain areas of the landing gear tubes for cracks and corrosion; and if any crack, leafing corrosion, or exfoliant corrosion is detected, removing certain parts from service and replacing with airworthy parts. If any corrosion other than leafing or exfoliant corrosion is detected, the NPRM proposed to require removing the corrosion.

The NPRM also proposed to require borescope inspecting the internal side of the landing gear tubes for cracks and corrosion. If any crack, leafing corrosion, or exfoliant corrosion is detected, the NPRM proposed to require removing any affected part from service and replacing it with an airworthy part. If any corrosion other than leafing or exfoliant corrosion is detected, the NPRM proposed to require removing the corrosion.

The NPRM also proposed, if any corrosion other than leafing or exfoliant corrosion is detected during any of the inspections, removing all corrosion and measuring the remaining thickness of the landing gear tubes and interpreting the results of the measurements. If the remaining thickness does not meet the permitted criteria as specified, the NPRM proposed to require removing each affected sub-assembly from service and replacing it with an airworthy part. If the remaining thickness meets the permitted criteria as specified, the NPRM proposed to require applying a chemical conversion coating and a double layer of primer.

Finally, the NPRM proposed to allow an affected part or affected part sub-assembly to be installed on a helicopter, if certain proposed requirements of the NPRM have been accomplished.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, Air Methods.[1] The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Allow Credit for Previously Issued Service Information

Air Methods requested that the FAA allow credit for the inspections and corrective actions proposed in the NPRM, if these actions were performed in accordance with Revision 1 of the service information before the effective

[1] This comment does not appear in the docket because it was marked ''proprietary information.''

date of the AD. Air Methods added that Figure 4 of the service information required by this AD does not properly label ''Zone B'' and ''Zone C,'' but commented that it considers the service information sufficiently adequate to identify the areas.

The FAA partially agrees. Paragraph (f) of this AD requires compliance with this AD within the compliance times specified, unless the actions have already been done. Therefore, this AD already permits credit for complying with the AD's required actions if those actions were performed before the effective date of this AD. However, the FAA disagrees with allowing credit for all of this AD's required actions if done in accordance with Revision 1 of the service information, before the effective date of this AD, because the corrective actions in Revision 1 of the service information differ from this AD's corrective actions. Operators may request approval of specific corrective actions as an alternative method of compliance (AMOC) under the provisions of paragraph (h) of this AD.

Comments Regarding Methods To Remove Corrosion

Air Methods stated that Revision 1 of the service information refers to the Standard Practices Manual (MTC) for procedures to remove corrosion and that the MTC includes details on important considerations when removing corrosion from aluminum parts. Air Methods further stated that the MTC contains safe procedures for corrosion removal based on service history. Lastly, Air Methods stated that the specific use of just a non-metal abrasive pad, as proposed in the NPRM, may not be adequate to remove corrosion in severe cases and asserted that restricting the corrosion removal procedure does not provide any measurable improvement to the level of safety. The FAA infers that Air Methods is requesting the FAA not limit corrosion removal to only using a non-metal abrasive pad.

The FAA agrees. The FAA has revised the required actions paragraph of this final rule by removing the requirement to use a non-metal abrasive pad, and only requires removing all corrosion from all zones.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. EC120–32A014 (EC120–32A014 Rev 1), for Model EC120B helicopters and Airbus Helicopters ASB No. EC130–32A013 (EC130–32A013 Rev 1), for Model EC130B4 and EC130T2 helicopters, both Revision 1, and both dated October 17, 2022. This service information includes Detail A Figure 3 (EC120–32A014 Rev 1) and Detail A Figure 4 (EC130–32A013 Rev 1), which identify the areas and zones to be inspected for cracks and corrosion (including, but not limited to leafing and exfoliant corrosion). This service information also includes Table 3, which identifies the minimum material thickness permitted after corrosion is removed. Additionally, this service information specifies procedures for visually inspecting the external areas and borescope inspecting the internal areas of the landing gear tubes, removing corrosion, measuring thickness, interpreting results of the measurements, and applying a chemical conversion coating and primer.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Differences Between This AD and EASA AD 2022–0053

EASA AD 2022–0053 requires, for certain helicopters, the initial inspections to be completed within certain compliance times specified in Table 1 of EASA AD 2022–0053, whereas this AD requires the initial inspections to be completed within 13 months after the effective date of this AD. EASA AD 2022–0053 requires contacting Airbus Helicopters for repair instructions if any cracks, leafing corrosion, or exfoliant corrosion are found, or if the residual thickness of an affected part sub-assembly does not meet certain criteria, whereas this AD requires removing the affected part or part sub-assembly from service instead. EASA AD 2022–0053 allows credit for certain inspections and corrective actions if these requirements were accomplished in accordance with previously issued service information, whereas this AD does not allow credit for the inspections and corrective actions if previously issued service information was used. EASA AD 2022–0053 requires reporting the inspection results to Airbus Helicopters, whereas this AD does not require reporting.

Interim Action

The FAA considers that this AD is an interim action. Once final action has been identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 353 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Removing and cleaning parts, and visually inspecting the external surface of each landing gear tube for cracks and corrosion takes about 2 work-hours for an estimated cost of $170 per inspection, up to $680 per helicopter (4 landing gear tubes per helicopter), and up to $240,040 for the U.S. fleet.

Borescope inspecting the internal side of each landing gear tube for cracks and corrosion (including, but not limited to, leafing and exfoliant corrosion) takes about 1 work-hour for an estimated cost of $85 per inspection, up to $340 per helicopter (4 landing gear tubes per helicopter), and up to $120,020 for the U.S. fleet.

If required, applying a chemical conversion coating and a double layer of primer takes about 2 work-hours and parts cost a minimal amount for an estimated cost of $170 per helicopter and up to $60,010 for the U.S. fleet.

If required, disassembling certain zones and removing corrosion takes about 1 work-hour for an estimated cost of $85 per helicopter.

If required, measuring the thickness of the internal side of each landing gear tube and interpreting the results takes up to 1 work-hour for an estimated cost of $85 per helicopter.

If required, replacing a landing gear assembly takes about 2 work-hours and parts cost up to $106,612 for an estimated cost of up to $106,782 per replacement.

If required, replacing a front crossbeam takes about 1 work-hour and parts cost up to $9,081 for an estimated cost of up to $9,166 per replacement.

If required, replacing a rear crossbeam takes about 1 work-hour and parts cost up to $11,639 for an estimated cost of up to $11,724 per replacement.

If required, replacing a right-hand or left-hand skid assembly takes about 1 work-hour and parts cost up to $21,447

for an estimated cost of up to $21,532 per skid assembly replacement.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–14–06 Airbus Helicopters: Amendment 39–22506; Docket No. FAA–2023–0016; Project Identifier MCAI–2022–00416–R.

(a) Effective Date

This airworthiness directive (AD) is effective September 8, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model EC120B, EC130B4, and EC130T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3213, Main Landing Gear Strut, Axle, Truck.

(e) Unsafe Condition

This AD was prompted by a report of corrosion detected on certain part-numbered landing gear assemblies. The FAA is issuing this AD to detect corrosion and cracks on the landing gear tubes. The unsafe condition, if not addressed, could result in the landing gear collapsing, damage to the helicopter, and injury to occupants.

(f) Compliance

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

(g) Required Actions

(1) Within 13 months after the effective date of this AD, for Model EC120B helicopters with landing gear assembly part number (P/N) C321A2106102, P/N C321A2501101, P/N C321A2501102, P/N C321A2601051AA, P/N C321A2601051CA, or P/N C321A2601052 installed, and for Model EC130B4 and EC130T2 helicopters with landing gear assembly P/N 350A41–0077–0201, P/N 350A41–0080–1102, P/N 350A41–0080–1103, P/N 350A41–0081–0201, P/N 350A41–0082–0101, or P/N 350A41–0082–0102 installed, except those having a date of first installation on a helicopter of February 16, 2022 or later; and for helicopters with a landing gear assembly having a P/N specified in this paragraph, with an unknown installation date, do the following:

(i) Remove the landing gear fairing from the rear crossbeam and clean the external areas of each of the landing gear tubes item a, item c, item d, and item e, including Zones B1, B2, C1, C2, D, E, F, and M as depicted in Detail A, Figure 3, and Details B and C, Figure 4 of Airbus Helicopters Alert Service Bulletin (ASB) No. EC120–32A014 (ASB EC120–32A014 Rev 1), or as depicted in Detail A, Figure 4, and Details B and C, Figure 5 of Airbus Helicopters ASB No. EC130–32A013 (ASB EC130–32A013 Rev 1), both Revision 1, and both dated October 17, 2022, as applicable to your model helicopter.

(ii) Visually inspect the external areas of each of the landing gear tubes item a, item c, item d, and item e, including Zones B1, B2, C1, C2, D, E, F, and M for corrosion (including, but not limited to leafing and exfoliant corrosion) and cracks.

(A) If any crack or leafing or exfoliant corrosion is detected, before further flight, remove the affected part from service and replace it with an airworthy part.

(B) If any corrosion is detected in Zone C1, C2, or E, other than leafing or exfoliant corrosion, before further flight, disassemble the landing gear and remove all corrosion from all zones.

(C) If any corrosion is detected in only Zone B1, B2, D, F, or M, other than leafing or exfoliant corrosion, before further flight, remove all corrosion from all zones.

(iii) Borescope inspect the internal side of each of the landing gear tubes item a, item c, item d, and item e, including Zones B1, B2, C1, C2, D, E, F, and M for corrosion (including, but not limited to leafing and exfoliant corrosion) and cracks.

(A) If any crack, leafing corrosion, or exfoliant corrosion is detected, before further flight, remove the affected part from service and replace it with an airworthy part.

(B) If any corrosion is detected in Zone C1, C2, or E, other than leafing or exfoliant corrosion, before further flight, disassemble the landing gear and remove all corrosion from all zones.

(C) If any corrosion is detected in only Zone B1, B2, D, F, or M, other than leafing or exfoliant corrosion, before further flight, remove all corrosion from all zones.

(iv) Before further flight after performing the inspections required by paragraphs (g)(1)(ii) and (iii) of this AD, if any corrosion was detected during any inspection required by paragraphs (g)(1)(ii) and (iii) of this AD other than leafing or exfoliant corrosion, using an ultrasonic thickness gauge, measure the remaining thickness of the landing gear tubes in the zones where any corrosion was removed. Interpret the results of the measurement using the criteria specified in Table 3 of ASB EC120–32A014 Rev 1 or Table 3 of ASB EC130–32A013 Rev 1, as applicable to your model helicopter. If the remaining thickness does not meet the permitted criteria as specified, before further flight, remove each affected sub-assembly from service and replace it with an airworthy part. If the remaining thickness meets the permitted criteria as specified, before further flight, accomplish the actions required by paragraph (g)(1)(v) of this AD.

(v) Apply a chemical conversion coating (Alodine 1200) or equivalent, and a double layer of chromate Primer P05 and Primer P20, or equivalent, below the collar in Zones F and M and to any reworked zone.

(2) For Model EC120B helicopters, as of the effective date of this AD, do not install landing gear assembly P/N C321A2106102, P/N C321A2501101, P/N C321A2501102, P/N C321A2601051AA, P/N C321A2601051CA, or P/N C321A2601052, previously installed with an unknown installation date or a date of first installation on a helicopter before February 16, 2022; and do not install a front crossbeam, rear crossbeam, left-hand (LH) skid assembly, or right-hand (RH) skid

assembly having a P/N identified in Table 2 of ASB EC120–32A014 Rev 1, previously installed with an unknown installation date, or a date of first installation on a helicopter before February 16, 2022, on any helicopter; unless the actions required by paragraphs (g)(1)(i) through (v) of this AD, as applicable, have been accomplished on the part.

(3) For Model EC130B4 and EC130T2 helicopters, as of the effective date of this AD, do not install landing gear assembly P/N 350A41–0077–0201, P/N 350A41–0080–1102, P/N 350A41–0080–1103, P/N 350A41–0081–0201, P/N 350A41–0082–0101, or P/N 350A41–0082–0102, previously installed with an unknown installation date or a date of first installation on a helicopter before February 16, 2022, and do not install a front crossbeam, rear crossbeam, LH skid assembly, or RH skid assembly, having a P/N identified in Table 2 of ASB EC130–32A013 Rev 1, previously installed with an unknown installation date, or a date of first installation on a helicopter before February 16, 2022, on any helicopter, unless the actions required by paragraphs (g)(1)(i) through (v) of this AD, as applicable, have been accomplished on the part.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0053, dated March 23, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0016.

(2) For more information about this AD, contact Stephanie Sunderbruch, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (817) 222–4659; email: *Stephanie.L.Sunderbruch@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin (ASB) No. EC120–32A014, Revision 1, dated October 17, 2022.

(ii) Airbus Helicopters ASB No. EC130–32A013, Revision 1, dated October 17, 2022.

(3) For service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on July 12, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16555 Filed 8–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0256]

RIN 1625–AA00

Safety Zone; Ohio River MM 469.5–470.5 and Licking River MM 0.0 to 0.3, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from Mile Marker 469.5—Mile Marker 470.5 of the Ohio River and from Mile Marker 0.0—Mile Marker 0.3 of the Licking River. This action is necessary to provide for the safety of life on these navigable waters near Cincinnati, OH during the Redbull Flugtag sporting event occurring on August 12, 2023. This safety zone prohibits persons and vessels from transiting through the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from noon through 5 p.m. on August 12, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0256 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 on this rule, call or email MST1 Julie Thomas, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email *Julie.A.Thomas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because due to timeline requirements, it is impracticable to publish an NPRM and consider the comments because we must establish this safety zone by August 12, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with growing public interest for the scheduled event starting August 12, 2023.

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 Ohio Valley (COTP) has determined that potential hazards associated with a sporting event starting August 1, 2023, will be a safety concern for anyone within Mile Marker 469.5—Mile Marker 470.5 of the Ohio River and Mile Marker 0.0—Mile Marker 0.3 of the Licking River. This rule is needed to protect waterway users, vessels, and the marine environment in the navigable waters within the safety zone while the

sporting event occurs. This includes protection of personnel involved with the sporting event and support vessels.

IV. Discussion of the Rule

This rule establishes a safety zone from noon until 5 p.m. on August 12, 2023. The safety zone will cover all navigable waters from Miler Marker 469.5—Mile Marker 470.5 of the Ohio River and Mile Marker 0.0—Mile Marker 0.3 of the Licking River. The duration of the zone is intended to protect waterway users, vessels, and the marine environment in these navigable waters while the sporting event is occurring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 the duration, and time of day of the safety zone. The duration of the safety zone is five hours, and vessels will be able to contact the COTP for directions on how to transit around or seek permission to enter. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone. We do not anticipate any significant economic impact resulting from activation of the safety zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 5 hours that would prohibit any vessel or person from entering the safety zone without obtaining permission from the Captain of the Port (COTP) of Sector Ohio Valley or a designated representative. It is categorically excluded from further review under paragraph L60(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 165 801 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 § 100.T08–0256 to read as follows:

§ 165.T08–0256 Safety Zone; Ohio River MM 469.5–470.5 and Licking River MM 0.0 to 0.3, Cincinnati, OH.

(a) *Regulated area.* This section applies to the following area: Ohio River Mile Marker 469.5—Miler Marker 470.5, extending the entire river and the Licking River from Mile Marker 0.0—Mile Marker 0.3, extending the entire river.

(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 Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) This rule establishes a safety zone from noon through 5 p.m. on August 12, 2023. The safety zone will cover all navigable waters from Miler Marker 469.5—Mile Marker 470.5 of the Ohio River and Mile Marker 0.0—Mile Marker 0.3 of the Licking River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by contacting the Patrol Commander via VHF–FM radio channel 16 or phone at 1–800–253–7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from noon through 5 p.m. on August 12, 2023.

Dated: July 31, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2023–16615 Filed 8–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0641]

Security Zones; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Seattle's Seafair Fleet Week Moving Vessels security zones from August 1 through August 7, 2023 to ensure the security of the vessels from sabotage or other subversive acts during Seafair Fleet Week Parade of Ships. Our regulation for marine events within the Thirteenth Coast Guard District identifies the regulated area for this event in Seattle, WA. During the enforcement period, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port (COTP), Puget Sound or his designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

DATES: The regulations in 33 CFR 165.1333 will be enforced for the security zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Steve Barnett, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zones for Seattle's Seafair Fleet Week Moving Vessels in 33 CFR 165.1333 for the regulated areas in the Elliott Bay from 11:30 a.m. on August 1, 2023, through 5 p.m. on August 7, 2023. This action is being taken to ensure the security of the vessels from sabotage or other subversive acts during this event. Our regulation for marine events within the Thirteenth Coast Guard District, § 165.1333, specifies the location of the regulated area in the Puget Sound around the participating vessels designated in this notice.

During the enforcement period, as reflected in § 165.1333, no person or vessel may enter or remain in the security zones without the permission of the COTP or a designated representative. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones. For 2023, the following areas are § 165.1333 security zones: all navigable waters within 500 yards of USS BARRY (DDG–52), USCGC HENRY BLAKE (WLM–563), USCGC ROBERT WARD (WPC–1130), USCGC WAHOO (WPB–87345), HMCS YELLOWKNIFE (MM–706), HMCS EDMONTON (MM–703), HMCS NANAIMO (MM–702), while each such vessel is in the Sector Puget Sound COTP Zone.

The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or a designated representative by contacting the on-scene patrol craft on VHF Ch 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene patrol craft until they are outside of the security zones.

Due to a change in participating vessels, the Coast Guard will provide the maritime community with advanced actual notification of these security zones via the Local Notice to Mariners and marine information broadcasts before the start of the event. In the event that there are additional changes to the participating vessels, due to operational requirements, the Coast Guard will provide actual notice for any additional designated participating vessels not covered in this notice.

Members of the public may contact Sector Puget Sound COTP at 206–217–6002 for an up-to-date list of designated participating vessels.

If the COTP determines that the security zones need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter all portions of the regulated areas.

Dated: July 31, 2023.

M.A. McDonnell,

Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.

[FR Doc. 2023–16682 Filed 8–3–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0892; EPA–R04–OAR–2022–0851; FRL–10928–02–R4]

Air Plan Approval; Florida; Revision of Excess Emissions Provisions and Emission Standards; Amendments to Stationary Sources—Emission Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Florida on November 22, 2016, and supplemented on September 30, 2022, through the Florida Department of Environmental Protection (FDEP). The November 22, 2016, SIP revision is in response to EPA's SIP Call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. The September 30, 2022, supplemental SIP revision addresses additional SSM-related rule amendments identified by the State and the addition of source specific sulfur dioxide (SO_2) and nitrogen oxide (NO_X) emission limits. EPA is approving these SIP revisions and finds that they correct the deficiencies identified in the June 12, 2015, SIP Call. EPA is also approving a portion of a SIP revision submitted by FDEP on April 1, 2022, which modifies provisions that regulate emissions of SO_2, NO_X, and visible emissions and modifies requirements for major stationary sources of volatile organic compounds (VOC) and NO_X.

DATES: This rule is effective September 5, 2023.

ADDRESSES: EPA has established dockets for these actions under Docket Identification Nos. EPA–R04–OAR–2022–0892 and EPA–R04–OAR–2022–0851. All documents in the dockets are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Manager, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

a. Florida's November 22, 2016, and September 30, 2022, SIP Submissions

On November 22, 2016, FDEP submitted a revision to the Florida SIP (referred to hereinafter as Florida's ''Excess Emissions Rule SIP Revision'') in response to EPA's June 12, 2015, action titled ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction'' (''2015 SSM SIP Action''). *See* 80 FR 33839 (June 12, 2015). In the Excess Emissions Rule SIP Revision, FDEP requests EPA approval of the following changes to the Florida SIP: (1) Removal of Florida Administrative Code Rule (referred to hereinafter referred as ''Rule'') 62–210.700(4) with the addition of equivalent language to Rules 62–210.700(1) and (2); (2) amendment of Rule 62–210.700(3) to revise the particulate matter (PM) limits applicable during boiler cleaning (soot blowing) and load changes by removing the statement that excess emissions during these periods ''shall be permitted,'' removing the exemption for pollutants other than PM and visible emissions, and removing a specific allowance for visible emissions which exceed 60 percent opacity for up to four six-minute periods during the 3-hour period of excess emissions allowed for soot blowing or load change; (3) addition of Rule 62–210.700(6), which states that Rules 62–210.700(1) and (2) shall not apply after May 22, 2018, to either category-specific or unit-specific limits that have been incorporated into Florida's SIP; and (4) addition of Rule 62–210.700(7), which states that after the State's effective date of the rule change (October 23, 2016), Rules 62–210.700(1) and (2) shall not apply to new permit-specific emission limits established pursuant to Florida's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) regulations (Rules 62–212.400 and 62–210.500). The Excess Emissions Rule SIP revision includes information demonstrating that these changes will not interfere with any applicable requirement concerning attainment of any National Ambient Air Quality Standards (NAAQS) and reasonable further progress (RFP), or with any other applicable requirement of the Clean Air Act (CAA or Act).

On September 30, 2022, FDEP submitted a supplemental revision (referred to hereinafter as Florida's ''Supplemental SSM SIP Revision'') to the State's November 22, 2016, Excess Emissions Rule SIP Revision. In the Supplemental SSM SIP Revision, FDEP includes alternative SIP emission limits for those SIP emission limits that it identified as ''problematic'' if applied continuously and several changes to language throughout Chapter 62–296. The State requests EPA approval of the following changes: (1) Amendment of existing Rule 62–296.405, ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' and Rule 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities,'' to clarify how emissions are calculated, including during periods of startup, shutdown, and malfunction; (2) addition of emissions-unit-specific SO_2 and NO_X emission limits for certain sulfuric acid plants (SAPs) and nitric acid plants (NAPs) in Florida; (3) removal of SO_2 emission limits in Rule 62–296.402, ''Sulfuric Acid Plants''; and (4) removal of NO_X emission limits in Rule 62–296.408, ''Nitric Acid Plants.'' The

Supplemental SSM SIP revision includes technical support materials to demonstrate that these changes will not interfere with any applicable requirement concerning attainment of any NAAQS and RFP, or with any other applicable requirement of the Act.

On May 8, 2023, EPA proposed to approve FDEP's November 22, 2016, and September 30, 2022, SIP revisions. *See* 88 FR 29598. That notice of proposed rulemaking (NPRM) is titled ''Air Plan Approval; Florida; Revision of Excess Emissions Provisions and Emission Standards'' (Excess Emissions Proposal). In the Excess Emissions Proposal, EPA also proposed to determine that the SIP revisions correct the deficiencies that the Agency identified in the 2015 SSM SIP Action with respect to Florida. The reasons for the proposed approval and determination are stated in the Excess Emissions Proposal and will not be restated here. The public comment period for EPA's proposed approval and determination ended on June 7, 2023. EPA received one favorable comment and one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter collectively referred to as the Commenters) which agree in part and disagree in part with EPA's proposed action. Both sets of comments are available in Docket No. EPA–R04–OAR–2022–0892.

b. Florida's April 1, 2022, SIP Submission

On April 1, 2022, FDEP submitted a SIP revision seeking to revise Rules 62–296.405, ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' and 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X- Emitting Facilities.'' [1] [2] Florida's April 1, 2022, SIP revision includes technical support materials to demonstrate that the changes and deletions to these rules will not interfere with any applicable requirement concerning attainment of any NAAQS and RFP, or with any other applicable requirement of the Act.

Specifically, the April 1, 2022, submission contains changes to the following provisions in Rule 62–296.405: 62–296.405(1)(a); 62–296.405(1)(c)1.; 62–296.405(1)(c)1.b. through e.; 62–296.405(1)(c)1.h. through i.; 62–296.405(1)(c)2.a., b., and d.; 62–296.405(1)(c)3.; 62–296.405(1)(d)3.; 62–296.405(1)(e); and 62–296.405(2). These provisions regulate emissions of SO_2, NO_X, and visible emissions from certain fossil fuel-fired steam generators with more than 250 million British thermal units (Btu) per hour heat input. The changes to these provisions revise a visible emissions limitation and clarify to whom the results of visible emissions testing must be submitted. The changes also remove outdated language, including emission limits for sources that have shut down or have more stringent federally enforceable limits, add specific citations for EPA test methods, and make minor wording edits. These changes do not allow for any pollutant emission increases because they only (1) remove certain SIP rules that are either obsolete or that are redundant for units that have more stringent federally enforceable limits in the SIP and (2) revise other rules in a way that would not interfere with any applicable requirement concerning attainment, RFP, or any other applicable requirement of the CAA.

The April 1, 2022, submission also removes obsolete provisions in Rule 62–296–570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities'' and makes changes to clarify the intent of the Rule and update certain cross-references. FDEP developed Rule 62–296.570 to implement VOC and NO_X RACT for existing major sources of VOC and NO_X in its then moderate ozone nonattainment area—the South Florida Area (consisting of Broward, Dade, and Palm Beach Counties)—as required by CAA section 182.[3] After EPA redesignated the South Florida Area to attainment, Florida revised its RACT rules such that Rule 62–296.570 now applies to the South Florida maintenance area.[4] EPA has evaluated the State's non-interference demonstration and finds that the changes to Rule 62–296.570 would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP, or any other applicable requirement of the CAA.

In a NPRM published on May 8, 2023, EPA proposed to approve the portion of Florida's April 1, 2022, SIP revision seeking to amend Rules 62–296.405 and 62–296.570. *See* 88 FR 29591. That notice of proposed rulemaking is titled ''Air Plan Approval; Florida; Amendments to Stationary Sources—Emission Standards'' (Emission Standards Proposal). Comments on the Emission Standards Proposal were due on or before June 7, 2023. EPA received no comments on the Emission Standards Proposal.

II. Response to Comments

This section contains summaries of the comments received and EPA's responses.

Comment 1: Regarding the removal of SO_2 and NO_X emission limits from Rules 62–296.402, ''Sulfuric Acid Plants,'' and 62–296.408, ''Nitric Acid Plants,'' respectively, Commenters state that ''EPA posits that a longer-term limit will protect the 1-hour SO_2 NAAQs if it is of comparable stringency to a maximum 1-hour NAAQS-protective 'critical emission value' that provides for attainment.'' [5] Commenters then note that EPA's 2014 SO_2 Nonattainment Guidance (SO_2 Nonattainment Guidance) [6] sets out a method that uses an ''equivalency ratio'' derived by compiling a representative distribution, or sample set, of actual emissions data on a 1-hour average to compute a distribution of longer-term emission averages and then a ratio of the 99th percentile of the longer-term values to the 99th percentile of the hourly values.[7] Commenters assert that Florida's proposed longer-term average limits are based on EPA's SO_2 Nonattainment Guidance and that ''one obvious problem'' with the method is that the equivalency ratio can vary greatly depending on the selected data set.[8] Commenters go on to state that EPA has not provided all relevant information about the data set used to

[1] On March 30, 2023, Florida submitted a letter to EPA withdrawing the removal of Rule 62–296.405(1)(c)1.g. and 62–296.405(1)(d)2., from EPA's consideration. For this reason, EPA is not acting on the removal of (1)(c)1.g. and (1)(d)2 described in the April 1, 2022, SIP revision. The letter is available in the docket for this rulemaking.

[2] The April 1, 2022, submittal transmits several changes to other Florida SIP-approved rules. These changes are not addressed in this rulemaking and will be considered by EPA in a separate rulemaking.

[3] *See* 60 FR 2688, 2689 (January 11, 1995) (approving Florida's January 8, 1993, SIP revision and noting that Florida's RACT rule ''applies to the 1990 Clean Air Act Amendment requirement for RACT for existing major sources of VOCs and NO_X in Florida's moderate non-attainment area.''). The fact that Rule 62–296.570 applies solely to existing units is further evidenced by language in Florida's January 8, 1993, SIP revision (available in the docket for this rulemaking), the May 31, 1995, compliance date in Rule 62–296.570(4)(a)1, and the exclusion of new and modified major VOC- and NO_X emitting facilities subject to major new source review through Rule 62–296.570(1)(a) (referencing Rule 62–296.500(1)(b)).

[4] *See* 60 FR 10325 (February 24, 1995) (redesignating the South Florida Area to attainment); 64 FR 32346 (June 16, 1999).

[5] Although this statement only appears in the comment regarding SO_2 limits in Rule 62–296.407, Commenters note in their comment regarding NO_X limits in Rule 62–296.408 that they ''have the same concerns . . . as with the SO_2 limits.'' The comments on the NO_X limits relate to the 1-hour NO_2 NAAQS.

[6] *See* SO_2 Nonattainment Guidance, *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

[7] *See supra* note 5.

[8] *Id.*

calculate the source-specific limits and it is therefore unclear whether the selected data are appropriate and whether they yield standards comparable to what might result from other potentially representative data.

Response 1: Regarding the Commenters' statement that ''EPA posits that a longer-term average limit will protect the 1-hour SO_2 NAAQS . . . ,'' the Excess Emissions Proposal does not, as the statement may suggest, include new policy statements on the use of longer-term average limits for NAAQS attainment planning purposes. Rather, in the Excess Emissions Proposal, EPA merely summarizes the approach for establishing acceptable longer-term average emission limits included in the SO_2 Nonattainment Guidance. The proposal also notes that all areas in Florida that had been through the attainment planning and/or designation process had been redesignated and, in Sections II.B.5.I. and II.B.5.II., details the methodology that Florida employed to determine proposed longer-term average emission limits for several sulfuric acid plants (SAPs) and nitric acid plants (NAPs) in the State. EPA also specifically highlights the differences between the attainment planning approach laid out in the SO_2 Nonattainment Guidance and the assessment made for determining comparably stringent limits to replace the existing SIP-rule limits.

As discussed in the Excess Emissions Proposal, Florida's longer-term average emission limits for several SAPs and NAPs in the September 30, 2022, SIP revision are not based entirely on the SO_2 Nonattainment Guidance. As FDEP explains in its SIP submittal, to set reasonable longer-term average emission limits that would be comparable to the existing SIP-rule emission limits proposed for removal from the SIP, the State made use of the statistical principles that EPA applied in the SO_2 Nonattainment Guidance to calculate equivalency ratios. In the Excess Emissions Proposal, EPA states that Florida made use of similar statistical approaches to the approach outlined in the guidance when developing its source-specific emission limits for SO_2 and NO_X. *See* 88 FR 29598, 29605–08. Making use of a similar statistical analysis of actual emissions data to develop longer-term average emission limits that would be comparable to existing SIP-rule emission limits and not allow emissions increases is not the same as applying the guidance for demonstrating that a prospective limit is sufficient to provide for attainment of the NAAQS.

As noted above, the Excess Emissions Proposal discusses the modified methodology for determining the longer-term average emission limits that can replace the existing SIP rule SO_2 emission limits for SAPs and the existing SIP rule NO_X emission limits for NAPs. The analysis demonstrates that the longer-term average emission limits are comparably stringent to those existing SIP emission limits and, therefore, do not allow any emissions increases. The detailed analysis described in section II.B.5. of the Excess Emissions Proposal explains why the longer-term emission limits developed by Florida are comparably stringent to the existing SIP limits. The proposal also specifically details how Florida's approach in establishing longer-term average emission limits for certain SAPs and for the two NAPs in the State differed from EPA's approach detailed in the SO_2 Nonattainment Guidance for the purpose of attainment planning, and it highlights the similarities, where relevant, between the two approaches. EPA did not state or suggest that Florida made use of actual modeled ''critical emission values'' (CEVs) to determine the new longer-term average emission limits proposed for incorporation into the SIP.

At the time of proposal, EPA had no information that there were any NAAQS issues that would require modeling a new CEV, and no new information has been provided to indicate that there would be NAAQS compliance issues around any of the facilities subject to this rulemaking. Rather, FDEP established new, source-specific emission limits and compared them to existing SIP emission limits in Rules 62–296.402 and 62–296.408. The starting point for the analysis was not a nonattainment planning situation, but instead a consideration of any potential relaxation to the SIP in replacing the existing SIP-rule emission limits with source-specific longer-term average emission limits.

As discussed in the Excess Emissions Proposal, the existing SIP emission limits proposed for removal from the SIP were only applicable to steady-state periods of operation, having functioned with an exemption for periods of SSM. With Florida's removal of exemptions for SSM in Rule 62–210.700, ''Excess Emissions,'' in response to the 2015 SSM SIP Action, the State wanted to develop new, continuous emission limits that would apply during all periods of operation. Having been through the attainment planning process and air quality designations process for several SAPs (*i.e.,* Mosaic Fertilizer's Riverview facility, Bartow facility, and New Wales facility), FDEP recognized that several SAPs in the State already had existing longer-term average, source-specific emission limits which were continuous and at least as stringent as the emission limits in Rule 62–296.402 (which had not been adopted for attainment planning purposes).

The State then proposed new, longer-term average emission limits for the remaining SAPs in the State, Mosaic South Pierce, Nutrien White Springs, and Tampa Electric Company (TECO) Polk, which would be based on an analysis of comparable stringency to the previously existing short-term limits using each source's continuous emissions monitoring system (CEMS) data, similar to the longer-term average emission limit approach developed in the SO_2 Nonattainment Guidance. For this analysis, Florida used the existing SIP rule emission limits in place of the CEV concept used in the SO_2 Guidance to demonstrate how much a longer-term average limit should be scaled down to compensate for the longer averaging period and maintain the same level of emission limit stringency. Similarly, the State developed longer-term average continuous emission limits for the two NAPs in the State, Ascend Pensacola, and Trademark Nitrogen, which could build off of a similar analysis based on historical CEMS data. EPA has not suggested that FDEP made use of a modeled CEV for these SAPs and NAPs. The existing 3-hour average SIP emission limits were the baseline for the longer-term average analysis. *See* 88 FR 29598, 29605–08.

EPA disagrees with the Commenters that the Agency did not provide enough information to assess the appropriateness of the data sets used in the analysis. The Excess Emissions Proposal and associated docket provide sufficient relevant information about the data sets Florida used to calculate the source-specific limits. The State utilized over three years of CEMS data for Mosaic South Pierce, three years of data for Nutrien White Springs SAP F, two years of data for Nutrien White Springs SAP E, and three years of data for Ascend Pensacola.[9] The data sets used were from the most recently available complete years and provide ample data points to perform robust analyses and to reach reliable conclusions.

EPA included the CEMS data as provided by FDEP for the Mosaic South Pierce SAPs, Nutrien White Springs

[9] *See* ''Nutrien White Springs Eq Ratio 2019–2021,'' ''Mosaic SP SO_2 Equivalence Ratios,'' and ''Ascend Nitric Acid Plant Equivalency Ratio'' in the docket for this rulemaking.

SAPs, and the Ascend Pensacola NAP in the rulemaking docket at the time of proposal. EPA also evaluated the analysis that FDEP performed in selecting longer-term average emission limits for these facilities. The Excess Emissions Proposal describes the use of 99th percentile 1-hour average, 3-hour average, 6-hour average, and 24-hour block average emissions, as applicable for the SAPs, and the proposed longer-term average emission limits being evaluated. Similarly, EPA describes the use of the 98th percentile 1-hour average, 3-hour average, and 720-hour rolling average emissions for the Ascend Pensacola NAP.

As discussed in the Excess Emissions Proposal, for the Nutrien White Springs and Mosaic South Pierce SAPs, FDEP evaluated the ratio of the 24-hour:3-hour average 99th percentile emissions, then also considered the ratio of 24-hour:1-hour average 99th percentile emissions. FDEP then selected a longer-term average emission limit (840 lbs/hr) in line with the most conservative (*i.e.,* lowest) equivalency ratios determined for Nutrien White Springs and considerably more stringent than the calculated equivalency ratios would have determined to be appropriate for Mosaic South Pierce. *See* 88 FR 29598, 29605–09. The ratio of the selected emission limit to the existing SIP emission limit (917 lbs/hr) is 0.916. The average of the two 24-hr:3-hr ratios determined for SAPs E (0.950) and F (0.914), would be 0.932. Therefore, the final limit across these two SAPs at Nutrien White Springs is in line with the lower end of what the 24-hr:3-hr equivalency ratios would indicate is an appropriate longer-term average emission limit and more stringent than what an equal consideration for the analysis across both SAPs would call for. Regarding Mosaic South Pierce, FDEP and Mosaic Fertilizer agreed upon an equivalency ratio of 0.750 for the source, which is lower than any of the 24-hr:3-hr or 24-hr:1-hr equivalency ratios included in the analysis of the CEMS data. *See* 88 FR 29598, 29605.

Regarding the TECO Polk SAP, with the new 6-hour average emission limit, the ratio between the selected limit and the existing SIP emission limit is in line with the lowest 6-hr:1-hr ratio from the available CEMS data for Nutrien White Springs and Mosaic South Pierce. *See* 88 FR 29598, 29610. For Ascend Pensacola, FDEP considered the ratio of the 720-hour:3-hour average 98th percentile emissions, then also considered the ratio of the 720-hour:1-hour average 98th percentile emissions. The selected emission limit compared to the existing SIP emission limit for Ascend Pensacola and Trademark Nitrogen results in a significantly more stringent ratio (0.867) than the CEMS data analysis would lead to for the 720-hr:3-hr (0.958) and 720-hr:1-hr (0.958) ratios. *See* 88 FR 29598, 29607, 29612–13. The ultimate longer-term average emission limits for these SAPs and NAPs were compared to these existing SIP emission limits and the ratios of longer-term average emissions to shorter-term average emissions in the CEMS data to assess the comparability with the existing SIP emission limits and therefore assess the potential relaxation to the SIP. FDEP developed its new source-specific emission limits in an appropriate way to ensure that the SIP is not relaxed and that increased emissions will not occur because of the SIP revision.

As shown in the tables below, and as discussed in the Excess Emissions Proposal,[10] in all cases the maximum emissions theoretically allowed under the new source-specific limits are less than what is theoretically allowed under the existing SIP limits on both a short-term and a long-term (annual) basis.

Facility	Existing SIP SO_2 limits		New source-specific SIP SO_2 limits	
	Combined unit maximum emissions allowed per hour (based on a 3-hour average) (lbs/hr)	Combined unit maximum emissions allowed per year (tons/yr)	Combined unit maximum emissions allowed per hour (based on longer-term averages, as indicated) (lbs/hr)	Combined unit maximum emissions allowed per year (tons/yr)
Nutrien White Springs	917	4,015	[i] 840	3,679
Mosaic South Pierce	1,000	4,380	[ii] 750	3,285
TECO Polk	49.8	218.3	[ii] 48.0	[iii] 210.2

[ii] 24-hour average.
[ii] 6-hour average.
[iii] EPA notes that Table 5 in the Excess Emissions Proposal included a typographical error, reflecting 214.6 tons/year rather than 210.2 tons/year.

Facility	Existing SIP NO_X limits		New source-specific SIP NO_X limits	
	Maximum emissions allowed per hour (based on a 3-hour average) (lbs/hr)	Maximum emissions allowed per year (tons/yr)	Maximum emissions allowed per hour (based on longer-term averages, as indicated) (lbs/hr)	Maximum emissions allowed per year (tons/yr)
Ascend Pensacola	187.5	821	[iv] 162.6	712

[10] Except where noted, each figure in the tables below appeared in a table regarding the corresponding facility in the Excess Emissions Proposal.

Facility	Existing SIP NO_X limits		New source-specific SIP NO_X limits	
	Maximum emissions allowed per hour (based on a 3-hour average) (lbs/hr)	Maximum emissions allowed per year (tons/yr)	Maximum emissions allowed per hour (based on longer-term averages, as indicated) (lbs/hr)	Maximum emissions allowed per year (tons/yr)
Trademark Nitrogen	18.8	82.1	[v] 16.3	71.2

[iv] 720-hour average.
[v] 30-day average.

Regarding the other impacted SAPs at Mosaic Fertilizer's Riverview facility, Bartow facility, and New Wales facility, EPA notes in the Excess Emissions Proposal that these facilities already had longer-term average continuous emission limits that had been previously approved into the SIP to enable attainment of the 2010 SO_2 NAAQS.[11] EPA compared these approved source-specific emission limits, which in fact provided for attainment in the respective nonattainment areas, to the existing SIP emission limit at Rule 62–296.402 (which had not been relied upon to show attainment) and determined that these emission limits are at least as stringent as the limits provided in Rule 62–296.402. EPA did not reopen for comment these longer-term average limits for these facilities, as noted in the proposal, and the Commenters did not raise any issues with these facilities or their existing longer-term average source-specific emission limits with any specificity. *See* 88 FR 29598, 29612, 29615. The Excess Emissions Proposal refers readers to the actions in which EPA approved those source-specific emission limits for more detail on how those limits were developed. In that proposal, EPA only compares the new longer-term average limits with the existing limits at Rule 62–296.402.

EPA also reiterates that, for the NAPs, the steady-state SIP emission limit was carried forward directly into the source-specific permits being approved into the SIP. This means, as EPA described in the Excess Emissions Proposal, no effective change to the existing SIP emission limitations results from removing the Rule 62–296.408 emission limit from the SIP. Instead, the two NAPs each received two new source-specific emission limits: the first covers the steady-state modes of operation and is the same as required by the existing SIP; the second applies at all times, including periods of SSM, and is comparably stringent to the existing SIP emission limit. Therefore, the SIP is strengthened by the changes applicable to these sources.

Regarding all SAPs, except for the TECO Polk SAP, the New Source Performance Standard (NSPS) at 40 CFR part 60, subpart H, *Standards of Performance for Sulfuric Acid Plants,* imposes the same emission limit for steady-state periods as the most stringent emission limit in Rule 62–296.402 (*i.e.,* 4 pounds of SO_2 per ton of sulfuric acid produced (lb/ton)). Therefore, EPA has several reasons to believe that steady-state emissions will not increase subsequent to this revision: (1) The new, longer-term average emission limits are comparably stringent to the existing steady-state SIP-rule emission limit, (2) the longer-term average emission limits significantly reduce the total SO_2 emissions allowed on a short-term basis and also a long-term (annual) basis, and (3) the NSPS will still apply to Nutrien White Springs and Mosaic South Pierce.

Comment 2: Commenters state that longer term limits cannot guarantee protection of 1-hour standards and generally should not be used to protect short-term NAAQS. Additionally, the Commenters state that if EPA chooses to allow longer-term emission limits, it should ensure that those limits are as protective as possible to ensure that the health-based standards are maintained at all times.

Response 2: EPA disagrees with the Commenters' statement that longer-term average limits should not be used to protect short-term NAAQS. As discussed in Section II.B.5. of the Excess Emissions Proposal, EPA's 2014 SO_2 Nonattainment Guidance provides procedures for using a statistical analysis to determine NAAQS-protective longer-term average emission limits for sources with variable emissions. In general, EPA believes that when the statistical procedure described in the SO_2 Nonattainment Guidance is applied appropriately, longer-term average limits are comparably effective in achieving attainment of a short-term NAAQS in nonattainment areas. EPA has approved the application of the longer-term averaging policy on a case-by-case basis in accordance with the concepts recommended in the SO_2 Nonattainment Guidance for several SO_2 nonattainment-area attainment SIPs and redesignation requests that require a NAAQS evaluation.[12] This includes attainment-SIP and redesignation-request approvals for SO_2 nonattainment areas in Florida. Appropriately set longer-term average limits can provide for attainment of a short-term NAAQS because they are set low enough that they are equally stringent as the respective shorter-term limits with higher thresholds.

Florida's application of the statistical analysis procedures contained in EPA's SO_2 Nonattainment Guidance for this SIP action was not for the purpose of demonstrating compliance with the short-term 1-hour SO_2 and NO_2 NAAQS. Rather, Florida's analysis shows that replacement of the existing short-term SIP-approved limits with the new source-specific longer-term average emission limits would not allow for an increase in emissions and thereby lessen the stringency of the SIP. As a result, the control strategy needed to meet a comparably stringent longer-term emission limit would necessarily be as effective as the control strategy needed to meet the shorter-term emission limit. Moreover, the statistical procedures were used to develop source-specific longer-term average emission limits that will apply during all periods of operation and that are comparatively

[11] *See* 82 FR 30749 (July 3, 2017), 85 FR 9666 (February 20, 2020).

[12] EPA analyzed and approved several SO_2 attainment SIPs and redesignation requests that provided modeled attainment of the 2010 short-term standard determining the suitably adjusted long term limits can be protective of the expected to 1-hour SO_2 standard. *See, e.g.,* 87 FR 33095 (June 1, 2022), 85 FR 9666 (February 20, 2020), 83 FR 25922 (June 5, 2018), 84 FR 30920 (June 28, 2019), 82 FR 30749 (July 3, 2017).

stringent to the existing shorter-term limits in Florida's SIP for SAPs and NAPs, which only apply during full-load operation and exclude SSM periods. While Florida's submission is neither intended nor required to demonstrate protection of 1-hour standards, such as what would be required of an attainment SIP supported by a modeling demonstration, Florida used appropriate source-specific data sets and appropriately applied statistical procedures to develop longer-term average emission limits that are comparatively stringent to the existing SIP emission limits such that the SIP revision will not result in emissions increases and consequently will not interfere with any applicable requirement of the CAA.

Comment 3: Commenters state that if EPA chooses to allow longer-term limits to protect short-term NAAQS, the Agency should ensure that the conversion factor used to calculate a longer-term limit is appropriately low and that the facility would violate its longer-term limit if it violated its ''critical emission value.''

Response 3: EPA believes that the procedures used by Florida to calculate the longer-term average limits for the SAPs and NAPs discussed in the May 8, 2023, Excess Emissions Proposal are appropriate and provide for comparably stringent longer-term average emission limits that apply during all periods of operation of the affected sources. The procedures used by Florida to derive the longer-term average limits are discussed and summarized in Section II.B.5. of the Excess Emissions Proposal. As shown in the example calculations provided for the Mosaic South Pierce facility and described in the Excess Emissions Proposal, Florida used an equivalency ratio of 0.75 to establish the 24-hour SO_2 limit for the two SAPs, which is approximately 23 percent lower than the 0.978 equivalency ratio calculated by applying the procedure of the SO_2 Nonattainment Guidance.[13] Therefore, the 24-hour SO_2 limits established for these SAPs are even more stringent than limits that would be derived by strictly following the procedures in the SO_2 Nonattainment Guidance. Likewise, the longer-term average limits for the other SAPs and NAPs subject to this rulemaking are at least as stringent as the longer-term average limits that were calculated following the procedures of the SO_2 Nonattainment Guidance.

As discussed in EPA's response to Comment 1, the concept of the ''critical emission value'' (CEV) is not applicable to the analysis Florida performed to calculate the comparably stringent longer-term average limits that apply during all periods of operation, including SSM events. Florida used the existing 3-hour SIP limits applicable the SAPs and NAPs as the starting point for deriving comparably stringent longer-term average limits. No CEVs were calculated. To the extent the Commenters may be referring to how the longer-term average emission limits are established relative to the existing 3-hour average SIP emission limits, EPA disagrees that the limits should be set such that any exceedance of the existing 3-hour average limits would result in exceeding the longer-term average limit. The purpose of setting a longer-term average emission limit is to allow for some level of emissions variability. Prior to this action, the existing SIP emission limits did not apply during periods of SSM, and with this change, a comparably stringent emission limit will apply at all times, including those periods of SSM. EPA discussed the statistical approach that Florida employed in establishing its longer-term average emission limits which are comparable to existing SIP emission limits in the responses to Comments 1 and 2.

Comment 4: Commenters state that there appears to be no description in EPA's proposed rule or Florida's SIP submission regarding the removal of subparagraph 62–296.405(1)(c)3, which provides that owners of fossil fuel steam generators shall monitor their emissions and the effects of the emissions on ambient concentrations of SO_2, in a manner, frequency, and locations approved and deemed reasonably necessary and ordered by the Department. Commenters question why EPA has not included any analysis on how removing this provision would not interfere with attainment, reasonable further progress, or any other applicable requirement under section 110(l) of the Act.

Response 4: EPA's May 8, 2023, Excess Emissions Proposal (88 FR 29598), which addresses Florida's November 22, 2016, and September 30, 2022, SIP revisions, did not discuss the removal of subparagraph 62–296.405(1)(c)3 because the Excess Emissions Proposal did not propose to remove it from the SIP. *See* 88 FR at 29602 and 29603, n.15. Instead, EPA proposed to remove subparagraph 62–296.405(1)(c)3 from the SIP in a different and separate notice of proposed rulemaking also published on May 8, 2023—the Emission Standards Proposal (88 FR 29591). In that notice, EPA explained the rationale for removal and proposed to find that the changes to Rule 62–296.405 would not interfere with any requirement concerning attainment and RFP, or any other applicable requirement of the CAA. *See* 88 FR 29591, 29593–94. EPA did not receive any comments on the Emission Standards Proposal and is finalizing action on both the Emission Standards Proposal and the Excess Emissions Proposal in this final rulemaking.

As EPA explained in the Emission Standards Proposal, EPA proposed to remove subparagraph (1)(c)3 from the SIP because, as FDEP notes in its April 1, 2022, SIP revision, the monitoring of stack emissions is regulated by SIP-approved Chapter 62–297, F.A.C., Stationary Sources—Emissions Monitoring, and subparagraph (1)(c)3 is a discretionary ambient SO_2 monitoring provision that is no longer needed in the SIP. *Id.* FDEP explains that the State has the authority and capability of setting up ambient air quality monitoring stations as needed. In addition, Rule 62–212.400(7) requires that the owner or operator of a major stationary source or major modification under the PSD program provide any required monitoring and analysis as required in 40 CFR 52.21(m). Florida operates an approved plan for monitoring compliance with the SO_2 NAAQS and may require owners of fossil fuel steam generators to conduct ambient monitoring as needed when constructing or modifying emissions units.

Comment 5: Commenters speculate that specific plants are being removed from Rule 62–296.405, ''Fossil Fuel Steam Generators with More than 250 Million Btu Per Hour Heat Input,'' because they no longer exist or are no longer permitted to operate. Commenters ask EPA to clarify why the plants are being removed.

Response 5: Similar to the response to Comment 4, EPA's May 8, 2023, Excess Emissions Proposal did not discuss the removal of SO_2 and NO_X standards for certain units from Rule 62–296.405 because the Excess Emissions Proposal did not propose to remove them from the SIP. Instead, EPA proposed to remove the standards for certain units from Rule 62–296.405 in the Emissions Standards Proposal and explained the rationale for such removal in that notice. EPA did not receive any comments on the Emission Standards Proposal and is finalizing action on both the Emission Standards Proposal and the Excess Emissions Proposal in this final rulemaking.

As EPA explained in the Emission Standards Proposal, EPA proposed to remove certain units from Rule 62–296.405 because Florida requested the

[13] *See supra* note 9.

removal of SO_2 and NO_X standards from Rule 62–296.405 for units that have permanently shut down [14] or have more stringent federally enforceable limits in the SIP. *See* 88 FR 29591, 29593–94.

Comment 6: A separate commenter expresses support for EPA's Excess Emissions Proposal and urges EPA to approve Florida's SIP revisions ''and reinstate or issue new SIP calls for other states or local jurisdictions that have not yet revised their SSM provisions . . . .'' The commenter mentions that ''this will ensure a level playing field for all regulated facilities and promote environmental justice for all communities.''

Response 6: EPA acknowledges the commenter's support for finalizing the Excess Emissions Proposal. To the extent that the comment refers to SIP calls for other states or local jurisdictions, the comment is outside the scope of this rulemaking, which addresses the 2015 SSM SIP Action with respect to Florida only.

III. Final Actions

EPA is approving Florida's November 22, 2016, SIP revision (Excess Emissions Rule SIP Revision) consisting of revisions to Rule Section 62–210.700, ''Excess Emissions.'' The revisions include the deletion of Rule 62–210.700(4), with the addition of equivalent language to Rules 62–210.700(1) and (2); amendment of Rule 62–210.700(3), to clarify and restate the visible emissions and PM limits applicable during boiler cleaning (soot blowing) and load changes; addition of Rule 62–210.700(6), which states that Rules 62–210.700(1) and (2) shall not apply after May 22, 2018, to either emission limits or unit-specific emission limits that have been incorporated into Florida's SIP; and addition of Rule 62–210.700(7), which states that after October 23, 2016, Rules 62–210.700(1) and (2), shall not apply to new permit-specific emission limits established pursuant to Florida's PSD and NNSR regulations (Rules 62–212.400 and 62–210.500). EPA has determined that Florida's Excess Emissions Rule SIP Revision is consistent with CAA requirements and adequately addresses the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to the Florida SIP.

Additionally, EPA is approving Florida's SIP revisions consisting of SSM-related and other changes to Rule 62–296.405, ''Existing Fossil Fuel Steam Generators with Greater than or Equal to 250 Million Btu Per Hour Heat Input,'' [15] and Rule 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities''; removal of the sulfur dioxide emission limit in Rule 62–296.402, ''Sulfuric Acid Plants''; and removal of the nitrogen oxides emission limit in Rule 62–296.408, ''Nitric Acid Plants.'' Further, EPA is approving into Florida's SIP source-specific SO_2 and NO_X emission limits and construction permit conditions for five SO_2 emissions units and two NO_X emissions units. EPA finds that Florida's April 1, 2022, SIP revision and the September 30, 2022, Supplemental SSM SIP Revision are consistent with CAA requirements and adequately address the additional regulations identified by the State as problematic.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is finalizing the incorporation by reference of Florida Rule 62–210.700, ''Excess Emissions,'' state effective October 23, 2016, which set a schedule by which the exemptions from applicable emission limits for startups, shutdowns, and malfunctions will be removed. EPA is also finalizing the incorporation by reference of the following Florida Rules: 62–296.402, ''Sulfuric Acid Plants,'' removing specific emission limits from the Florida SIP, state effective June 23, 2022, except for 62–296.402(1), 62–296.402(2)(a)2., 62–296.402(2)(b)2., and 62–296.402(3)(b); 62–296.405, ''Existing Fossil Fuel Steam Generators with Greater than or Equal to 250 Million Btu Per Hour Heat Input,'' revising monitoring requirements and clarifying applicability, state effective June 23, 2022, except for 62–296.405(4)(a)2. through 5., 62–296.405(4)(a)8. and 9., 62–296.405(4)(b)1. and 2., 62–296.405(4)(b)4., and 62–296.405(5)(c).; 62–296.408, ''Nitric Acid Plants,'' removing specific emission limits, state effective November 23, 1994, except for 62–296.408(2); and 62–296.570, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities,'' removing an exemption from RACT requirements during startups, shutdowns, and malfunctions, state effective June 23, 2022. Additionally, EPA is finalizing the incorporation by reference of the specified new operating parameters, SO_2 emission caps, and compliance monitoring, recordkeeping, and reporting requirements for emission units EU 066 (SAP E) and EU 067 (SAP F) at Nutrien White Springs (Permit No. 0470002–132–AC),[16] state effective January 1, 2023; EU 004 (SAP 10) and EU 005 (SAP 11) at Mosaic South Pierce (Permit No. 1050055–037–AC),[17] state effective April 1, 2023; and EU 004 at TECO-Polk (Permit No. 1050233–050–AC),[18] state effective January 1, 2023. The SO_2 emission standards specified in each permit are the basis for the removal of other SO_2 emission limits from the SIP. Finally, EPA is finalizing the incorporation by reference of the specified new operating parameters, NO_X emission caps, and compliance monitoring, recordkeeping, and reporting requirements for emission units EU 042 at Ascend Pensacola (Permit No. 0330040–076–AC),[19] state effective January 1, 2023; and EU 001 at Trademark Nitrogen (Permit No. 0570025–016–AC),[20] state effective

[14] As explained in the Emission Standards Proposal, on March 30, 2023, Florida withdrew its request to remove 62–296.405(1)(c)1.g and (1)(d)2., which include SO_2 and NO_X limits, respectively, for Florida Power and Light's Manatee plant, which has not shut down. EPA accordingly did not propose to approve the removal of these subparagraphs.

[15] The September 30, 2022, SIP revision includes the following typographical errors: (1) In paragraph 62–296.405(6)(b) as shown on page 33 of 126 in the submittal, one sentence (''In lieu of EPA Method 17, 5, 5B, or 5F . . . .'') appears in two places. The amendments to the State effective version of Rule 62–296.405, which start at page 73 of 126, show the revised text correctly at page 75 of 126 in the SIP submittal. (2) In paragraph 62–296.405(7)(a)4. as shown on page 35 of 126, two rule cross-references are not shown as revised. The amendments to the State effective version of Rule 62–296.405 show the revised cross-references correctly at page 77 of 126. (3) In paragraph 62–296.405(7)(b) as shown on page 35 of 126, a rule cross-reference is not shown as revised. The amendments to the State effective version of the rule show the revised cross-reference correctly at page 77 of 126.

[16] Specifically, EPA is incorporating by reference into Florida's SIP Specific Conditions 3 through 6 from Permit No. 0470002–132–AC issued to White Springs Agricultural Chemicals, Inc., Suwanee River/Swift Creek Complex by FDEP on September 22, 2022, State effective January 1, 2023.

[17] Specifically, EPA is incorporating by reference into Florida's SIP Specific Conditions 4 through 7 from Permit No. 1050055–037–AC issued to Mosaic Fertilizer, LLC, South Pierce Facility by FDEP on September 22, 2022, State effective April 1, 2023.

[18] Specifically, EPA is incorporating by reference into Florida's SIP Specific Conditions 1 through 4 from Permit No. 1050233–050–AC issued to Tampa Electric Company Polk Power Station by FDEP on September 21, 2022, State effective January 1, 2023.

[19] Specifically, EPA is incorporating by reference into Florida's SIP Specific Conditions 1 through 6 from Permit No. 0330040–076–AC issued to Ascend Performance Materials Operations LLC Pensacola Plant by FDEP on September 20, 2022, State effective January 1, 2023. EPA notes that the condition numbers are misidentified on pages 43–44 of the Supplemental SSM SIP Revision as 1 and 5 through 9; in the permit, those conditions are numbered 1 through 6, as shown on pages 98–99 of the Supplemental SSM SIP Revision.

[20] Specifically, EPA is incorporating by reference into Florida's SIP Specific Conditions 1 and 5

January 1, 2023. The NO_X emission standards specified in each permit are the basis for the removal of other NO_X emission limits from the SIP. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[21]

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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Are 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. In those areas of Indian country, these actions do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

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 FDEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in these actions. Due to the nature of the actions being taken here, these actions are expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of these actions, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. These actions are 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 these actions must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 24, 2023.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. In § 52.520:

■ a. Amend the table in paragraph (c) by:

■ 1. Under the heading ''Chapter 62–210 Stationary Sources—General Requirements,'' revising the entry ''62–210.700'',

through 9 from Permit No. 0570025–016–AC issued to Trademark Nitrogen, Inc., by FDEP on September 20, 2022, State effective January 1, 2023.

[21] *See* 62 FR 27968 (May 22, 1997).

■ 2. Under the heading ''Chapter 62–296 Stationary Sources—Emission Standards,'' revising entries ''62–296.402'', ''62–296.405'', ''62–296.408'', and ''62–296.570'';

■ b. Amend the table in paragraph (d), by adding entries ''Nutrien White Springs''; ''Mosaic Fertilizer LLC—South Pierce Facility''; ''Tampa Electric Company (TECO)—Polk Power Station'', Ascend Pensacola'', and ''Trademark Nitrogen'' at the end of the table.

The revisions and additions read as follows:

§ 52.520 dentification of plan.

* * * * *

(c) * * *

EPA-APPROVED FLORIDA LAWS AND REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 62–210 Stationary Sources—General Requirements				
*	*	*	*	*
62–210.700	Excess Emissions	10/23/2016	8/4/2023, [Insert citation of publication].	
*	*	*	*	*
Chapter 62–296 Stationary Sources—Emission Standards				
*	*	*	*	*
62–296.402	Sulfuric Acid Plants	6/23/2022	8/4/2023, [Insert citation of publication].	Except for paragraphs (1), (2)(a)2., (2)(b)2., and (3)(b).
*	*	*	*	*
62–296.405	Existing Fossil Fuel Steam Generators with Greater than or Equal to 250 Million Btu Per Hour Heat Input.	6/23/2022	8/4/2023, [Insert citation of publication].	Except for paragraphs (4)(a)2. through 5., (4)(a)8. and 9., (4)(b)1. and 2., (4)(b)4., and (5)(c).
*	*	*	*	*
62–296.408	Nitric Acid Plants	11/23/1994	8/4/2023, [Insert citation of publication].	Except for paragraph (2).
*	*	*	*	*
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.	6/23/2022	8/4/2023, [Insert citation of publication].	
*	*	*	*	*

(d) * * *

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
*	*	*	*	*
Nutrien White Springs	0470002–132–AC.	1/1/2023	8/4/2023, [Insert citation of publication].	Conditions 3 through 6 at EU 066 (SAP E) and EU 067 (SAP F).
Mosaic Fertilizer, LLC—South Pierce Facility.	1050055–037–AC.	4/1/2023	8/4/2023, [Insert citation of publication].	Conditions 4 through 7 at EU 004 (SAP 10) and EU 005 (SAP 11).
Tampa Electric Company (TECO)—Polk Power Station.	1050233–050–AC.	1/1/2023	8/4/2023, [Insert citation of publication].	Conditions 1 through 4 at EU 004.
Ascend Pensacola	0330040–076–AC.	1/1/2023	8/4/2023, [Insert citation of publication].	Conditions 1 through 6 at EU 042.
Trademark Nitrogen	0570025–016–AC.	1/1/2023	8/4/2023, [Insert citation of publication].	Conditions 1 and 5 through 9 at EU 001.

* * * * *

[FR Doc. 2023–15964 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0197; FRL–10826–02–R7]

Air Plan Approval; State of Missouri; Construction Permits by Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Missouri State Implementation Plan (SIP) received on August 4, 2022. The submission removes a provision in the Missouri regulation ''Construction Permits By Rule'' that allows the burning of illegal and waste pharmaceutical drugs in crematories and animal incinerators. In the previous revision, submitted to EPA on March 7, 2019, EPA approved selected revisions of the rule but did not act on a portion of the revision that included the disposal of pharmaceuticals in crematories and animal incinerators because it conflicted with federal requirements on the incineration of illegal and waste pharmaceuticals. By removing the conflicting language, approval of these revisions ensures consistency between State and federally approved rules. These revisions along with other minor text changes are administrative in nature and do not impact the stringency of the SIP or air quality. The EPA's approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on September 5, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2023–0197. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7718; email address: *brown.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is approving a SIP revision submitted by the State of Missouri on August 4, 2022. Missouri requested the EPA to approve revisions to 10 Code of State Regulations (CSR) 10–6.062 in the Missouri SIP. The state has revised the rule to remove a provision in the Missouri regulation, ''Construction Permits By Rule'' that allowed the burning of illegal and waste pharmaceutical drugs in crematories and animal incinerators. In the previous revision, submitted to EPA on March 7, 2019, and in a final rulemaking, EPA approved selected revisions of the rule but did not act on a portion of the revision that included the disposal of pharmaceutical drugs because it conflicted with federal requirements on the incineration of illegal and waste pharmaceuticals. After review and analysis of the revisions, the EPA concluded that these changes do not have adverse effects on air quality. The full text of these changes can be found in the State's submission, which is included in the docket for this action. The EPA's analysis of the revisions can be found in the technical support document (TSD), also included in the docket.

II. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from 12/01/2021 to 2/03/2022 and received no comments. The EPA's Notice of Proposed Rulemaking (NPRM) and supporting information contained in the docket were made available for public comment from May 22, 2023, to June 21, 2023 (88 FR 32715).

The EPA received one comment. The commenter did not support the incineration of illegal and waste pharmaceuticals because of the potential negative human health and environmental impacts. The state removed the language in the rule allowing the incineration of illegal and waste pharmaceuticals. Therefore, the rule is consistent with federal regulations and EPA is able to approve this revision. The comment is included in the docket.

In addition, as explained above and in more detail in the TSD, which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is the EPA taking?

The EPA is taking final action to amend the Missouri SIP by approving the State's revisions to rule 10–6.062 ''Construction Permits By Rule.'' Approval of these revisions will ensure consistency between State and federally approved rules. As described in the NPRM (88 FR 32715), and the TSD, the EPA has determined that these changes meet the requirements of the Clean Air Act and will not adversely impact air quality or the stringency of the SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri rule 10 CSR 10–6.062, state effective date July 30, 2022, which regulates the process by which sources can be exempt from 10 CSR 10–6.060 Construction Permits Required. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

[1] 62 FR 27968, May 22, 1997.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

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.''

Missouri 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 did not perform an EJ analysis and did not consider EJ in this action. 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 E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 21, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.062'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
10–6.062	Construction Permits by Rule	7/30/2022	8/4/2023, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–15848 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0618; FRL–9242–02–R4]

Air Plan Approval; North Carolina; Volatile Organic Compound Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a State Implementation Plan (SIP) revision to the North Carolina SIP, submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality (NCDAQ), via a letter dated April 13, 2021. This SIP revision updates several NCDEQ air regulations which apply to sources that emit volatile organic compounds (VOC).

DATES: This rule is effective September 8, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0618. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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 Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Spann can be reached via electronic mail at *spann.jane@epa.gov* or via telephone at (404) 562–9029.

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing to take?

EPA is finalizing the approval of changes to North Carolina's SIP that were provided to EPA through NCDAQ via a letter dated April 13, 2021.[1] Specifically, EPA is approving changes to 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .0900, *Volatile Organic Compounds* (hereinafter referred to as Section .0900).[2] The April 13, 2021, revision to the North Carolina SIP transmits a few substantive changes and a number of changes that do not alter the meaning of the regulations, such as clarifying changes, updated cross-references, and several ministerial language changes. In addition, other changes include adding, deleting, and editing definitions and adding SIP-strengthening language.

North Carolina's Section .0900 rules regulate sources that emit greater than or equal to 15 pounds of VOC per day, unless otherwise specified in Section .0900. Most of the SIP changes to Section .0900 are ministerial and formatting changes, with clarifying changes throughout. Specifically, EPA is approving changes to Rules .0901, *Definitions;* .0902, *Applicability;* .0903, *Recordkeeping: Reporting: Monitoring;* .0906, *Circumvention;* .0909, *Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas;* .0912, *General Provisions on Test Methods and Procedures;* .0918, *Can Coating;* .0919, *Coil Coating;* .0922, *Metal Furniture Coatings;* .0923, *Surface Coating of Large Appliance Parts;* .0924, *Magnet Wire Coating;* .0925, *Petroleum Liquid Storage in Fixed Roof Tanks;* .0928, *Gasoline Service Stations Stage 1;* .0930, *Solvent Metal Cleaning;* .0931, *Cutback Asphalt;* .0933, *Petroleum Liquid Storage in External Floating Roof Tanks;* .0935, *Factory Surface Coating of Flat Wood Paneling;* .0937, *Manufacture of Pneumatic Rubber Tires;* .0943, *Synthetic Organic Chemical and Polymer Manufacturing;* .0944, *Manufacture of Polyethylene: Polypropylene and Polystyrene;* .0945 *Petroleum Dry Cleaning;* .0947, *Manufacture of Synthesized Pharmaceutical Products;* .0948, *VOC Emissions from Transfer Operations;* .0949, *Storage of Miscellaneous Volatile Organic Compounds;* .0951, *RACT For Sources of Volatile Organic Compounds;* .0955, *Thread Bonding Manufacturing;* .0956, *Glass Christmas Ornament Manufacturing;* .0957, *Commercial Bakeries;* .0961, *Offset Lithographic Printing and Letterpress Printing;* .0962, *Industrial Cleaning Solvents;* .0963, *Fiberglass Boat Manufacturing Materials;* .0964, *Miscellaneous Industrial Adhesives;* .0965, *Flexible Package Printing;* .0966, *Paper, Film and Foil Coatings;* .0967, *Miscellaneous Metal and Plastic Parts Coatings;* and .0968, *Automobile and Light Duty Truck Assembly Coatings.*[3]

Through a notice of proposed rulemaking (NPRM), published on June 13, 2023, EPA proposed to approve North Carolina's April 13, 2021, submission. The proposed changes included various ministerial and minor changes to language and other clarifying changes throughout North Carolina's

[1] EPA notes that the submittal was received through the State Planning Electronic Collaboration System (SPeCS) on April 14, 2021. For clarity, this notice will refer to the submittal by the date on the cover letter, which is April 13, 2021.

[2] EPA notes that the Agency received several submittals revising the North Carolina SIP that were transmitted with the same April 13, 2021, cover letter. EPA has considered and will be considering action for these other SIP revisions in separate rulemakings.

[3] Hereinafter, the North Carolina Rules will be identified by ''Rule'' and the accompanying number, *e.g.,* Rule .0901.

rules in 02D Section .0900, *Volatile Organic Compounds.* The details of North Carolina's submission, as well as EPA's rationale for approving the changes, are described in more detail in the June 13, 2023, NPRM. *See* 88 FR 38441. Comments on the June 13, 2023, NPRM were due on or before July 13, 2023. No comments were received on the June 13, 2023, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference 15A NCAC Subchapter 02D Rules .0901, *Definitions;* .0902, *Applicability,* with the exception of paragraph .0902(d)(2) and the reference in paragraph .0902(c) to paragraph .0902(d)(2); .0903, *Recordkeeping: Reporting: Monitoring;* .0906, *Circumvention;* .0909, *Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas;* .0912, *General Provisions on Test Methods and Procedures;* .0918, *Can Coating;* .0919, *Coil Coating;* .0922, *Metal Furniture Coatings;* .0923, *Surface Coating of Large Appliance Parts;* .0924, *Magnet Wire Coating;* .0925, *Petroleum Liquid Storage in Fixed Roof Tanks;* .0928, *Gasoline Service Stations Stage 1;* .0930, *Solvent Metal Cleaning;* .0931, *Cutback Asphalt;* .0933, *Petroleum Liquid Storage in External Floating Roof Tanks*; .0935, *Factory Surface Coating of Flat Wood Paneling;* .0937, *Manufacture of Pneumatic Rubber Tires;* .0943, *Synthetic Organic Chemical and Polymer Manufacturing;* .0944, *Manufacture of Polyethylene: Polypropylene and Polystyrene;* .0945, *Petroleum Dry Cleaning;* .0947, *Manufacture of Synthesized Pharmaceutical Products;* .0948, *VOC Emissions from Transfer Operations;* .0949, *Storage of Miscellaneous Volatile Organic Compounds;* .0951, *RACT for Sources of Volatile Organic Compounds;* .0955, *Thread Bonding Manufacturing;* .0956, *Glass Christmas Ornament Manufacturing;* .0957, *Commercial Bakeries;* .0961, *Offset Lithographic Printing and Letterpress Printing;* .0962, *Industrial Cleaning Solvents;* .0963, *Fiberglass Boat Manufacturing Materials;* .0964, *Miscellaneous Industrial Adhesives;* .0965, *Flexible Package Printing;* .0966, *Paper, Film and Foil Coatings;* .0967, *Miscellaneous Metal and Plastic Parts Coatings;* and .0968, *Automobile and Light Duty Truck Assembly Coatings.* These regulations were state effective on November 1, 2020. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

III. Final Action

EPA is finalizing the approval of the April 13, 2021, SIP revision to incorporate various changes to North Carolina's VOC air provisions into the SIP. Specifically, EPA is approving various ministerial and minor changes to language and other clarifying changes throughout North Carolina's rules in 02D Section .0900, *Volatile Organic Compounds.* EPA is approving these changes because they are consistent with the CAA.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 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.''

NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. 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 to positive impact on the air quality of the affected area. Consideration of EJ is not required as

[4] *See* 62 FR 27968 (May 22, 1997).

part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

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. 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 3, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. In § 52.1770(c), amend table 1 by removing the entries for ''Section .0901,'' ''Section .0902,'' ''Section .0903,'' ''Section .0906,'' ''Section .0909,'' ''Section .0912,'' ''Section .0918,'' ''Section .0919,'' ''Section .0922,'' ''Section .0923,'' ''Section .0924,'' ''Section .0925,'' ''Section .0928,'' ''Section .0930,'' ''Section .0931,'' ''Section .0933,'' ''Section .0935,'' ''Section .0937,'' ''Section .0943,'' ''Section .0944,'' ''Section .0945,'' ''Section .0947,'' ''Section .0948,'' ''Section .0949,'' ''Section .0951,'' ''Section .0955,'' ''Section .0956,'' ''Section .0957,'' ''Section .0961,'' ''Section .0962,'' ''Section .0963,'' ''Section .0964,'' ''Section .0965,'' ''Section .0966,'' ''Section .0967,'' and ''Section .0968;'' and adding in their place entries for ''Rule .0901,'' ''Rule .0902,'' ''Rule .0903,'' ''Rule .0906,'' ''Rule .0909,'' ''Rule .0912,'' ''Rule .0918,'' ''Rule .0919,'' ''Rule .0922,'' ''Rule .0923,'' ''Rule .0924,'' ''Rule .0925,'' ''Rule .0928,'' ''Rule .0930,'' ''Rule .0931,'' ''Rule .0933,'' ''Rule .0935,'' ''Rule .0937,'' ''Rule .0943,'' ''Rule .0944,'' ''Rule .0945,'' ''Rule .0947,'' ''Rule .0948,'' ''Rule .0949,'' ''Rule .0951,'' ''Rule .0955,'' ''Rule .0956,'' ''Rule .0957,'' ''Rule .0961,'' ''Rule .0962,'' ''Rule .0963,'' ''Rule .0964,'' ''Rule .0965,'' ''Rule .0966,'' ''Rule .0967,'' and ''Rule .0968.''

The amendment reads as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* *	*	*	* *
	Section .0900 Volatile Organic Compounds			
Rule .0901	Definitions	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0902	Applicability	11/1/2020	8/4/2023, [Insert citation of publication].	Except for paragraph .0902(d)(2) and the reference to paragraph.0902(d)(2) found in .0902(c).
Rule .0903	Recordkeeping: Reporting: Monitoring ..	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0906	Circumvention	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0909	Compliance Schedules for Sources in Ozone Nonattainment and Maintenance Areas.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0912	General Provisions on Test Methods and Procedures.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0918	Can Coating	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0919	Coil Coating	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0922	Metal Furniture Coatings	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0923	Surface Coating of Large Appliance Parts.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0924	Magnet Wire Coating	11/1/2020	8/4/2023, [Insert citation of publication].	

(1) EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Rule .0925	Petroleum Liquid Storage in Fixed Roof Tanks.	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0928	Gasoline Service Stations Stage 1	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0930	Solvent Metal Cleaning	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0931	Cutback Asphalt	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0933	Petroleum Liquid Storage in External Floating Roof Tanks.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0935	Factory Surface Coating of Flat Wood Paneling.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0937	Manufacture of Pneumatic Rubber Tires.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0943	Synthetic Organic Chemical and Polymer Manufacturing.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0944	Manufacture of Polyethylene: Polypropylene and Polystyrene.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0945	Petroleum Dry Cleaning	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0947	Manufacture of Synthesized Pharmaceutical Products.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0948	VOC Emissions from Transfer Operations.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0949	Storage of Miscellaneous Volatile Organic Compounds.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0951	RACT for Sources of Volatile Organic Compounds.	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0955	Thread Bonding Manufacturing	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0956	Glass Christmas Ornament Manufacturing.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0957	Commercial Bakeries	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *
Rule .0961	Offset Lithographic Printing and Letterpress Printing.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0962	Industrial Cleaning Solvents	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0963	Fiberglass Boat Manufacturing Materials.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0964	Miscellaneous Industrial Adhesives	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0965	Flexible Package Printing	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0966	Paper, Film and Foil Coatings	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0967	Miscellaneous Metal and Plastic Parts Coatings.	11/1/2020	8/4/2023, [Insert citation of publication].	
Rule .0968	Automobile and Light Duty Truck Assembly Coatings.	11/1/2020	8/4/2023, [Insert citation of publication].	
*	* *	*	*	* *

* * * * *

[FR Doc. 2023–16600 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–40, 60–50, 60–300, and 60–741

RIN 1250–AA14

Pre-enforcement Notice and Conciliation Procedures

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The U.S. Department of Labor publishes this final rule to modify procedures and standards the Office of Federal Contract Compliance Programs (''OFCCP'' or ''the agency'') uses when issuing pre-enforcement notices and securing compliance through conciliation. This final rule strengthens OFCCP's enforcement by rescinding the evidentiary standards and definitions codified in 2020 (''the 2020 rule''), which hindered the agency's ability to pursue meritorious cases. OFCCP is instituting a streamlined, effective, and flexible pre-enforcement and conciliation process that promotes greater consistency with Title VII of the Civil Rights Act of 1964 (''Title VII'').

DATES: These regulations are effective September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 or toll free at 1–800–397–6251. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

OFCCP administers and enforces Executive Order 11246, as amended (''E.O. 11246''); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (''Section 503''); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (''VEVRAA''), as well as their implementing regulations. Issued in 1965, and amended several times in the intervening years, E.O. 11246 has two principal purposes. First, it prohibits covered Federal contractors and subcontractors [1] from discriminating against employees and applicants because of race, color, religion, sex, sexual orientation, gender identity, national origin, or because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.[2] Second, it requires covered contractors to take affirmative action to ensure equal employment opportunity.

The requirements in E.O. 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that, when combined, total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. Supply and service contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–2. Construction contractors have different affirmative action requirements under E.O. 11246, codified at 41 CFR part 60–4.

Enacted in 1973 and amended since, the purpose of Section 503 is twofold. First, Section 503 prohibits employment discrimination on the basis of disability by Federal contractors. Second, it requires each covered Federal contractor to take affirmative action to employ and advance in employment qualified individuals with disabilities. The requirements in Section 503 generally apply to any business or organization that holds a single Federal contract or subcontract in excess of $15,000.[3] Pursuant to Section 503, contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–741, subpart C.

Enacted in 1974 and amended in the intervening years, VEVRAA prohibits Federal contractors from discriminating against employees and applicants because of their status as protected veterans (defined by the statute to include disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and active duty wartime or campaign badge veterans). It also requires each covered contractor to take affirmative action to employ and advance in employment these veterans. The requirements in VEVRAA generally apply to any business or organization that holds a single Federal contract or subcontract in excess of $150,000.[4] Pursuant to VEVRAA, contractors with 50 or more employees and a single Federal contract or subcontract of $150,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–300, subpart C.

Pursuant to these authorities, receiving a Federal contract comes with a number of responsibilities. Contractors are required to comply with all provisions of these authorities as well as the rules, regulations, and relevant orders of the Secretary of Labor. Where OFCCP finds noncompliance under any of the three authorities or their implementing regulations, it utilizes established procedures to either facilitate resolution or proceed to administrative enforcement as necessary to secure compliance. A contractor found in violation that fails to correct violations of OFCCP's regulations may, after the opportunity for a hearing, have its contracts canceled, terminated, or suspended and/or may be subject to debarment.

II. Summary of Relevant Background

This final rule, like the 2020 rule it modifies, focuses almost entirely on OFCCP's pre-enforcement resolution procedures. This includes the processes by which the agency notifies Federal contractors of the agency's findings during the compliance evaluations it conducts, and how the agency seeks to conciliate matters in which it finds a

[1] Hereinafter, the terms ''contractor'' or ''Federal contractor'' are used to refer collectively to Federal contractors and subcontractors that fall under OFCCP's authority, unless otherwise expressly stated. This approach is consistent with OFCCP's regulations, which define ''contract'' to include subcontracts and ''contractor'' to include subcontractors.

[2] The nondiscrimination protections and standards under E.O. 11246 are interpreted consistently with those under Title VII of the Civil Rights Act of 1964 (''Title VII''). *See OFCCP* v. *Greenwood Mills, Inc.,* Nos. 00–044, 01–089, 2002 WL 31932547, at *4 (ARB Final Decision & Order Dec. 20, 2002) (''The legal standards developed under Title VII of the Civil Rights Act of 1964 apply to cases brought under [E.O. 11246].'').

[3] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 75 FR 53129 (Aug. 30, 2010).

[4] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 80 FR 38293 (July 2, 2015).

violation of its regulations prior to referring a matter to the Office of the Solicitor for possible enforcement. To provide background and context for this final rule, we first summarize how OFCCP had traditionally accomplished this prior to the 2020 rule, the changes that the 2020 rule made to this approach, and how the agency proposed to modify this approach in the 2022 Notice of Proposed Rulemaking (NPRM).

A. OFCCP's Use of Pre-Enforcement Notices Prior to the 2020 Rule

For decades prior to the promulgation of the 2020 rule, the regulations most relevant to OFCCP's pre-enforcement resolution procedures remained unchanged.[5] OFCCP's general regulations on compliance evaluations provided that, when OFCCP finds deficiencies in contractors' compliance with its regulatory obligations, it will make ''reasonable efforts . . . to secure compliance through conciliation and persuasion. . . .'' [6] If the compliance evaluation found a material violation of the legal authorities administered by the agency, the contractor was willing to correct the violations, and OFCCP determined that settlement was appropriate, the parties would enter into a written conciliation agreement.[7] If the agency had reasonable cause to believe that the contractor violated OFCCP's authorities and the contractor would not correct the violation, the agency could issue a notice requiring the contractor to show cause (''Show Cause Notice''), within 30 days, why enforcement proceedings or other appropriate actions should not be instituted.[8] For decades, OFCCP evaluated and conciliated with contractors under this regulatory framework.

In addition to these regulatory provisions, OFCCP, as a matter of agency policy, long provided contractors with additional notice of its findings and an opportunity to respond during the course of its compliance evaluations and prior to any referral for enforcement.[9] Specifically, whenever discrimination or other violations were found during the course of a compliance review, prior to the issuance of a Show Cause Notice, OFCCP would issue to the contractor a Notice of Violation.[10] The Notice of Violation would notify the contractor that the agency found violations of the legal authorities it administers, and would specify the corrective actions the contractor would have to take in order to resolve the violations.[11] OFCCP required that the Notice of Violation indicate the reasons for each finding and, if appropriate, note the contractor's failure to adequately justify its actions.[12] Contractors were provided an opportunity to respond to the Notice of Violation and to attempt to conciliate the violations prior to issuance of a Show Cause Notice.[13]

Additionally, prior to the issuance of a Notice of Violation, OFCCP would in certain circumstances issue a Predetermination Notice. The 2020 rule traced the agency's use of the Predetermination Notice back to 1988.[14] Since that time, the agency has used the Predetermination Notice in a variety of circumstances. In those situations in which it was used, the purpose of this pre-enforcement notice has been to convey to the contractor an analysis of concerns OFCCP identified during its review indicating potential discrimination, whether referred to as ''preliminary findings'' or ''preliminary indicators.'' Historically, issuance of a Predetermination Notice was not required. In 2018, however, OFCCP issued a Directive on the use of Predetermination Notices, requiring that OFCCP issue them ''for preliminary individual and systemic discrimination findings identified during the course of compliance evaluations,'' and providing contractors with an opportunity to respond prior to OFCCP deciding to issue a Notice of Violation.[15] This Directive remains in effect.

B. The 2020 Rule

In November 2020, OFCCP published a final rule amending its regulations regarding the agency's pre-enforcement resolution procedures.[16] The 2020 rule changed the obligations placed on the agency in several respects. First, the 2020 rule codified [17] that OFCCP would issue a Predetermination Notice and Notice of Violation in any compliance evaluation [18] in which the agency found potential discrimination or other material violations of its legal authorities.[19] Accordingly, in combination with the Show Cause Notice already required by the regulations, the 2020 rule required OFCCP to provide the contractor with three separate pre-enforcement notices during the course of its compliance evaluation, and an opportunity for contractors to respond to each,[20] prior to a decision to refer a case to the Office of the Solicitor for possible enforcement.

In addition, the 2020 rule established specific evidentiary requirements that OFCCP would need to meet in order to issue pre-enforcement notices. These requirements applied equally to the Predetermination Notice and the Notice of Violation. First, the rule required OFCCP to identify and disclose to contractors in the Predetermination Notice and Notice of Violation the theory of discrimination—disparate treatment and/or disparate impact—under which it was proceeding. Second, depending on the theory of discrimination, the 2020 rule required OFCCP to meet specific evidentiary thresholds in order to issue any pre-enforcement notice. For matters

[5] These regulations were not substantively revised by the 2020 rule, and this final rule makes only minor clarifying revisions to one of the provisions, as discussed in more detail below.

[6] 41 CFR 60–1.20(b); 60–300.60(b); 60–741.60(b).

[7] 41 CFR 60–1.33; 60–300.62; 60–741.62 (2019). While the 2020 rule added additional provisions to these sections of the regulations, the language on conciliation agreements remained substantively the same.

[8] 41 CFR 60–1.28; 60–300.64; 60–741.64 (2019); *Compliance Responsibility for Equal Employment Opportunity,* 43 FR 49240, 49247 (Oct. 20, 1978); *Revision of Chapter,* 33 FR 7804, 7810 (May 28, 1968). These regulations were not modified by the 2020 rule.

[9] *See generally* Federal Contract Compliance Manual (FCCM), Chapter 8, Resolution of Noncompliance, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/chapter-8-resolution-noncompliance* (last accessed Dec. 1, 2022).

[10] *Id.* at Chapter 8F, Notice of Violation, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/chapter-8-resolution-noncompliance/8f-notice-violation* (last accessed Dec. 1, 2022).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] ''Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination,'' 85 FR 71553, 71561 (Nov. 10, 2020).

[15] Directive 2018–01, Use of Predetermination Notices, (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 1, 2022).

[16] 85 FR 71553.

[17] As noted above, Directive 2018–01 required that OFCCP issue Predetermination Notices for preliminary individual and systemic discrimination findings identified during the course of compliance evaluations. The 2020 rule codified this practice. *See* 85 FR 71561.

[18] The regulation stated that OFCCP ''may'' issue these notices, *see* 41 CFR 60–1.33(a) and (b) (2021), but this language was to account for OFCCP's inherent enforcement discretion not to pursue enforcement in certain cases if it so chose. *See generally Heckler* v. *Chaney,* 470 U.S. 821 (1985). For any matters that OFCCP wished to pursue with potential discrimination or other material violations, the 2020 rule required the issuance of the Predetermination Notice and Notice of Violation.

[19] 85 FR 71553. The final rule, which took effect on December 10, 2020, was published after OFCCP considered comments it received on a notice of proposed rulemaking, *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures To Resolve Potential Employment Discrimination,* 84 FR 71875 (Dec. 30, 2019).

[20] *See* 41 CFR 60–1.33; 41 CFR 60–300.62; 41 CFR 60–741.62 (providing the contractor an opportunity to respond to the Predetermination Notice, Notice of Violation, and Show Cause Notice).

proceeding under a disparate treatment theory, the 2020 rule required OFCCP to set forth: (1) sufficient ''quantitative evidence''; (2) sufficient ''qualitative evidence'' that, in combination with other evidence, supported a finding that the contractor's discriminatory intent caused disparate treatment; and (3) a demonstration that any observed disparities were also ''practically significant.'' [21] For matters proceeding under a disparate impact theory, the 2020 rule required the same findings of sufficient ''quantitative evidence'' and ''practical significance'' prior to issuing a pre-enforcement notice, as well as a requirement that OFCCP identify the specific policy or practice of the contractor causing the adverse impact. For purposes of further describing the evidentiary obligations OFCCP must meet to issue these pre-enforcement notices, the 2020 rule also included lengthy definitions of ''quantitative evidence'' and ''qualitative evidence'' detailing specific types and amounts of evidence that would satisfy the definition.

Additionally, the 2020 rule required OFCCP to disclose the quantitative and qualitative evidence it had accumulated in ''sufficient detail'' to allow contractors to investigate and respond. It also required OFCCP to disclose ''the model and variables used in any statistical analysis and an explanation for why any variable proposed by the contractor was excluded from that analysis.'' Once OFCCP issued the Predetermination Notice, the 2020 rule provided contractors with 30 days to respond. As an alternative, the 2020 rule also codified a provision stating that contractors could waive the procedures for issuing a Predetermination Notice and/or Notice of Violation and enter directly into a conciliation agreement if they so chose. Finally, the 2020 rule included severability clauses that applied only to these new pre-enforcement obligations.

The stated rationale for these revisions in the 2020 rule was ''to increase clarity and transparency for Federal contractors, establish clear parameters for OFCCP resolution procedures, and enhance the efficient enforcement of equal employment opportunity laws.'' [22] The 2020 rule preamble further asserted that the rule would ''provide[ ] contractors with more certainty as to OFCCP's operative standards for compliance evaluations, and provide[ ] guardrails on the agency's issuance of pre-enforcement notices.'' [23] As a result, OFCCP concluded that the 2020 rule would ''help [the agency] to increase the number of contractors that the agency evaluates and focus on resolving stronger cases through the strategic allocation of limited agency resources.'' [24] The 2020 rule further clarified that the Department was issuing the rule ''as an exercise of its enforcement discretion,'' and that the approach codified in the rule was ''neither compelled nor prohibited by Title VII and OFCCP case law.'' [25]

C. The 2022 NPRM

On March 22, 2022, OFCCP published a NPRM that proposed to rescind most, though not all, provisions in the 2020 rule.[26] OFCCP proposed to retain the requirement that it would issue Predetermination Notices and Notices of Violation to contractors in matters in which OFCCP found preliminary indicators of discrimination. OFCCP also proposed to retain the regulatory language regarding early resolution, which provides that contractors may waive the pre-enforcement notice procedures if they enter directly into a conciliation agreement.

OFCCP proposed to remove or modify the other provisions in the 2020 rule. OFCCP proposed to eliminate the specific evidentiary requirements of 41 CFR 60–1.33(a) and (b) that the agency needed to meet to issue a Predetermination Notice or Notice of Violation. This included the requirement to identify the theory of discrimination at the pre-enforcement notice stage, the requirement to provide specific and different forms of ''quantitative'' and ''qualitative'' evidence as defined by the 2020 rule, the definitions of ''quantitative'' and ''qualitative'' evidence, and the requirement to demonstrate that any disparities identified were also ''practically significant.''

The NPRM provided multiple reasons for these proposed modifications.[27] First and foremost, the NPRM explained that many of the key stated objectives of the 2020 rule—to promote more effective enforcement, increase the number of contractors that the agency evaluates, and promote greater certainty and clarity regarding the agency's resolution procedures—had not been met. Rather than creating clear standards and more effective enforcement, the NPRM noted that the 2020 rule instead resulted in time-consuming disputes with contractors over the application of the new requirements. The NPRM also described how the 2020 rule placed certain obligations on OFCCP that went beyond, or were even in some cases inconsistent with, Title VII principles and case law. For instance, the 2020 rule required OFCCP to demonstrate practical significance, a concept that is not found in the Title VII statute and that multiple circuit courts have held is not necessary in order to satisfy a *prima facie* case of employment discrimination. The 2020 rule also included rigid evidentiary thresholds for issuing pre-enforcement notices, such as requiring specific types and amounts of ''quantitative evidence'' and ''qualitative evidence'' as defined by the rule with only narrow exceptions, which the NPRM explained were inconsistent with the general principle that the Title VII evidentiary standard is a flexible one dependent on the unique facts at issue in each case. The NPRM further emphasized that, beyond the rigid evidentiary requirements themselves, the 2020 rule's requirement that OFCCP meet them prior to issuing pre-enforcement notices, while the investigation is still underway, had also proven problematic. Not only did this require OFCCP to meet a heightened evidentiary threshold before issuing even a *preliminary* notice of findings to contractors, but the same standard applied to both the Predetermination Notice and the Notice of Violation, rendering the two notices—which were originally intended to serve separate purposes—duplicative. Accordingly, the NPRM proposed to restore the function of the Predetermination Notice to convey *preliminary* findings of potential discrimination, providing contractors early notice when OFCCP had found potential issues and fostering more efficient exchanges of information that may focus the scope of review.

[21] The 2020 rule included some narrow exceptions where OFCCP would not be required to satisfy all three of these prongs in order to issue a Predetermination Notice, such as when qualitative evidence alone could satisfy a disparate treatment finding, or if the quantitative evidence was ''so extraordinarily compelling that by itself it is sufficient'' to support a disparate treatment finding. 41 CFR 60–1.33(a)(2). As discussed in the NPRM and herein, however, Title VII does not require meeting such rigid requirements in order to satisfy a *prima facie* case; rather, case law provides that the standards of proof in such cases are flexible and fact-specific.

[22] 85 FR 71553.

[23] *Id.*

[24] *Id.*

[25] *Id.* As noted above, the nondiscrimination protections and standards under E.O. 11246 are interpreted consistently with those under Title VII.

[26] *See Pre-Enforcement Notice and Conciliation Procedures,* 87 FR 16138 (Mar. 22, 2022).

[27] The reasons summarized here are some of the key points raised in the NPRM but is not an exhaustive list. For further detail and explanation, we refer readers to the NPRM itself, as well as the response to public comments in Section IV, *infra.*

OFCCP also proposed to modify the period of time for contractors to respond to pre-enforcement notices from 30 to 15 days, noting that the latter was the timeframe for response that the agency had set forth in its 2018 Directive on Predetermination Notices and that it would continue its practice of providing extensions to contractors for good cause when needed.[28] Additionally, OFCCP proposed to modify the severability clause included in the 2020 rule, expanding it so that it applied to all parts of OFCCP's regulations, not just the specific section pertaining to OFCCP's resolution procedures.

Finally, OFCCP proposed two additional clarifications to the regulations related to, but not addressed by, the 2020 rule. First, OFCCP proposed language clarifying the ''reasonable efforts'' standard, which applies to the actions the agency must take ''to secure compliance through conciliation and persuasion.'' The NPRM proposed language clarifying that the standard should be interpreted consistently with Title VII and its requirement that the Equal Employment Opportunity Commission (EEOC) ''endeavor to eliminate any such alleged employment practice by informal methods of conference, conciliation, and persuasion'' prior to bringing an enforcement action, to ensure that OFCCP has the same flexibility in the administration of its laws as that recognized under Title VII by Congress and by the U.S. Supreme Court. Second, the NPRM clarified that, if OFCCP identified additional violations after issuing a Predetermination Notice, it could include those violations in a subsequent Notice of Violation or Show Cause Notice without amending and reissuing the Predetermination Notice. The NPRM explicitly stated that OFCCP would continue to provide contractors with an opportunity to respond to and conciliate any such violations prior to referring a case for enforcement.

D. Public Comments

OFCCP received 11 public comments in response to the NPRM. The commenters included individuals, employer associations, law firms, a women's rights legal advocacy organization, a labor rights organization, and a civil and human rights advocacy organization. Some commenters, such as the women's rights legal advocacy organization, labor rights organization, and civil and human rights advocacy organization, generally supported the proposed rule, asserting that the 2020 rule imposed unnecessary, burdensome, and confusing enforcement standards that did not align with the requirements of Title VII and conflated the first two stages of OFCCP's pre-enforcement process, thereby causing delay and wasting resources. These commenters believed that modifying the 2020 rule would restore consistency between OFCCP practice and Title VII and would reestablish the distinct roles of the Predetermination Notice and the Notice of Violation. Other commenters, such as employer associations and law firms, generally opposed the proposal, expressing concerns that the modification would remove transparency from the enforcement process, did not align with Title VII, and would afford contractors less due process. These commenters also asserted that OFCCP has not demonstrated a need for the rulemaking and believed that 15 calendar days was an inadequate amount of time to provide a response to a Predetermination Notice. In addition, one commenter raised concerns that the proposed use of the term ''indicator of discrimination'' signaled that OFCCP intended to issue Predetermination Notices based solely on the results of the agency's initial analyses. These comments are explained in more detail and addressed by the agency in Section IV, below.

III. Summary of the Final Rule

After consideration of all significant issues raised in the public comments, this final rule adopts most of the revisions outlined in the NPRM, with some minor adjustments. As set forth in more detail below, the changes adopted in this final rule stem from OFCCP's experience implementing the 2020 rule as well as its reconsidered policy judgment as to how OFCCP can strengthen enforcement of its requirements and promote consistency with Title VII principles. In sum, this final rule largely returns to the processes and standards under which OFCCP and contractors operated for many years prior to the effective date of the 2020 rule, while also providing additional certainty and notice to contractors.

As proposed in the NPRM, this final rule does retain some provisions from the 2020 rule that will provide additional certainty and efficiency for contractors during the course of compliance evaluations. First, the final rule retains the requirement that OFCCP will issue a Predetermination Notice and Notice of Violation to contractors in all matters in which the agency has made preliminary findings of potential discrimination and findings of discrimination, respectively. Second, the final rule retains the early resolution provisions allowing OFCCP and the contractor to resolve identified issues without the need for OFCCP to issue a Predetermination Notice and Notice of Violation if the contractor so chooses.

The final rule does include a few additional changes from what was proposed. First, the final rule replaces the term ''indicators of discrimination'' with ''preliminary findings of potential discrimination'' to describe what is necessary in order to issue a Predetermination Notice. Further detail regarding this change is set forth in Section IV, *infra.* Second, consistent with OFCCP's longstanding practice and the 2020 rule, the final rule includes a clarification that the agency may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review, or refuses to provide access to witnesses, records, or other information. Finally, the proposed language in the regulation on Predetermination Notices stated that if there was insufficient rebuttal evidence to the Predetermination Notice, the agency would ''proceed with its review.'' The final rule makes two minor clarifications. It first adds language to clarify that OFCCP's determination on whether there was sufficient rebuttal evidence would be determined by the contractor's response and any additional investigation undertaken by the agency, to clarify that the agency may conduct an additional investigation after issuing the Predetermination Notice and as a result of the contractor's response to the Predetermination Notice. It also amends this provision to clarify that it will proceed ''to issue a Notice of Violation,'' which is the intended, more specific meaning.

The final rule otherwise adopts the NPRM as proposed. A more detailed discussion of the public comments that OFCCP received follows in the next section.

IV. Response to Public Comments

A. Public Comments on Modifications to the E.O. 11246 Regulations

1. Evidentiary Standards

a. Qualitative and Quantitative Evidence

As described above, the NPRM proposed to amend § 60–1.3 by removing the 2020 rule's definitions for ''qualitative evidence'' and

[28] *See* Directive 2018–01, Use of Predetermination Notices, (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 1, 2022).

''quantitative evidence.'' OFCCP also proposed rescinding the requirement for the agency to provide both ''qualitative'' and ''quantitative'' evidence under a specific theory of proof before issuing a Predetermination Notice or Notice of Violation.

OFCCP received eight comments on this topic from employer associations, law firms, and labor rights and advocacy organizations. A women's rights legal advocacy organization agreed with removing the definitions. It stated that the definitions were confusing and further disagreed with the 2020 rule's requirement that OFCCP provide both quantitative and qualitative evidence before issuing Predetermination Notices or Notices of Violation. It asserted that removing this requirement will ensure that OFCCP can conduct investigations efficiently, ''without being forced to develop its full slate of evidence at a preliminary stage.'' A labor rights organization and a civil and human rights advocacy organization made similar comments, describing how the definitions and requirements for showing qualitative and quantitative evidence departed from Title VII principles and hindered OFCCP's ability to issue pre-enforcement notices based on the specific facts and circumstances uncovered through the compliance evaluation. One law firm stated that it understood why OFCCP would want to remove the qualitative and quantitative evidence definitions, as OFCCP should be able to evolve with Title VII's interpretation.[29] Some employer associations and law firms opposed removing the definitions and evidentiary requirements, asserting that the 2020 rule's definitions were broad enough to allow OFCCP to effectively pursue cases and stating that OFCCP was not required to provide examples of every type of quantitative or qualitative evidence included in the definitions.

OFCCP considered these comments and maintains that, on balance, the inclusion of the definitions created more problems than benefits. First and foremost, as set forth in the NPRM and expanded upon here, OFCCP found that these definitions created confusion and increased disputes regarding the evidence required to issue pre-enforcement notices. Specifically, since the 2020 rule went into effect, some contractors have asserted that OFCCP must present evidence in its preliminary pre-enforcement notices of the highly specific examples included in the definitions in order for the agency to satisfy the requirements of the 2020 rule. In one instance, rather than providing a substantive response to the agency's preliminary determination notice, the contractor cited the 2020 rule, claiming that OFCCP failed to identify sufficient qualitative evidence of intentional discrimination. The contractor disputed the type of qualitative evidence OFCCP was permitted to use under the 2020 rule, asserting that information OFCCP obtained from interviews was not evidence, but instead speculative statements insufficient to infer discriminatory intent. These disputes are directly at odds with the 2020 rule's stated intention of increasing clarity and enhancing the efficient enforcement of equal employment opportunity laws.

In addition to these inefficiencies, OFCCP, upon further reconsideration, found that the codification of evidentiary definitions was confusing, overly particularized, and inconsistent with the general principle that the Title VII evidentiary standard is a flexible one dependent on the unique facts at issue. As otherwise discussed in the NPRM, the definitions in the 2020 rule included many examples of evidence demonstrating overt bias, including ''biased statements, remarks, attitudes, or acts based upon membership in a protected class, particularly when made by a decision maker involved in the action under investigation.'' [30] This type of highly specific evidence of discrimination is rare and not required by Title VII standards in order for a plaintiff to prevail.[31] Yet, the inclusion of this language engendered contractor disputes over whether the evidence OFCCP presented met this definition. In addition, the definition did not encompass the full range of relevant evidence and ran counter to the flexibility needed to demonstrate discrimination based on the facts of each case. Further, although the ''qualitative evidence'' definition also applied to disparate impact matters, the definition was overly focused on evidence of discriminatory intent in disparate treatment cases. Although the definition included one example related to disparate impact cases—evidence related to ''the business necessity (or lack thereof) of a challenged policy or practice'' [32]—that example was problematic because it was: (1) a category of evidence that is the employer's burden to demonstrate, after the agency establishes a *prima facie* case; [33] and (2) not the only sort of ''qualitative'' evidence that plaintiffs typically introduce or rely upon in the course of a disparate impact case.[34] Another problem with the definition is that it included ''whether the contractor has otherwise complied with its non-discrimination obligations'' as a type of permissible qualitative evidence. Upon reconsideration, OFCCP determined that this provision could easily be misinterpreted to mean that when a contractor complies with some of its nondiscrimination obligations, it somehow lessens the weight of evidence of noncompliance with other nondiscrimination obligations.

Some commenters, including law firms and employer associations, also asserted that the requirement to show quantitative and qualitative evidence helped contractors better understand the preliminary indicators and helped them provide a meaningful response to the Predetermination Notice. One employer association expressed the importance of the 2020 rule's requirement that OFCCP identify its theory of proof (*i.e.,* disparate treatment or disparate impact) and the benefit of the clear parameters the 2020 rule provided for each theory. In response to these comments, OFCCP notes that the agency will continue to provide a Predetermination Notice describing its preliminary findings of potential discrimination and any other potential violations. This information enables the parties to clarify the issues, respond to each other's positions, and work toward an efficient resolution. For proof at trial, the agency will marshal all relevant evidence to prove that discrimination has occurred, which will typically include interviews with a more expansive number of employees

[29] This firm disagreed with removing other aspects of the evidentiary requirements, which OFCCP addresses below.

[30] 85 FR 71553, 71570–71574.

[31] *See Thomas* v. *Eastman Kodak Co.,* 183 F. 3d 38, 58 n.12 (1st Cir. 1999) (citing *Hodgens* v. *Gen. Dynamics Corp.,* 144 F.3d 151, 171 n. 13 (1st Cir. 1998)) (noting that direct evidence, while probative of discrimination, is ''rarely found in today's sophisticated employment world'').

[32] 85 FR 71557.

[33] 42 U.S.C. 2000e–2(k)(1)(A)(i); *see also Ricci* v. *DeStefano,* 557 U.S. 557, 578 (2009) (''An employer may defend against liability [for disparate impact discrimination] by demonstrating that the practice is 'job related for the position in question and consistent with business necessity.'' (quoting 42 U.S.C. 2000e–2(k)(1)(A)(i))); *Wards Cove Packing Co.,* 490 U.S. at 659 (''[T]he employer carries the burden of producing evidence of a business justification for his employment practice.'').

[34] By way of example, because a plaintiff in disparate impact cases must, where possible, identify the particular employment practice that is causing the adverse impact, *see* 42 U.S.C. 2000e–2(k)(1)(B)(i), it is commonplace for a plaintiff to introduce testimony or interview statements from expert witnesses or company officials regarding its selection or compensation system that would provide necessary context and help to identify the particular employment practice at issue. Similarly, evidence regarding less discriminatory alternative employment practices is a common feature in disparate impact cases. 42 U.S.C. 2000e–2(k)(1)(A)(ii).

and other witnesses and documents, data, and other information obtained through the investigative and discovery process. However, the agency need not provide the specific theory of proof or satisfy rigid evidentiary standards to provide preliminary notice of findings of discrimination.[35] Furthermore, Title VII case law demonstrates that there are multiple ways to establish a *prima facie* case of discrimination as long as the plaintiff ultimately satisfies its burden of proof. As the U.S. Supreme Court and lower courts have long recognized, Title VII requires a case-by-case evaluation of the facts and circumstances.[36] Additionally, prior to discovery in litigation, OFCCP may not have access to the full evidentiary record necessary to evaluate the precise theories of proof and would need to conduct depositions of witnesses and obtain relevant data and information for each stage of the employment process at issue before making this determination. Despite this, the 2020 rule required OFCCP to satisfy bright line statistical thresholds and proffer specific types of evidence to issue even preliminary notices of findings to contractors. Additionally, OFCCP agrees with the law firm comment that the removal of the qualitative and quantitative evidence definitions will enable the agency's enforcement to evolve with developments in the interpretation of Title VII.

Based upon further consideration of its position, the effect of the final rule, and the comments received, OFCCP has determined the 2020 rule's rigid requirements were unnecessary, fostered confusion, and limited OFCCP's ability to pursue potentially meritorious cases. As noted above, the 2020 rule's evidentiary standards placed certain obligations on OFCCP that went beyond, or were even in some cases inconsistent with, Title VII principles and case law. Accordingly, OFCCP is removing the definitions for qualitative evidence and quantitative evidence and is rescinding the requirement for OFCCP to provide both quantitative and qualitative evidence under a specific theory of discrimination in order to issue a Predetermination Notice or Notice of Violation.

The NPRM also proposed removing the 2020 rule requirement that OFCCP disclose the quantitative and qualitative evidence the agency relied upon in the Predetermination Notice ''in sufficient detail to allow contractors to investigate allegations and meaningfully respond.'' [37] The requirement for OFCCP to provide ''sufficient detail'' for a contractor to ''meaningfully respond'' is inherently subjective. Some contractors argued that the anecdotal evidence that OFCCP shared to support its issuance of pre-enforcement notices failed to meet the qualitative evidence definition included in the 2020 rule. Contractors have also argued that the qualitative evidence that OFCCP provided was insufficient because the agency failed to disclose the identity of the interviewees who provided relevant statements at the Predetermination Notice stage.

Additionally, commenters, including a women's rights legal advocacy organization, a labor rights organization, and a civil and human rights advocacy organization, shared OFCCP's concern articulated in the proposed rule that the requirement to disclose anecdotal evidence at this preliminary stage may have a chilling effect on the willingness of victims and witnesses to participate in OFCCP's investigation due to concerns that an employer may uncover their identities, which could lead to retaliation. One commenter disagreed, citing OFCCP's ability to protect a witness' identity while still providing the required evidence. However, as described above, some contractors have nevertheless asserted that, under the 2020 rule, OFCCP must reveal the identity of relevant witnesses at the preliminary stage in order to meet the 2020 rule's requirements. OFCCP believes this interpretation of the regulation is incorrect, as the government informer's privilege generally protects the agency's right to withhold the identity of confidential witnesses.

Nevertheless, it remains that the 2020 rule's required disclosure of anecdotal evidence has led to extensive disputes about what information is sufficient under the rule, and OFCCP's authority to protect witness' confidentiality at the preliminary stages of investigations. These disputes over inherently subjective thresholds regarding what information needed to be proffered in preliminary notices of findings have limited OFCCP's ability to pursue cases that would be actionable under Title VII standards. Accordingly, in the final rule, OFCCP is rescinding the requirement to disclose the quantitative and qualitative evidence relied upon in the Predetermination Notice.[38] To promote consistency and notice to contractors, the final rule does require the use of the Predetermination Notice where the agency has made preliminary findings of potential discrimination. Further, the final rule specifies that in the Predetermination Notice, OFCCP will continue to describe the preliminary findings of potential discrimination and any other potential violations to enable the contractor to understand OFCCP's position and provide a substantive response.

b. Statistical Model and Variables

While most comments opposing the rule focused on evidentiary standards as a whole, one law firm specifically requested that OFCCP retain the 2020 rule's requirement that, upon the contractor's request, OFCCP must provide the model and variables used in any statistical analysis and an explanation for why any variable proposed by the contractor was excluded from that analysis. The law firm asserted that sharing this information promoted transparency and helped contractors understand OFCCP's analysis and allowed the contractor to more easily make a business decision to resolve the matter.

In response, OFCCP declines to retain this requirement because imposing a regulation requiring the production of the model and variables used in any statistical analysis the agency performs and an explanation for why any variable proposed by the contractor was excluded from that analysis creates inefficiencies. The agency already has guidance that promotes sufficient transparency through the sharing of information by OFCCP, including information on the agency's econometric methods and the provision

[35] Longstanding case law provides that OFCCP need not make an election between alternative theories of proof during litigation, let alone in the preliminary notice stage of a compliance review. *OFCCP* v. *Honeywell,* 77–OFC–3, 1993 WL 1506966, at *11 (Sec'y of Labor June 2, 1993) (''no procedural election between alternative legal theories is required of a claimant at either pre-trial, or appellate stages'') (c*iting Wright* v. *Nat'l Archives & Records Serv.,* 609 F.2d 702, 711 (4th Cir. 1979)); *see also Teamsters* v. *United States,* 431 U.S. 324, 336 n.15 (1977).

[36] *See Watson* v. *Fort Worth Bank & Trust,* 487 U.S. 977, 995 n.3 (1988) (noting that the Supreme Court has ''not suggested that any particular number of 'standard deviations' can determine whether a plaintiff has made out a prima facie case in the complex area of employment discrimination''); *Gay* v. *Waiters' & Dairy Lunchmen's Union, Local No. 30,* 694 F.2d 531, 551 (9th Cir. 1982) (''It would be improper to posit a quantitative threshold above which statistical evidence of disparate racial impact is sufficient as a matter of law to infer discriminatory intent, and below which it is insufficient as a matter of law.''); *see also Alvarez* v. *Royal Atlantic Developers, Inc.,* 610 F.3d 1253, 1264 (11th Cir. 2010) (also noting, in an individual case without statistical evidence, that ''[t]he methods of presenting a prima facie case are flexible and depend on the particular situation.'').

[37] 87 FR 16138, 16143.

[38] OFCCP retains discretion to disclose some or all of the quantitative and qualitative evidence supporting the Predetermination Notice, where appropriate.

of replication data.[39] OFCCP will continue to explain its statistical analysis in sufficient detail for the contractor to replicate the analysis and assess the merits of the agency's findings. OFCCP will also continue to explain its rationale for excluding otherwise reasonable variables from its analysis.

However, OFCCP has determined that imposing a regulatory requirement to provide the model and variables used in any statistical analysis, particularly at preliminary stages of the review, limits the agency's effective enforcement of the law. First, the 2020 rule's requirement for OFCCP to share its ''model'' is vague and subject to dispute, as the types of analyses and statistical techniques can vary widely from case to case, and the agency needs to exercise discretion over the aspects of its modeling that would be appropriate to share based on the stage of the investigation, the nature of the concerns identified, and a consideration of aspects of the analysis, tools, and techniques subject to deliberative process privilege.

The regulatory requirement to explain ''any'' variables suggested by the contractor raises similar concerns by limiting OFCCP's ability to exercise its enforcement discretion and promote efficiency in its investigation. Not all variables suggested by a contractor merit explanation and response. For example, variables that are highly correlated with other variables, those that do not impact selections or pay in the direction or magnitude claimed by the contractor, and those that are differentially distributed by gender or race but do not legitimately influence selection or pay may not warrant an explanation depending on the fact and circumstances of the matter. While OFCCP will address certain variables in appropriate circumstances, the categorical requirement that OFCCP address all proposed variables is inefficient.

In sum, rather than expend resources responding to unproductive requests for further information, OFCCP has determined that to promote effective enforcement, the agency needs to have discretion to ascertain where providing further details about its modeling is likely to be productive. Removing the regulatory requirements that OFCCP produce its models and variables and address all variables suggested by a contractor will allow OFCCP to utilize its discretion to provide information on its modeling and variables to promote contractors' understanding of concerns OFCCP has identified and to facilitate a prompt and successful resolution of compliance evaluations.

c. Practical Significance

In the NPRM, OFCCP proposed removing the regulatory requirement to demonstrate practical significance before issuing a Predetermination Notice.[40] The agency received five comments on the proposal to remove this regulatory requirement from employer associations, a law firm, a women's rights legal advocacy organization, and a civil and human rights advocacy organization. Two commenters supported removing the requirement, stating that whether Title VII requires a showing of practical significance is unsettled as a matter of law. One employer association commented that practical significance is a necessary consideration in scientific research and therefore cannot be ignored by the agency. The same commenter also believed that the use of practical significance allowed OFCCP to prioritize compliance evaluations with the strongest evidence and strategically allocate resources. Another employer association argued that removing the requirement to demonstrate practical significance before issuing a Predetermination Notice was generally inconsistent with Title VII principles and would effectively set a dual standard upon which contractors would be evaluated. A law firm commented that removing this requirement would be counterproductive as doing so would cause delays and reduce settlements.

In response, OFCCP notes that it did not propose adopting a blanket policy to disregard practical significance. As part of its enforcement, dating back before the publication of the 2020 rule, OFCCP has utilized practical significance measures where appropriate in compliance evaluations, based on the specific facts of the case. There is no professional consensus among statisticians and labor economists regarding an appropriate or actionable practical significance threshold for all cases of employment discrimination.[41] Further, the text of Title VII contains no reference to practical significance,[42] and the case law is unsettled as to whether Title VII specifically requires a finding of practical significance, and, if so, what level of practical significance is sufficient and appropriate.[43] Therefore, the final rule removes the regulatory requirement to demonstrate practical significance prior to issuing a Predetermination Notice or Notice of Violation. OFCCP will continue to utilize the concept of practical significance where appropriate, along with statistical significance, and all other evidence gathered in the review, as part of a holistic approach that applies the case law and statistical techniques as they evolve to the compliance evaluations it investigates, conciliates, and refers for enforcement.

d. General Comments Regarding the Evidentiary Standards

OFCCP also received general comments in favor of and against removing the evidentiary standards that the 2020 rule imposed on OFCCP's use of the Predetermination Notice and Notice of Violation. Commenters' concerns about removing the evidentiary standards for the Predetermination Notice generally aligned with their concerns regarding the Notice of Violation. Labor rights and advocacy organizations agreed with removing the evidentiary standards, asserting that these heightened evidentiary standards were not aligned with Title VII and impeded OFCCP's ability to enforce its legal authorities. Employer associations and law firms generally disagreed with removing the evidentiary standards. An employer association stated that the 2020 rule's

[39] *See* Directive 2018–05, *Analysis of Contractor Compensation Practices During a Compliance Evaluation,* issued Aug. 24, 2018, available at *https://www.dol.gov/agencies/ofccp/directives/2018-05* (last accessed Dec. 5, 2022).

[40] Practical significance refers to whether an observed disparity in employment opportunities or outcomes reflects meaningful harm to the disfavored group, focusing on the contextual impact or importance of the disparity rather than its likelihood of occurring by chance.

[41] *See* Joseph L Gastwirth et al, On the Interplay Between Practical and Statistical Significance in Equal Employment Cases, 20 Law, Probability and Risk, 69, 69–87 (2022), available at *https://doi.org/10.1093/lpr/mgac002* (last accessed June 22, 2022).

[42] *See* Elliot Ko, Big Enough to Matter: Whether Statistical Significance or Practical Significance Should Be the Test for Title VII Disparate Impact Claims, 101 Minn. L.R. 869, 889 (2016) (''Title VII does not require plaintiffs to prove that an employment practice had a 'large' impact on a protected class. Title VII just requires plaintiffs to prove that 'a particular employment practice' had a disparate impact on a protected class. . . . Title VII only requires proof of a 'disparate impact,' not proof of a 'very' disparate impact that is large enough to warrant societal or moral condemnation.'').

[43] Several circuit courts have held that a finding of practical significance is not required in order to satisfy a *prima facie* case of discrimination. *See, e.g., Jones* v. *City of Boston,* 752 F.3d 38 (1st Cir. 2014); *Apsley* v. *Boeing Co.,* 691 F.3d 1184 (10th Cir. 2012); *Stagi* v. *Nat'l R.R. Passenger Corp.,* 2010 WL 3273173 (3d Cir. Aug. 16, 2010). Other circuit courts have considered measures of practical significance to varying degrees. *See, e.g., Brown* v. *Nucor Corp.,* 785 F.3d 895, 908, 935 (4th Cir. 2015); *Isabel* v. *City of Memphis,* 404 F.3d 404, 412, 418 (6th Cir. 2005); *Ensley Branch of NAACP* v. *Seibels,* 31 F.3d 1548, 1555 (11th Cir. 1994); *Waisome* v. *Port Auth. of N.Y. & N.J.,* 948 F.2d 1370, 1376 (2d Cir. 1991); *Clady* v. *County of Los Angeles,* 770 F.2d 1421, 1428–29 (9th Cir. 1985); *Fisher* v. *Procter & Gamble Mfg. Co.,* 613 F.2d 527, 545 (5th Cir. 1980).

evidentiary standards were beneficial because contractors could use the standards to replicate OFCCP's approach during their self-audits. OFCCP has concluded that the 2020 rule's rigid evidentiary standards are not necessary for contractors to conduct self-audits. The agency provides extensive guidance and resources to assist contractors in conducting meaningful self-audits of their employment systems, including two recent public directives,[44] the FCCM, compliance assistance materials, technical assistance guides, online contractor courses, and webinars. Through these materials, OFCCP provides transparency on how the agency will conduct compliance evaluations and promote a proactive approach to compliance. Additionally, as discussed thoroughly in the NPRM and elsewhere in this final rule, the evidentiary standards that the 2020 rule required the agency to meet exceeded those required by Title VII in certain respects, and thus are particularly inappropriate to require in order to issue *preliminary* notices of *potential* discrimination issued while the agency's investigation is still ongoing.

Employer associations and law firms also expressed concerns that removing the evidentiary standards would infringe on contractors' due process by depriving them of the ability to evaluate alleged indicators of discrimination and impede their ability to meaningfully respond or correct problem areas. These commenters also stated that removing the evidentiary standards would lead to less transparency, resulting in lengthy disputes, fewer settlements, and increased litigation against the agency. Commenters also expressed concerns that removing the 2020 rule's evidentiary standards would remove important ''guardrails'' against OFCCP's enforcement where the agency does not have to meet any standards for issuing a Predetermination Notice or Notice of Violation and contractors would be subjected to a ''vague, arbitrary, moving target.''

In response, OFCCP notes that there are significant legal guardrails retained in this final rule that address concerns raised by commenters with regard to due process. This final rule will require the agency to issue to contractors three separate notices regarding any preliminary findings or findings the agency makes related to discrimination before the agency makes a final determination about whether to refer the matter to the Office of the Solicitor for enforcement. Each of these notices requires OFCCP to describe its findings to date and invite the contractor to respond. Prior to issuing a Predetermination Notice, OFCCP's field offices conduct thorough discussions of the preliminary findings of potential discrimination with senior leadership and consult with the Office of the Solicitor.[45] These offices also confer with the agency's Branch of Expert Services to discuss statistical analyses related to the preliminary findings of potential discrimination. Prior to issuing a Notice of Violation and a Show Cause Notice, the agency assesses the information provided by the contractor in response to a Predetermination Notice and Notice of Violation, respectively, and conducts further investigation as a result of the contractor's response as necessary. After OFCCP issues a Show Cause Notice, it refers the matter to the Office of the Solicitor, which conducts its own independent review of OFCCP's investigative findings to determine if it will file an administrative complaint. Beyond these significant legal guardrails, OFCCP notes that the pre-enforcement notice process provides an opportunity for contractors to provide relevant information to inform OFCCP's understanding of the issues before the matter may proceed to a judicial forum, which provides notice and the opportunity to be heard before an impartial tribunal. Additionally, given the agency's finite resources, OFCCP is strongly disincentivized to spend significant time pursuing cases that are unlikely to ultimately prove successful in court. Accordingly, OFCCP disagrees with the assertions that contractors are not afforded due process or that there are ''no standards'' that the agency needs to meet. Rather, the agency is largely returning to its long-standing pre-enforcement resolution practices in effect for decades prior to the 2020 rule, which have long provided a functional framework in which OFCCP and contractors have successfully conciliated hundreds of matters.

Further, this final rule provides consistency in the formal notification and conciliation process. While this final rule removes the overly formulaic standards in the 2020 rule that have hindered early discussion of issues and effective enforcement, the agency finds it beneficial to codify the formal notices it uses to communicate with the contractor community about potential violations throughout the stages of a review. Accordingly, this final rule retains the required use of the Predetermination Notice and Notice of Violation while rescinding the evidentiary standards for issuance of the Predetermination Notice and Notice of Violation.

2. Predetermination Notice Provisions

a. Retaining the Use of the Predetermination Notice

In the NPRM, OFCCP proposed retaining the required use of the Predetermination Notice in the regulations to convey ''preliminary indicators of discrimination'' to the contractor. OFCCP received three comments from employer associations and a law firm supporting OFCCP's proposal to retain the Predetermination Notice in the regulations because it provides contractors an opportunity to understand the potential discrimination identified by OFCCP and potentially resolve matters at an earlier stage. The agency agrees with these comments, and the final rule retains the required use of the Predetermination Notice. However, as discussed elsewhere in this final rule, OFCCP has replaced the term ''preliminary indicators of discrimination'' with ''preliminary findings of potential discrimination,'' to provide additional clarity in response to one of the public comments. By continuing to require the use of the Predetermination Notice, OFCCP furthers its commitment to transparency and fosters the exchange of information to promote an efficient resolution.

b. Issuing the Predetermination Notice

In the NPRM, OFCCP proposed distinguishing the Predetermination Notice from the Notice of Violation and streamlining the compliance evaluation process by issuing the Predetermination Notice earlier than the 2020 rule allowed, where appropriate, to give the contractor an understanding of where the agency is seeing possible problems and focusing its investigative efforts. OFCCP will issue a Predetermination Notice to a contractor when it has preliminary findings of potential discrimination. OFCCP remains committed to providing notice of potential discrimination to contractors and as such has retained the required use of the Predetermination Notice in

[44] *See* Directive 2022–02, *Effective Compliance Evaluations and Enforcement* (Mar. 31, 2022), available at *https://www.dol.gov/agencies/ofccp/directives/2022-02* (last accessed June 13, 2022); Directive 2022–01 Revision 1, *Advancing Pay Equity Through Compensation Analysis* (Aug. 18, 2022), available at *https://www.dol.gov/agencies/ofccp/directives/2022-01-Revision1* (last accessed Aug. 25, 2022).

[45] *See* FCCM at 8B02 (last updated Jan. 7, 2021), available at *https://www.dol.gov/agencies/ofccp/manual/fccm* (last accessed June 13, 2022) (discussing consultation with senior leadership and the Office of the Solicitor).

the final rule as discussed earlier in this preamble. In some instances, depending on the facts and circumstances of the particular compliance evaluation, OFCCP may provide this notice after the agency completes the desk audit. In many instances, however, it may be at a later stage of the investigation, such as after the conclusion of the on-site review or after OFCCP has completed its off-site analysis of the information obtained during the on-site review. Providing contractors notice of preliminary findings of potential discrimination through the Predetermination Notice facilitates understanding and efficient resolution. This provides contractors the opportunity to share additional information about their compliance in response to the concerns raised by OFCCP before the agency, if appropriate, issues a Notice of Violation.

Three comments addressed whether OFCCP should issue the Predetermination Notice based on preliminary indicators of discrimination. The commenters included a civil and human rights advocacy organization and two law firms. The civil and human rights advocacy organization expressed support, stating there is no requirement in applicable federal law that forces OFCCP to wait until it can prove a case of discrimination before engaging with a contractor to discuss preliminary indicators of discrimination. The two law firms did not support the change. One law firm believed that proceeding with a Predetermination Notice at a preliminary stage on the basis of ''mere 'indicators of discrimination' '' marks a ''radical shift'' in OFCCP policy. This commenter expressed concern that OFCCP intended to issue Predetermination Notices based solely on the results of the initial desk audit analyses that typically serve as the basis for follow-up requests for information.

OFCCP disagrees with this view that the proposal represents a ''radical shift.'' As explained earlier, this final rule largely returns to the procedures that existed for years prior to December 2020. To the extent this final rule is different than that prior process, it provides *more* certainty for contractors in that the rule codifies the requirement that the agency issue a Predetermination Notice in all matters involving potential discrimination. Further, the commenter may have misinterpreted the use of the term ''indicators of discrimination'' in the proposed regulatory text. To provide clarity, OFCCP has modified this portion of the final rule to remove the reference to ''preliminary indicators of discrimination'' and instead state that if a compliance evaluation indicates ''preliminary findings of potential discrimination,'' OFCCP will issue a Predetermination Notice describing those preliminary findings. As explained earlier in this preamble, this change in terminology is intended to convey that OFCCP will issue a Predetermination Notice only after OFCCP has reviewed the available evidence related to any disparity or other indicators and concluded that the record available suggests potentially unlawful discrimination. In the Predetermination Notice, OFCCP provides the contractor with information concerning the agency's preliminary findings of potential discrimination and requests that the contractor provide any additional information or documentation the contractor believes OFCCP should consider before making a final determination of compliance.

This final rule allows OFCCP to tailor the issuance of the Predetermination Notice to the facts and circumstances of each compliance evaluation. By rescinding the rigid evidentiary standards, which functionally required that a *predetermination* notice could not be issued until the completion of the compliance evaluation, the final rule allows OFCCP to provide contractors with earlier written notice of preliminary findings of potential discrimination. This focuses the contractor's attention on specific issues as early as possible, allowing a more streamlined and efficient transfer of information.

In the NPRM, in discussing when OFCCP will issue a Predetermination Notice after it has identified concerns indicating potential discrimination, OFCCP proposed changing the reference to ''preliminary findings'' to the term ''preliminary indicators'' to highlight the difference in purpose between the Predetermination Notice and the Notice of Violation.[46] The Predetermination Notice conveys OFCCP's analysis of preliminary findings of potential discrimination, provides the contractor a formal opportunity to respond with additional information, and is issued prior to the agency's final determination of compliance. The Notice of Violation provides OFCCP's findings of violation(s) and their corresponding required corrective action(s) and invites the contractor to voluntarily enter into a conciliation agreement. The contractor may also provide additional information regarding its compliance after receipt of the Notice of Violation, or after receipt of a Show Cause Notice, although earlier responses promote a more efficient and effective process for both the contractor and OFCCP. As discussed above, to avoid confusion about the term ''indicators of discrimination,'' the final rule adopts the term ''preliminary findings of potential discrimination.''

Another law firm expressed concern that OFCCP could issue a Predetermination Notice after the desk audit and prior to the completion of the on-site phase of the compliance evaluation, noting that this could result in OFCCP issuing a Predetermination Notice prior to the contractor having any meaningful dialogue with the agency. The law firm believed issuing the Predetermination Notice prior to the completion of the on-site review would cause compliance officers to conduct an incomplete investigation and possibly make them vested in a particular outcome rather than conducting a full and neutral evaluation of the facts and circumstances of the particular compliance evaluation. As an initial matter, OFCCP does not agree with this assessment, which seems based in conjecture that, simply by issuing a Predetermination Notice earlier in the process to provide contractors with advance notice to understand and respond, compliance officers will conduct an inadequate investigation and become invested in a particular outcome. In addition, OFCCP will issue a Predetermination Notice to a contractor after OFCCP has reviewed the available facts and data and has reached a preliminary finding of potential discrimination.[47] The appropriate time to issue this notice will depend upon the facts and circumstances of each matter. The agency will continue to conduct an onsite review before issuing a Predetermination Notice where it determines that further information is beneficial to assess whether preliminary findings of potential discrimination exist. Furthermore, OFCCP will offer training to its compliance officers regarding the provisions of this final rule, and under what conditions a Predetermination Notice may be issued to promote consistency across regions.

The law firm further recommended that OFCCP require compliance officers to seek the contractor's explanation for any identified selection or compensation disparity prior to issuing the Predetermination Notice, and then include an evaluation of the contractor's position in the Predetermination Notice.

[46] 87 FR 16138, 16152–16154.

[47] FCCM, Chapter 8E03, Signature Authority, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/8e-predetermination-notice/8e03-signature-authority* (last accessed Dec. 1, 2022).

OFCCP declines to adopt this suggestion. The resolution process set forth in the final rule related to Predetermination Notices remains the same as it always has been: the agency presents its preliminary findings, and then the contractor has an opportunity to respond. Building in an additional mandatory step to seek a response prior to issuing the Predetermination Notice would therefore be duplicative, which would run counter to the objective of this rule to increase efficiency. The Predetermination Notice is the first of three written notices in a multi-stage notification process that OFCCP uses to communicate preliminary findings of potential discrimination identified during a compliance evaluation. When OFCCP identifies preliminary findings of potential discrimination, it notifies the contractor and provides an opportunity for the contractor to respond. If after providing this opportunity, OFCCP finds a violation of an equal opportunity clause, the agency issues a Notice of Violation to the contractor requiring corrective action and inviting conciliation through a written agreement.[48] If necessary, OFCCP thereafter will issue a Show Cause Notice. Each of these notice steps already provides the contractor an opportunity to respond.[49] Further, the Predetermination Notice is far from the contractor's first communication with OFCCP during a compliance evaluation. OFCCP's communication with the contractor begins even before the contractor's deadline to submit its response to the Scheduling Letter notifying the contractor that OFCCP has selected the contractor for a compliance evaluation and requesting its affirmative action programs and itemized listing information. Within 15 calendar days of sending the Scheduling Letter, OFCCP contacts the contractor, or the contractor's representative, or both. At that time, OFCCP answers any questions the contractor may have, provides technical assistance on the contractor's obligations and the compliance evaluation process, and provides an overview of what to expect during the evaluation.[50] OFCCP remains committed to regular and open communication by all parties at each stage of the compliance evaluation, further supporting OFCCP's overarching goal of providing notice of its findings throughout the process, allowing OFCCP and the contractor to resolve the matter efficiently.

This final rule adopts the proposal to retain agency-wide use of the Predetermination Notice when OFCCP has preliminary findings of potential discrimination, to advance OFCCP's commitment to transparency and clarity while ensuring consistency throughout its regions. The final rule also maintains the flexibility needed for OFCCP to provide notice to contractors of preliminary findings of potential discrimination by issuing the Predetermination Notice earlier in the compliance evaluation, where appropriate. This flexibility ensures that OFCCP can provide the contractor notice of potential discrimination concerns to facilitate understanding and efficient resolution. This benefits contractors by providing notice of preliminary findings earlier in the resolution process than the 2020 rule allowed with a full opportunity to respond.

c. Adding Violations Without Amending a Predetermination Notice

In the NPRM, OFCCP also proposed adding a provision to § 60–1.33(a) that would allow OFCCP to add violations in a subsequent Notice of Violation without amending the Predetermination Notice. The agency received two comments on this proposed modification, both from employer associations. One commenter stated that this proposal deprived contractors of the opportunity to defend themselves against incorrect conclusions drawn by OFCCP. Another commenter expressed concern that this change would eliminate the purpose of the Predetermination Notice as the contractor would not be able to engage in meaningful discussions regarding all possible violations.

After careful consideration of these comments, OFCCP has decided to move forward with this change, as proposed. The proposal provides sufficient opportunity for contractors to respond, as the Predetermination Notice is the first written notice in a notification and information exchange process with multiple stages. Following the Predetermination Notice, if the preliminary findings of potential discrimination are not adequately rebutted, the contractor has sufficient opportunities to respond following the Notice of Violation and Show Cause Notice, if issued. Throughout the process, contractors continue to have an opportunity to discuss any additional violations, confer with OFCCP, and provide relevant information for OFCCP's review and consideration. The Predetermination Notice is simply the first notice in this multi-stage process. Further, at the point OFCCP issues the Predetermination Notice, the agency may not have a full evidentiary record. Although the Predetermination Notice contains information on the preliminary findings of potential discrimination OFCCP has identified at that point in the investigation, OFCCP may make additional findings during this investigation, such as when it obtains additional information from the contractor or witnesses after the issuance of the Predetermination Notice. Issuing a new Predetermination Notice in these situations would be inefficient and would postpone remedies for victims, as the agency would have to wait until all allegations went through the pre-enforcement stages before it could refer the case to enforcement. Issuing a new Predetermination Notice is also unnecessary, as the Notice of Violation and Show Cause Notice provide sufficient opportunity for the contractor to respond.[51]

d. Response Period for a Predetermination Notice

To promote greater efficiency in resolving potential discrimination, OFCCP also proposed to modify the 2020 rule's provision that required a contractor to provide a response within 30 calendar days of receiving a Predetermination Notice. The proposal would have returned the Predetermination Notice response period to the 15-calendar day period in effect prior to the 2020 rule, which OFCCP could extend for good cause. In the proposal, OFCCP also clarified this provision to state that any response must be received by OFCCP within 15 calendar days, absent an extension. OFCCP received eight comments regarding the Predetermination Notice response period. The commenters included employer associations, law firms, a women's rights legal advocacy organization, a labor rights organization, and a civil and human rights advocacy organization.

Three of the commenters, including the labor rights and advocacy organizations, supported OFCCP's proposal to return to a 15-calendar day period. These commenters noted that the Predetermination Notice is a

[48] This process is discussed more fully in the Overview section above.

[49] *See* 41 CFR 60–1.33; 41 CFR 60–300.62; 41 CFR 60–741.62 (providing the contractor an opportunity to respond to the Predetermination Notice, Notice of Violation, and Show Cause Notice).

[50] *See* FCCM Chapter 1B04 Follow-Up Contact with Contractor and Jurisdiction Challenges, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/1b-pre-desk-audit-actions/1b04-follow-contact-contractor-and-jurisdiction* (last accessed Nov. 15, 2022).

[51] *See* 41 CFR 60–1.33; 41 CFR 60–300.62; 41 CFR 60–741.62 (providing the contractor an opportunity to respond to the Predetermination Notice, Notice of Violation, and Show Cause Notice).

preliminary notification that engages employers in a dialogue with the agency and that a longer response period potentially prolongs discrimination and delays securing a remedy for victims of discrimination.

Five commenters, including employer associations and law firms, opposed returning to a 15-calendar day response period. The commenters expressed concern that 15 calendar days is an insufficient amount of time to review, evaluate, and respond to the Predetermination Notice because it may be the first notice the contractor receives after a complex investigation. Also, in some situations, the contractors may choose to retain experts to understand the information provided which may require more than 15 calendar days. They also expressed concerns that OFCCP would not use its discretion to grant extensions for good cause. Three commenters proposed a response period of at least 60 days. One of the commenters recommended a two-phase response in which a contractor first has 30 days to review and reply with any questions and then, after the contractor's questions have been answered, a second 60-day period in which to provide a substantive response.

After careful consideration of these comments, OFCCP has decided to keep the 15-calendar day response period.[52] In so doing, OFCCP notes that this is consistent with the time originally permitted for responses in its 2018 Predetermination Notice Directive.[53] Prior to the 2020 rule, contractors were generally providing responses within this 15-day timeframe or receiving extensions for good cause. With this modification, OFCCP will continue to provide extensions to contractors where OFCCP determines the request is supported by good cause. Further, while the Predetermination Notice is the first formal notice that the agency provides, OFCCP communicates with the contractor about the preliminary findings before a Predetermination Notice is even issued.

OFCCP declines to adopt a multi-stage response period to the Predetermination Notice. OFCCP determined that a two-phase response period in which a contractor first has 30 days to review and reply with any questions and then, after the contractor's questions have been answered, a second 60-day period in which to provide a substantive response would introduce confusion about when a contractor needs to respond to the preliminary findings of potential discrimination and would prolong the pre-enforcement process. This 15-day response period will allow OFCCP to move compliance evaluations along expeditiously, while providing contractors with a reasonable period to review and respond to the Predetermination Notice and the opportunity to obtain an extension if needed.

e. Responding to Evidence Provided by a Contractor in Advance of Issuing a Notice of Violation

A law firm requested that the regulations state specifically that OFCCP must address the employer's evidence provided in response to the Predetermination Notice prior to issuing a Notice of Violation. OFCCP did not propose this additional requirement in the NPRM. OFCCP declines to include this requirement in the final rule. Should the agency decide to issue a Notice of Violation, it will incorporate relevant information that the contractor provides in response to the Predetermination Notice. Requiring another pre-enforcement notice or response letter would be duplicative, and a regulation requiring that OFCCP address the employer's evidence is likely to generate dispute over the application and meaning of such a requirement. As part of its investigations, OFCCP carefully reviews and considers the evidence provided, and the agency determines what information is relevant and how best to respond to contractors' concerns. In making this determination, OFCCP will continue to engage with the contractor throughout the compliance evaluation process to promote a mutual understanding of the issues.

3. Notice of Violation Provisions

In § 60–1.33(b), OFCCP proposed adding a provision that will allow the agency to include additional violations in a subsequent Show Cause Notice without amending the Notice of Violation. The reasons for allowing this are the same as the reasons discussed above for allowing OFCCP to include new findings in a Notice of Violation that were made after a Predetermination Notice had already been issued. An employer association expressed concern that adding a violation in a subsequent Show Cause Notice without amending the Notice of Violation would limit a contractor's ability to respond to and rebut OFCCP's findings. However, in the proposal, OFCCP addressed this concern by explicitly stating in the regulations that the agency will provide contractors an opportunity to conciliate additional violations identified in the Show Cause Notice. If OFCCP's investigation identifies additional violations at a later stage, requiring OFCCP to restart the three-stage notice process from the beginning creates yet more inefficiency, as the agency would have to wait until all allegations went through the pre-enforcement stages before it could refer the case to enforcement. This negatively impacts workers by prolonging the resolution of discrimination findings and constraining OFCCP's ability to effectively enforce its protections.

4. Conciliation Agreements

In the NPRM, OFCCP proposed minor changes to the existing provisions at § 60–1.33(c). The proposed changes included clarifying that the written agreement required to resolve a material violation of the equal opportunity clause is a ''written conciliation agreement'' that identifies the violations and/or deficiencies. The proposal also clarified the remedial actions which may be necessary to correct the identified violations and/or deficiencies. OFCCP received no comments on these proposed changes. Accordingly, OFCCP adopts these changes in the final rule as proposed.

5. Clarifications to the Show Cause Notice Provisions

In § 60–1.33(d) of the NPRM, OFCCP proposed to clarify its use of the Show Cause Notice including when a contractor denies access to its premises, to witnesses, or to records. The proposed changes also clarify that the Show Cause Notice will include each violation that OFCCP has identified at the time of issuance and, where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice. OFCCP received no comments regarding the proposed provision. Accordingly, OFCCP adopts the proposed provision without any changes in the final rule.

For clarity, OFCCP also proposed relocating the ''Show Cause Notices'' provisions to § 60–1.33 with the other pre-enforcement notices in part 60–1 and removing and reserving § 60–1.28. OFCCP did not receive any comments on this change and adopts it into the final rule as proposed.

6. Expedited Conciliation

In the NPRM, OFCCP proposed retaining the expedited conciliation option and made general edits to improve procedural efficacy and clarify

[52] The final rule clarifies that OFCCP must receive the contractor's response within 15 calendar days.

[53] *See* Directive 2018–01, Use of Predetermination Notices, (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 1, 2022).

OFCCP's role in the expedited conciliation process. The agency received four comments addressing expedited conciliation. Commenters included employer associations, a women's rights legal advocacy organization, and a civil and human rights advocacy organization. All commenters supported retaining the expedited conciliation option in the regulations, noting that this option improves efficiency and promotes expeditious resolutions. OFCCP did not receive any comments regarding the proposed clarifying edits to the expedited conciliation provisions. Accordingly, the final rule adopts the changes as proposed.

7. Reasonable Efforts Standard

In the NPRM, OFCCP proposed to modify § 60–1.20(b) to clarify that the ''reasonable efforts'' standard that OFCCP must satisfy when attempting to secure compliance with its authorities through conciliation and persuasion should be interpreted consistent with Title VII language requiring EEOC to ''endeavor to'' remedy discrimination through conciliation, persuasion, and conference.[54] OFCCP proposed two modifications to § 60–1.20(b), first adding a clause stating OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion pursuant to § 60–1.33. Second, OFCCP proposed that its regulatory ''reasonable efforts'' standard must be interpreted consistently with EEOC's ''endeavor'' standard.[55] OFCCP received one comment from a law firm regarding these modifications. The commenter opposed the modifications, stating that reliance on the Supreme Court's interpretation of Title VII's conciliation provisions in *Mach Mining* v. *EEOC,* 575 U.S. 480, 486 (2015), is misplaced because the Court analyzed the specific Title VII conciliation provision, which does not contain the ''reasonable efforts'' requirement found in E.O. 11246. In response to this comment, OFCCP notes that it is well established that the legal standards developed under Title VII apply to cases brought under E.O. 11246.[56] That principle should apply here because OFCCP's regulation is functionally similar in purpose and meaning to the section of Title VII that the Supreme Court analyzed in *Mach Mining.* Where OFCCP finds deficiencies in a compliance evaluation, OFCCP's regulation requires it to make ''reasonable efforts . . . to secure compliance through conciliation and persuasion.''[57] Similarly, where EEOC believes a charge of discrimination is true, it must ''endeavor to eliminate any . . . alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.''[58] A plain reading of the text in both provisions indicates a similar purpose and meaning: to attempt to resolve discrimination through conciliation and informal means like persuasion and communication. Given that OFCCP traditionally applies Title VII principles to the interpretation and application of E.O. 11246, and given the similarity between the two provisions, OFCCP determined that the text of its regulations on securing compliance to remedy discrimination through conciliation should be interpreted to be consistent with the Title VII provision on endeavoring to eliminate unlawful discrimination by conciliation. This interpretation would be consistent with a stated policy goal of this final rule to align the regulations with Title VII standards, to ensure that OFCCP has the same flexibility as EEOC in the administration of its authorities. For these reasons, OFCCP adopts this modification as proposed.

8. Severability Clauses

In the NPRM, OFCCP proposed deleting the severability clause that applied just to certain sections of OFCCP's regulations and replace it with severability clauses covering the entirety of each part of OFCCP's regulatory scheme. OFCCP received no comments on this issue and adopts this change into the final rule, as proposed.[59]

9. Reasonable Reliance Interests

OFCCP received a comment from a law firm stating that the NPRM did not address contractors' reasonable reliance interests during pending compliance evaluations. Although the commenter did not cite any specific reliance interests, it did state its belief that pre-enforcement notices already issued should be held to conform to the regulatory standards in existence at the time the notice was issued and asserted that OFCCP's proposal did not address this issue. A women's rights legal advocacy organization stated that OFCCP's need to fulfill its mission and mitigate the harm of discrimination outweighs any reliance interests by contractors. It noted that the Title VII framework has long applied to OFCCP's compliance process and noted that the agency already publicly stated its intention to modify the 2020 rule in 2021.

Reliance interests are one factor among many that agencies must consider during rulemaking.[60] While ''[a]gencies are not compelled to explore 'every alternative device . . . [they are] required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.''[61] The 2020 rule took effect on December 10, 2020, approximately 16 months before OFCCP issued the NPRM proposing to modify the 2020 rule; prior to the 2020 rule, OFCCP relied on well-established Title VII principles in its pre-enforcement and notice and conciliation procedures. Considering the short period of time the 2020 rule was in place, OFCCP determined that restoring flexibility to its pre-enforcement process by relying on well-established Title VII standards in an effort to more efficiently resolve findings of discrimination outweighs any possible reliance interest the 2020 rule may have created among the regulated community.

For clarification, this final rule would apply to any pre-enforcement notices and actions issued on or after the effective date of this rulemaking, 30 days after publication in the **Federal Register**. For example, OFCCP may have issued a Predetermination Notice to a contractor under the standards in the 2020 rule, but if it then proceeds to issue a Notice of Violation or Show Cause Notice after the effective date of this final rule, the standards in this final rule would apply to those notices. OFCCP believes that through the notice and comment process, the agency has adequately provided contractors with notice of the changes. OFCCP will also continue to support contractors in understanding this final rule through compliance assistance materials.

[54] 42 U.S.C. 2000e–5(b).

[55] The NPRM included an extended discussion of the EEOC's conciliation procedures, including a law passed by Congress that disapproved and annulled a rule which codified rigid requirements the EEOC had to meet during conciliation, which we include here by reference.

[56] *See Greenwood Mills, Inc.,* 2002 WL 31932547, at *4.

[57] *See* 41 CFR 60–1.20(b).

[58] 42 U.S.C. 2000e–5(b).

[59] Beyond these severability clauses, OFCCP did not consider nor propose making any additional changes to the existing regulations at 41 CFR parts 60–2, 60–3, 60–4, 60–20, 60–30, 60–40, and 60–50, and any comments regarding those parts were not considered and responded to as they were beyond the scope of the proposed rule.

[60] *See Dep't of Homeland Sec.* v. *Regents of the Univ. of California,* 140 S. Ct. 1891, 1914 (2020).

[61] *Id.* at 1916 (internal citations omitted).

10. Comments Regarding the Need for the Rulemaking

OFCCP received four comments that emphasized the need for modifying the 2020 rule. The commenters included a women's rights legal advocacy organization, a civil and human rights advocacy organization, a labor rights organization, and an individual. These commenters described the prevalence of employment discrimination against workers and asserted that the 2020 rule's onerous requirements prevented OFCCP from effectively enforcing its nondiscrimination authorities. They believed that modifying the 2020 rule would restore the flexibility the agency needs to carry out its important mission of protecting workers.

OFCCP received five comments from employer associations and law firms that believed that the agency failed to show how the 2020 rule constrained its enforcement efforts. For example, one of these commenters stated that the Administrative Procedure Act (APA) requires that revisions to existing regulations be firmly based on a substantial factual record, and that OFCCP failed to meet this requirement.[62] This commenter asserted that the NPRM proposed ''sweeping changes'' without any factual basis, and compared this with the 2020 rule, which the commenter asserted had provided ''extensive'' factual justification. Despite this assertion, the comment did not identify with any specificity any facts underlying the 2020 rule, let alone what comprised an ''extensive'' factual justification.

At the outset, we note the regulations at issue here are distinguishable from those analyzed in the cases the commenter cites, which created or rescinded standards applicable to regulated entities and thus affected the burdens of compliance for those regulated entities. In contrast, the 2020 rule, and this rule, deal entirely with the internal standards to which the agency will hold itself during the conduct of compliance evaluations prior to enforcement. The 2020 rule explicitly noted that it was undertaken as ''an exercise of enforcement discretion'' that was not ''compelled . . . by Title VII or OFCCP case law,'' and further ''add[ed] no new requirements or burdens on contractors.'' [63]

Nevertheless, as explained in the NPRM, and again here, OFCCP has identified a factual basis to conclude the 2020 rule has not met the objectives it asserted. When promulgating the 2020 rule, OFCCP stated that it believed the rule would ''increase clarity and transparency for Federal contractors, establish clear parameters for OFCCP enforcement proceedings, and enhance the efficient enforcement of the law.'' [64] Further, two stated objectives of the 2020 rule were to increase the number of contractors the agency evaluates and focus on resolving stronger cases through the strategic allocation of limited agency resources.[65] However, the 2020 rule has not met these objectives. While the 2020 rule acknowledges that the heightened evidentiary standards are not compelled by Title VII,[66] some contractors have nonetheless asserted that OFCCP must meet the heightened evidentiary standards to prove discrimination in cases. The NPRM described specific examples of this problem based on OFCCP's experience enforcing the 2020 rule, including:

- Contractors asserting that the evidence that OFCCP shared to support its case failed to meet the ''qualitative evidence'' definition included in the 2020 rule.[67]
- Contractors asserting that the qualitative evidence that OFCCP provided was insufficient because the agency failed to disclose the identity of the interviewees who provided relevant statements at the Predetermination Notice stage; [68] and
- Contractors disputing whether OFCCP met the required threshold for practical significance under the 2020 rule, arguing that the agency has failed to meet the threshold or even disagreeing with the 2020 rule's standard altogether.[69]

As these examples illustrate, the 2020 rule has not met its stated objectives to increase clarity and promote efficiency. Rather, the evidentiary mandates have spawned collateral disputes that hinder OFCCP's ability to pursue cases that would otherwise be actionable under Title VII's more flexible standards. By rescinding the 2020 rule's heightened evidentiary standards, OFCCP can restore its enforcement discretion as to the cases it decides to pursue and return to its long-standing practice of applying Title VII principles to the facts and circumstances of each compliance evaluation, a process which applies established evidentiary standards under Title VII.

The commenter also noted the agency's rationale for rescinding the requirement to provide qualitative evidence when issuing a Predetermination Notice is based on ''pure speculation'' that the disclosure of such evidence may have a chilling effect. While the agency maintains that the 2020 rule's requirement to disclose anecdotal evidence creates a risk of chilling workers from coming forward, we note that the NPRM, and in turn this final rule, in fact relied on multiple rationales for rescinding the requirement to provide qualitative evidence. For example, requiring proof of qualitative evidence before issuing a Predetermination Notice is not only inconsistent with Title VII standards and interpretive case law, but such evidence may not yet be available to the agency at such a preliminary investigative stage.[70] Ultimately, OFCCP has found that the 2020 rule's inflexible evidentiary requirements, which apply while the matter is still under investigation and OFCCP is making *preliminary* findings, have hindered the agency's ability to pursue potentially actionable cases.

The commenter also asserted that the NPRM failed to explain its rationale as to how mandating the same evidentiary requirements for the Predetermination Notice as the Notice of Violation creates inefficiency. To the contrary, in the NPRM and in this final rule, OFCCP has discussed the distinct purposes that the Predetermination Notice and the Notice of Violation are intended to serve. Specifically, the Predetermination Notice is intended to provide the contractor with early notice of the agency's preliminary findings of potential discrimination, allowing the contractor to focus on specific, discrete areas of concern *prior to a finding of violation,* thereby facilitating an early exchange of information and shared understanding that in turn could lead to faster resolutions. By contrast, the 2020 rule's heightened evidentiary requirements functionally required the agency to complete its entire investigation and have litigation-ready evidence at hand before it could issue a *preliminary* notice to the contractor regarding its investigation. Imposing these same heightened evidentiary standards to both the Predetermination

[62] This comment also stated that the NPRM failed to meet the basic requirements of the APA because the agency failed to consider ''less disruptive'' alternatives to the proposed rule. OFCCP disagrees with this comment. As detailed in the ''Alternatives'' discussion in the Regulatory Procedures section below, OFCCP carefully considered alternatives when proceeding with this rulemaking and determined that proceeding with the rulemaking as proposed would enable the agency to best meet its mission and ensure equal employment opportunity.

[63] 85 FR 71554; 87 FR 16151.

[64] 85 FR 71554.

[65] *Id.*

[66] 87 FR 16138.

[67] 87 FR 16138, 16145.

[68] *Id.*

[69] *Id.*

[70] *Id.* at 16143–45.

Notice and the Notice of Violation created duplication in the use of these notices. By removing these barriers, OFCCP is able to utilize the Predetermination Notice to provide notice of preliminary findings of potential discrimination at an earlier stage before the agency has made findings to support a Notice of Violation.[71]

As illustrated by the case examples above, OFCCP has found that the stated intentions in the 2020 rule are not being fulfilled, and indeed in some situations have hindered OFCCP's ability to efficiently resolve preliminary findings of potential discrimination. Accordingly, OFCCP has provided a reasoned explanation for modifying the 2020 rule—the agency has demonstrated benefits to both the agency and contractors by modifying the 2020 rule, including alignment with well-established standards under Title VII and strengthening OFCCP's ability to bring meritorious cases. The agency has also shown it believes these modifications to be better than the requirements set forth in the 2020 rule to effectuate efficient enforcement.[72]

Some commenters also stated that the rule has not been in effect for enough time to warrant revisions. These groups generally expressed favorable opinions of the 2020 rule, with some asserting that it promoted certainty, efficiency, and transparency in OFCCP's enforcement. OFCCP disagrees with these comments. As described in the NPRM and repeated herein, soon after implementation, OFCCP saw that the 2020 rule's heightened evidentiary standards spawned collateral disputes about the interpretation of these evidentiary standards and hampered OFCCP's ability to provide contractors with notification of preliminary findings of potential discrimination.

[71] *Id.*

[72] *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (stating that an agency ''need not demonstrate . . . that the reasons for the new policy are *better* than the reasons for the old one''); *id.* at 537 (stating that when changing or modifying policy, an agency may act arbitrarily and capriciously if it ignores or countermands its earlier factual findings without reasoned explanation for doing so) (Kennedy, J. concurring in part and concurring in judgment); *see also Bernhardt,* 472 F. Supp. 3d at 591 (explaining that the standard of review for assessing whether an agency action is arbitrary and capricious is '' 'highly deferential, presuming the agency action to be valid and affirming the agency action if a reasonable basis exists for its decision' '') (citing *Nw. Ecosystem All.* v. *United States Fish & Wildlife Serv.,* 475 F. 3d 1136, 1140 (9th Cir. 2007) (quoting *Indep. Acceptance Co.* v. *California,* 204 F.3d 1247, 1251 (9th Cir. 2000))).

B. Modifications to 41 CFR Parts 60–300 and 60–741

OFCCP has separate regulations for E.O. 11246, VEVRAA, and Section 503. In the Section 503 and VEVRAA regulations, OFCCP proposed parallel changes to the definitions, evidentiary requirements, and pre-enforcement and resolution procedures as those described above for E.O. 11246. No commenter suggested that these changes should apply differently depending on the authority the agency is enforcing. For the reasons discussed above, OFCCP thus adopts the same modifications and provisions in 41 CFR part 60–300 (VEVRAA) and 41 CFR part 60–741 (Section 503) that are described above for the E.O. 11246 regulations.

C. Other Comments

OFCCP received two comments that are not addressed above because they lacked relevance to the proposed rule.

V. Regulatory Procedures

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Under Executive Order 12866 (E.O. 12866), the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of E.O. 12866 and OMB review. Section 3(f) of E.O. 12866 defines 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 $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) creates serious inconsistency or otherwise interferes 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) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O 12866. This final rule has been designated a ''significant regulatory action,'' although not significant within the scope of section 3(f)(1) of E.O. 12866. OMB has reviewed the final rule. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated the rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Executive Order 13563 (E.O. 13563) directs agencies to adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

1. Need for Rulemaking

As discussed in the preamble, OFCCP received comments both supporting and opposing the proposal. Those that supported the proposal agree that the 2020 rule imposed onerous evidentiary standards that are inconsistent with the preliminary nature of the pre-enforcement notices, required OFCCP to share unnecessarily detailed evidence with contractors during the investigatory stage, and made it more difficult for the agency to protect workers from discrimination. These commenters remarked that the heightened requirements conflict with Title VII and OFCCP precedent, and had no basis in law and imposed unnecessary, burdensome, and confusing enforcement standards onto OFCCP's pre-enforcement processes that serve to hamper the ability of OFCCP to engage with Federal contractors at the earliest stages to remedy potential discrimination.

Commenters in opposition generally stated the 2020 rule provided transparency, efficiency, and clarity to contractors and argued OFCCP did not provide enough evidence in the proposal to modify the 2020 rule. For example, one commenter asserted that rescinding the 2020 rule would prevent both OFCCP compliance officers and contractors from focusing resources on true problem areas, leading to longer, less efficient reviews.

After considering the comments received, OFCCP concluded the 2020 rule created rigid constraints, many of which are not required by Title VII and are particularly inappropriate to apply to *preliminary* notices long before the agency has committed to bring an enforcement action. OFCCP determined that the 2020 rule narrowed the scope of the agency's authority to protect workers and impeded the agency's effective enforcement of E.O. 11246, Section 503, and VEVRAA. The 2020 rule prescribed that OFCCP could only

issue a Predetermination Notice if it provided certain quantitative evidence and qualitative evidence, with only limited exceptions. Under the 2020 rule, if after providing the contractor an opportunity to respond to the Predetermination Notice, OFCCP found a violation of an equal opportunity clause, OFCCP issued a Notice of Violation, which imposed the same rigid parameters that it imposed on the Predetermination Notice. The purpose of a Predetermination Notice is to provide the contractor with prompt written notice of preliminary findings of potential discrimination and to provide the contractor an opportunity to respond with additional information. As illustrated by the case examples discussed above, requiring the agency to meet heightened and formulaic standards of proof before it can proceed with notifying the contractor of preliminary findings of potential discrimination has limited the agency's ability to efficiently conduct a compliance review tailored to the facts and evidence presented. In addition, the 2020 rule has resulted in collateral disputes at the Predetermination Notice stage over the implementation of the rule's regulatory standards—diverting limited agency and contractor resources away from resolving concerns of discrimination. As discussed above, this diversion of resources has hindered OFCCP's ability to pursue meritorious cases.

This final rule aims to create a streamlined, efficient, and flexible process to ensure OFCCP utilizes its limited resources as strategically as possible to advance the agency's mission. In a return to agency policy prior to the 2020 rule, in place since 1988, OFCCP will require a case-by-case evaluation of the facts and circumstances of each compliance evaluation, including during the pre-enforcement notice and conciliation stages. Doing so will remove unnecessary constraints that impede effective enforcement and delay resolutions. Removing the blanket regulatory requirements applied to early, pre-enforcement procedural notices will also allow OFCCP to pursue enforcement in the full scope of cases that would be actionable under Title VII rather than the more limited scope of fact patterns that conform to the evidentiary requirements set forth under the 2020 rule. OFCCP remains committed to providing contractors with an explanation of the basis for the agency's preliminary findings of potential discrimination during a compliance evaluation. Such notice is mutually beneficial for OFCCP and the contractor under review because it provides the contractor with an earlier opportunity to respond to potential issues before OFCCP makes a determination on violations. Providing earlier notice to contractors can result in the prompt and mutually satisfactory resolution of compliance evaluations, which minimizes unnecessary burdens on contractors and agency staff. Going forward, OFCCP will provide updated training to its compliance officers on the pre-enforcement procedures. This training will reflect current case law and provide consistency across the agency, while providing OFCCP needed flexibility to adapt to the legal standards and statistical techniques as they evolve.

2. Discussion of Impacts

In this section, OFCCP presents a summary of the costs associated with the final rule. OFCCP utilizes the Employment Information Report (EEO–1) data, which identifies the number of supply and service contractors that could be scheduled for a compliance evaluation and thus impacted by the rule. The EEO–1 Report must be filed by covered Federal contractors that: (1) have 50 or more employees; (2) are prime contractors or first-tier subcontractors; and (3) have a contract, subcontract, or purchase order amounting to $50,000 or more. OFCCP schedules only contractors that meet those thresholds for compliance evaluations. The number of supply and service contractors possibly impacted by the rule is 19,586.[73]

OFCCP also utilizes USASpending data, which identifies the number of construction contractors that could be scheduled for a compliance evaluation and thus impacted by the rule. The USASpending data accounts for all construction contractors with contracts greater than $10,000 that meet the thresholds for compliance evaluations. The number of construction contractors possibly impacted by the proposed modification is 11,557.[74]

The total number of contractors eligible to be scheduled that are possibly impacted by the rule is 31,143.[75] While OFCCP acknowledges that all Federal contractors that could be scheduled for a compliance evaluation may learn the requirements to comply with the laws that OFCCP enforces, only those contractors who are actually scheduled are likely to have a need to know the pre-enforcement procedures and will be directly impacted by the rule. For this reason, the total number of contractors impacted by the final rule is likely an overestimation because not all of the eligible contractors will be scheduled for a compliance evaluation.

OFCCP has determined that either a Human Resources Manager (SOC 11–3121) or a Lawyer (SOC 23–1011) would review the rule. OFCCP estimates that 50 percent of the reviewers would be human resources managers and 50 percent would be in-house counsel. Thus, the mean hourly wage rate reflects a 50/50 split between human resources managers and lawyers. The mean hourly wage of a human resources manager is $65.67, and the mean hourly wage of a lawyer is $71.17.[76]

Therefore, the average hourly wage rate is $68.42 (($65.67 + $71.17)/2). OFCCP adjusted this wage rate to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. OFCCP uses a fringe benefits rate of 45 percent[77] and an overhead rate of 17 percent,[78] resulting in a fully loaded hourly compensation rate of $110.84 ($68.42 + ($68.42 × 45 percent) + ($68.42 × 17 percent)). The estimated labor cost to contractors is reflected in Table 1, below.

[73] OFCCP obtained the total number of supply and service contractors from the most recent EEO–1 Report data available, which is from fiscal year (FY) 2020.

[74] OFCCP obtained the total number of construction contractor establishments from the FY 2021 USASpending data, available at *https://www.usaspending.gov/#/download_center/award_data_archive* (last accessed August 15, 2022).

[75] 19,586 supply and service contractors + 11,557 construction contractors = 31,143 contractors.

[76] BLS, Occupational Employment Statistics, Occupational Employment and Wages, May 2021, available at *https://www.bls.gov/oes/current/oes_nat.htm* (last accessed June 9, 2022).

[77] BLS, Employer Costs for Employee Compensation, available at *https://www.bls.gov/ncs/data.htm* (last accessed August 15, 2022). Wages and salaries averaged $28.16 per hour worked in March 2022, while benefit costs averaged $12.74, which is a benefits rate of 45 percent.

[78] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' (June 10, 2002), available at *www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005* (last accessed June 9, 2022).

TABLE 1—LABOR COST

Major occupational groups	Average hourly wage rate	Fringe benefit rate (%)	Overhead rate (%)	Fully loaded hourly compensation (%)
Human Resources Managers and Lawyers	$68.42	45	17	$110.84

a. Cost of Rule Familiarization

OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for a rule the estimated time it takes for contractors to review and understand the instructions for compliance. To minimize the burden, OFCCP will publish compliance assistance materials regarding the final rule.

OFCCP received one comment opposing the burden estimate of 30 minutes for rule familiarization. The commenter stated, ''While reading time for the NPRM *per se* may be 30 minutes for the fastest of readers, it will be impossible to understand the background, history, and practical implications of the new rule.''

OFCCP considered the comment and declines to make any changes in the final rule. Both the NPRM and this final rule state that the 30-minute estimate for rule familiarization is the average amount of time it will take someone to familiarize themselves with the new regulations by reading the regulatory text. OFCCP emphasizes that the 30-minute estimate is an average across all contractors and acknowledges that the precise amount of time each company will take is difficult to estimate.

OFCCP believes that a human resources manager or lawyer will take a minimum of 30 minutes (.5 hours) to read the regulatory text. Consequently, the estimated burden for rule familiarization is 15,572 hours (31,143 contractor firms × .5 hours). OFCCP calculates the total estimated cost of rule familiarization as $1,726,000 (15,572 hours × $110.84/hour) in the first year, which amounts to a 10-year annualized cost of $196,446 at a discount rate of 3 percent (which is $6.31 per contractor firm) or $229,667 at a discount rate of 7 percent (which is $7.37 per contractor firm). Table 2, below, reflects the estimated rule familiarization costs.

TABLE 2—RULE FAMILIARIZATION COST

Total number of contractors	31,143.
Time for rule familiarization	30 minutes.
Human Resources Managers fully loaded hourly compensation	$110.84.
Rule familiarization cost in the first year	$1,726,000.
Annualized cost with 3 percent discounting	$196,446.
Annualized cost per contractor with 3 percent discounting	$6.31.
Annualized cost with 7 percent discounting	$229,667.
Annualized cost per contractor with 7 percent discounting	$7.37.

b. Benefits

E.O. 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important and states that agencies may consider such benefits. This rule has several benefits, including equity and fairness benefits, which are explicitly recognized in E.O. 13563. Key benefits include:

- Supporting more effective enforcement of OFCCP's equal opportunity laws by eliminating procedural inefficiencies and heightened evidentiary standards created by the 2020 rule;
- Facilitating earlier and more efficient resolutions;
- Ensuring greater certainty and consistency in case resolutions by maintaining adherence to Title VII and OFCCP case law standards;
- Promoting transparency by codifying the required use of the Predetermination Notice when the agency identifies preliminary findings of potential discrimination;
- Allowing OFCCP to tailor the pre-enforcement process to the specific facts and circumstances of each case, consistent with judicial interpretations of the applicable legal authorities as they evolve, which will in turn allow OFCCP to more effectively redress unlawful discrimination;
- Advancing a policy of promoting consistency between Title VII and E.O. 11246 and removing unnecessary constraints on the agency's ability to pursue meritorious cases. This approach will help OFCCP advance the overriding policy goal of promoting nondiscrimination by strengthening the enforcement of federal protections under E.O. 11246;
- Reducing time-consuming disputes over unnecessary standards that are inherently fact-specific; and
- Furthering the strategic allocation of agency resources.

3. Alternatives

In response to the NPRM, OFCCP received one comment stating the agency's proposed modifications did not meet the APA requirement of considering less disruptive alternatives. However, OFCCP clearly addressed the alternatives in the NPRM and describes in detail the alternative approaches that were considered prior to finalizing the rule below.[79]

Specifically, OFCCP considered maintaining the current regulations established in the 2020 rule. However, as discussed earlier in this preamble, OFCCP determined that creating rigid regulatory standards to govern its pre-enforcement compliance evaluation notice and conciliation procedures is incompatible with the flexibility needed for effective enforcement. Moreover, the 2020 rule places certain obligations on OFCCP at this preliminary stage before its review can proceed that go beyond the substantive legal requirements that E.O. 11246, Title VII, and interpretive case law require to state a claim and prove discrimination at a much later stage, upon a full evidentiary record. OFCCP has determined that imposing such rigid and heightened standards early in its pre-enforcement proceedings unduly constrains its ability to pursue

[79] *See* 87 FR 16138, 16151 (describing alternative approaches OFCCP considered).

the full range of discrimination under its authority. The 2020 rule also created an inefficient process where OFCCP's Predetermination Notice (intended to notify the contractor of potential discrimination and to invite the contractor to provide additional information on its compliance before OFCCP makes its determination) and the Notice of Violation (intended to inform the contractor of violations that require corrective action and to invite conciliation through a written agreement) were largely duplicative. Further, mandating regulatory requirements to make inherently fact-specific determinations invites time-consuming disputes over the application of the rule's requirements, as OFCCP has already experienced in compliance evaluations since the 2020 rule took effect. Modifying the 2020 rule helps restore the enforcement discretion and flexibility OFCCP needs to facilitate compliance through conciliation by providing pre-enforcement notice of preliminary findings of potential discrimination and findings of discrimination and applying Title VII to the facts and circumstances of each compliance evaluation. OFCCP is modifying the regulatory text to create a more streamlined and effective process for the agency to communicate preliminary findings of potential discrimination to contractors, provide contractors an opportunity to respond, notify contractors of violations, and ultimately facilitate greater understanding to obtain resolution through conciliation.

OFCCP also considered modifying the 2020 rule to rescind the entirety of the rule except the correction to OFCCP's agency head title or modifying the 2020 rule by eliminating the Predetermination Notice entirely since it currently functions as a procedural redundancy. However, OFCCP determined that retaining both pre-enforcement notices in the regulatory text while rescinding the inflexible evidentiary requirements for the Predetermination Notice and Notice of Violation allows the contractor and OFCCP to engage in earlier discussions that can lead to more efficient resolutions.

B. Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354, section 2(b). The RFA requires agencies to consider the impact of a regulatory action on a wide range of small entities, including small businesses, nonprofit organizations, and small governmental jurisdictions.

Agencies must review whether a regulatory action would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the regulatory action would, then the agency must prepare a regulatory flexibility analysis as described in the RFA. *See id.* However, if the agency determines that the regulatory action would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis. *See* 5 U.S.C. 605. The certification must provide the factual basis for this determination.

The final rule will not have a significant economic impact on a substantial number of small entities. The first-year cost for small entities at a discount rate of 7 percent for rule familiarization is $51.80 per entity which is far less than 1 percent of the annual revenue of the smallest of the small entities affected by the rule. Accordingly, OFCCP certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. *See* 44 U.S.C. 3507(d). An agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. *See* 5 CFR 1320.5(b)(1).

OFCCP has determined that there would be no new requirement for information collection associated with this final rule. The information collections contained in the existing Executive Order 11246, Section 503, and VEVRAA regulations are currently approved under OMB Control Number 1250–0001 (Construction Recordkeeping and Reporting Requirements), OMB Control Number 1250–0003 (Supply and Service Program), OMB Control Number 1250–0004 (Recordkeeping and Reporting Requirements Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended), and OMB Control Number 1250–0005 (Recordkeeping and Reporting Requirements Under Rehabilitation Act of 1973, as Amended Section 503). Consequently, this final rule does not require review by OMB under the authority of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this final rule would not include any federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

E. Executive Order 13132 (Federalism)

OFCCP has reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The final rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The final rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

List of Subjects

41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, Reporting and recordkeeping requirements.

41 CFR Part 60–2

Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60–4

Construction industry, Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60–20

Civil rights, Equal employment opportunity, Government procurement, Labor, Sex discrimination, Women.

41 CFR Part 60–30

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government contracts, Government procurement, Government property management, Individuals with Disabilities, Reporting and recordkeeping requirements, Veterans.

41 CFR Part 60–40

Freedom of information, Reporting and recordkeeping requirements.

41 CFR Part 60–50

Equal employment opportunity, Government procurement, Religious discrimination, Reporting and recordkeeping requirements.

41 CFR Parts 60–300 and 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Labor, Reporting and recordkeeping requirements, Veterans.

Michele Hodge,

Acting Director, Office of Federal Contract Compliance Programs.

For the reasons stated in the preamble, OFCCP revises 41 CFR parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–40, 60–50, 60–300, and 60–741 as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

■ 2. Amend § 60–1.3 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.''

■ 3. Revise § 60–1.20(b) to read as follows:

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–1.33. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission endeavor to remove any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

* * * * *

§ 60–1.28 [Removed and reserved]

■ 4. Remove and reserve § 60–1.28.

■ 5. Revise § 60–1.33 to read as follows:

§ 60–1.33 Pre-enforcement notice and conciliation procedures.

(a) *Predetermination Notice.* If a compliance evaluation by OFCCP indicates preliminary findings of potential discrimination, OFCCP will issue a Predetermination Notice that describes the preliminary findings and provides the contractor an opportunity to respond. The Predetermination Notice may also include preliminary findings of other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response and any additional investigation undertaken by the agency did not resolve the preliminary findings of potential discrimination or other violations identified in the Predetermination Notice, OFCCP will proceed to issue a Notice of Violation.

(b) *Notice of Violation.* If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor requiring corrective action. The Notice of Violation will identify the violations found and describe the recommended corrective actions. The Notice of Violation will invite the contractor to conciliate the matter and resolve the findings through a written conciliation agreement. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) *Conciliation agreement.* If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) *Show Cause Notice.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(e) *Expedited conciliation option.* OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the

contractor this expedited conciliation option but may not require or insist that the contractor avail itself of the expedited conciliation option.

■ 6. Add § 60–1.48 to subpart C to read as follows:

§ 60–1.48 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

■ 7. The authority citation for part 60–2 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501, and E.O. 13672, 79 FR 42971.

■ 8. Add § 60–2.36 to subpart C to read as follows:

§ 60–2.36 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

■ 9. The authority citation for part 60–4 continues to read as follows:

Authority: Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086; and E.O. 13672, 79 FR 42971.

■ 10. Add § 60–4.10 to read as follows:

§ 60–4.10 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–20—DISCRIMINATION ON THE BASIS OF SEX

■ 11. The authority citation for part 60–20 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339 as amended by E.O. 11375, 32 FR 14303, 3 CFR 1966–1970 Comp., p. 684; E.O. 12086, 43 FR 46501, 3 CFR 1978 Comp., p. 230; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13672, 79 FR 42971.

■ 12. Add § 60–20.9 to read as follows:

§ 60–20.9 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 13. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 14. Add § 60–30.38 to read as follows:

§ 60–30.38 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–40—EXAMINATION AND COPYING OF OFCCP DOCUMENTS

■ 15. The authority citation for part 60–40 continues to read as follows:

Authority: E.O. 11246, as amended by E.O. 11375, and as amended by E.O. 12086; 5 U.S.C. 552.

■ 16. Add § 60–40.9 to read as follows:

§ 60–40.9 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part or chapter.

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

■ 17. The authority citation for part 60–50 continues to read as follows:

Authority: Sec. 201 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086; and E.O. 13672, 79 FR 42971.

■ 18. Add § 60–50.6 to read as follows:

§ 60–50.6 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

■ 19. The authority citation for part 60–300 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

§ 60–300.2 [Amended]

■ 20. Amend § 60–300.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.''

■ 21. Revise § 60–300.60(b) to read as follows:

§ 60–300.60 Compliance evaluations.

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–300.62. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission endeavor to remove any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

* * * * *

■ 22. Revise § 60–300.62 to read as follows:

§ 60–300.62 Pre-enforcement notice and conciliation procedures.

(a) *Predetermination Notice.* If a compliance evaluation by OFCCP indicates preliminary findings of potential discrimination, OFCCP will issue a Predetermination Notice that describes the preliminary findings and provides the contractor an opportunity to respond. The Predetermination Notice may also include preliminary findings of other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response and any additional investigation undertaken by the agency did not resolve the preliminary findings of potential discrimination or other violations identified in the Predetermination Notice, OFCCP will proceed to issue a Notice of Violation.

(b) *Notice of Violation.* If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor

requiring corrective action. The Notice of Violation will identify the violations found and describe the recommended corrective actions. The Notice of Violation will invite the contractor to conciliate the matter and resolve the findings through a written conciliation agreement. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) *Conciliation agreement.* If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) *Show Cause Notice.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(e) *Expedited conciliation option.* OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the contractor this expedited conciliation option, but may not require or insist that the contractor avail itself of the expedited conciliation option.

§ 60–300.64 [Removed and Reserved]

■ 23. Remove and reserve § 60–300.64.

■ 24. Add § 60–300.85 to subpart D to read as follows:

§ 60–300.85 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

■ 25. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 26. Amend § 60–741.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.''

■ 27. Revise § 60–741.60(b) to read as follows:

§ 60–741.60 Compliance evaluations.

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–741.62. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission endeavor to remove any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

* * * * *

■ 28. Revise § 60–741.62 to read as follows:

§ 60–741.62 Pre-enforcement notice and conciliation procedures.

(a) *Predetermination Notice.* If a compliance evaluation by OFCCP indicates preliminary findings of potential discrimination, OFCCP will issue a Predetermination Notice that describes the preliminary findings and provides the contractor an opportunity to respond. The Predetermination Notice may also include preliminary findings of other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response and any additional investigation undertaken by the agency did not resolve the preliminary findings of potential discrimination or other violations identified in the Predetermination Notice, OFCCP will proceed to issue a Notice of Violation.

(b) *Notice of Violation.* If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor requiring corrective action. The Notice of Violation will identify the violations found and describe the recommended corrective actions. The Notice of Violation will invite the contractor to conciliate the matter and resolve the findings through a written conciliation agreement. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) *Conciliation agreement.* If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) *Remedial benchmarks.* The remedial action referenced in paragraph (c) of this section may include the establishment of benchmarks for the contractor's outreach, recruitment, hiring, or other employment activities. The purpose of such benchmarks is to create a quantifiable method by which the contractor's progress in correcting identified violations and/or deficiencies can be measured.

(e) *Show Cause Notice.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(f) *Expedited conciliation option.* OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the contractor this expedited conciliation option, but may not require or insist that the contractor avail itself of the expedited conciliation option.

§ 60–741.64 [Removed and Reserved]

■ 29. Remove and reserve § 60–741.64.

■ 30. Add § 60–741.84 to read as follows:

§ 60–741.84 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

[FR Doc. 2023–16098 Filed 8–3–23; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 169

[Docket No. USCG–2020–0107]

RIN 1625–AC51

Survival Craft Equipment-Update To Type Approval Requirements; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correcting amendment.

SUMMARY: The Coast Guard is correcting a final rule published in the **Federal Register** on November 14, 2022. The final rule updated type approval requirements for certain types of survival craft equipment. The final rule had a typographical error in one of the sections. This document corrects that error.

DATES: Effective August 4, 2023.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Ms. Stephanie Groleau, Lifesaving & Fire Safety Division (CG–ENG–4), Coast Guard; telephone 202–372–1381, email *Stephanie.M.Groleau@uscg.mil.*

SUPPLEMENTARY INFORMATION: On November 14, 2022, the Coast Guard published a final rule titled ''Survival Craft Equipment-Update to Type Approval Requirements'' at 87 FR 68270. The final rule updated type approval requirements for certain types of survival craft equipment, including hatchets. The final rule contained a spelling error in the regulatory text of 46 CFR 169.527(c)(4) where ''Hatch'' was used instead of ''Hatchet''. This document corrects that error and adopts the correct spelling for § 169.527(c)(4).

We find good cause under provisions in 5 U.S.C. 553(d)(3) to make this correction effective upon publication because delaying the effective date is unnecessary and contrary to the public interest. Waiting 30 days after publication to correct the error within the final rule is unnecessary and contrary to the public's interest in having access to accurate and current regulations. The November 14, 2022, final rule preamble discussion indicated the changes were intended for hatchets, but the spelling was inaccurate.

List of Subjects in 46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

For the reasons stated in the preamble, the Coast Guard is correcting 46 CFR part 169 with the following correcting amendment:

PART 169—SAILING SCHOOL VESSELS

■ 1. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; DHS Delegation 00170.1, Revision No. 01.2; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.527 [Amended]

■ 2. In § 169.527(c)(4), remove the text ''Hatch'' and add, in its place, the text ''Hatchet''.

Dated: August 1, 2023.

Michael T. Cunningham,

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

[FR Doc. 2023–16655 Filed 8–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221215–0272; RTID 0648–XD196]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers From VA to NC and RI

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

ACTION: Notification of quota transfers.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2023 commercial bluefish quota to the States of North Carolina and Rhode Island. These adjustments to the 2023 fishing year quota are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial bluefish quotas for Virginia, North Carolina, and Rhode Island.

DATES: Effective August 3, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2023 allocations were published on December 21, 2022 (87 FR 78011).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP), as published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for transferring bluefish commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator,

can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: The transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfers approved in this notification.

Virginia is transferring 55,000 lb (24,948 kg) to North Carolina and 25,000 lb (11,340 kg) to Rhode Island through mutual agreements of the States. These transfers were requested to ensure that North Carolina and Rhode Island would not exceed their 2023 State quotas. The revised bluefish quotas for 2023 are: Virginia, 355,625 lb (161,309 kg); North Carolina, 1,429,077 lb (648,218 kg); and Rhode Island, 351,165 lb (159,286 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: August 1, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–16671 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 149
Friday, August 4, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1497; Project Identifier AD–2023–00516–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–25–17, which applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2019–25–17 requires revising the existing airplane flight manual (AFM) to prohibit selection of certain runways for airplanes equipped with certain software. Since the FAA issued AD 2019–25–17, Boeing has developed new software to address the unsafe condition. This proposed AD would retain the requirements of AD 2019–25–17. This proposed AD would also require installing the new software and performing a software configuration check, which would terminate the AFM revision. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 18, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1497; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1497.

FOR FURTHER INFORMATION CONTACT: Douglas Y. Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsuji@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1497; Project Identifier AD–2023–00516–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Douglas Y. Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsuji@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–25–17, Amendment 39–21016 (84 FR 71304, December 27, 2019) (AD 2019–25–17), for all the Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER (Model 737 NG) series airplanes (although the scope of the AD requirements is limited to operation at specific runways in the U.S., Colombia, and Guyana). AD 2019–25–17 was prompted by reports of Display Units (DU) blanking due to Display Electronics Unit (DEU) software errors on Model 737 NG airplanes flying into runway PABR in Barrow, Alaska. The investigation revealed that the problem occurs when a certain combination of software is installed and a susceptible runway with a 270-degree true heading is selected for instrument approach, although only seven runways worldwide have latitude and longitude values that cause the blanking behavior. AD 2019–25–17 requires revising the

existing AFM to prohibit selection of certain runways for airplanes equipped with certain software. AD 2019–25–17 was issued to address unscheduled diversions and Boeing Business Jet flights into the affected airports. The software errors and consequent display blanking, if not addressed, could prevent continued safe flight and landing.

Actions Since AD 2019–25–17 Was Issued

The preamble to AD 2019–25–17 specifies that the FAA considers the requirements ''interim action'' and that the manufacturer is developing a software update to address the unsafe condition. That AD explains that the FAA might consider further rulemaking if a software update is developed, approved, and available. Boeing has developed new software common display system (CDS) DEU operational program software (OPS) block point 2015A, which corrects the DU blanking issue. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020. This service information specifies procedures for installing the CDS DEU OPS block point 2015A and performing a software configuration check. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2019–25–17. This proposed AD would also require accomplishing the actions in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020, already described, except for any differences identified as exceptions in the regulatory text of this proposed AD, and except as specified under ''Difference Between Service Information and Proposed AD.''

Accomplishment of the new actions specified in this proposed AD would terminate the AFM revision required by AD 2019–25–17. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2023–1497.

Difference Between Service Information and Proposed AD

The effectivity of Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020, is limited to Model 737 NG airplanes having certain line numbers. This AD, however, applies to all of these airplanes to ensure that the unsafe condition is addressed on all airplanes subject to the unsafe condition. For airplanes on which the latest software was installed in production, paragraph (j) of this proposed AD would provide for terminating action for the AFM revision requirements of paragraph (g) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,739 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise AFM (retained action from AD 2019-25-17).	1 work-hour × $85 per hour = $85	$0	$85	$147,815.
Install software and perform configuration check (new proposed actions).	2 work-hours × $85 per hour = $170	Up to $975	Up to $1,145	Up to $1,991,155.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–25–17, Amendment 39–21016 (84 FR 71304, December 27, 2019), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2023–1497; Project Identifier AD–2023–00516–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by September 18, 2023.

(b) Affected ADs

This AD replaces AD 2019–25–17, Amendment 39–21016 (84 FR 71304, December 27, 2019) (AD 2019–25–17).

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by reports of display electronic unit (DEU) software errors on airplanes with a selected instrument approach to a specific runway. The FAA is proposing this AD to address the potential for all six DUs to blank, which can prevent continued safe flight and landing.

(f) Compliance

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

(g) Retained AFM Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–25–17, with no changes. Within 14 days after December 27, 2019 (the effective date of AD 2019–25–17), revise the Miscellaneous Limitations section of the existing airplane flight manual (AFM) to include the information in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of figure 1 to paragraph (g) of this AD into the Miscellaneous Limitations section of the existing AFM.

Figure 1 to Paragraph (g)—AFM Revision

Figure 1 to paragraph (g) – *AFM revision*

Common Display System	**(Required by AD 2019-25-17)**
The following is applicable only if configured with CDS BP15 and FMC U12 or later. Do not select the following runways in the FMC ARRIVALS page, as it may result in blanking of all six display units:	
82V RW26	Pine Bluffs, Wyoming, USA
KBJJ RW28	Wayne County, Ohio, USA
KCIU RW28	Chippewa County, Michigan, USA
KCNM RW26	Cavern City, New Mexico, USA
PABR RW25	Barrow, Alaska, USA
SKLM RW28	La Mina, La Guajira, Colombia
SYCJ RW29	Cheddi Jagan, Georgetown, Guyana

(h) Software Update

Except as specified in paragraph (i) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by paragraph (h) of this AD can be found in Boeing Alert Service Bulletin 737–31A1880, Revision 1, dated September 16, 2020, which is referred to in Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020.

(i) Exceptions to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020, use the phrase ''Within 12 months—after the Revision 1 date of Requirements Bulletin 737–31A1880 RB,'' this AD requires using ''Within 12 months after the effective date of this AD.''

(j) Terminating Action for AFM Revision

Accomplishment of the actions specified by paragraph (h) of this AD by an operator's entire affected fleet terminates the actions required by paragraph (g) of this AD, and the AFM revision required by paragraph (g) of this AD may be removed from the AFM.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 737–31A1880 RB, dated April 17, 2020, which is not incorporated by reference in this AD.

(l) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the actions required by this AD can be performed, provided the airplane is operated in accordance with the AFM limitation required by paragraph (g) of this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 (n)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, 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.

(n) Related Information

(1) For more information about this AD, contact Douglas Y. Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3548; email: *Douglas.Tsuji@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (4) of this AD.

(o) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–31A1880 RB, Revision 1, dated September 16, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562 797 1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on July 13, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16364 Filed 8–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1652; Project Identifier MCAI–2022–01528–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede five airworthiness directives (ADs) for all Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines. The existing ADs require recalculating the cyclic life for certain engine life-limited rotating parts and replacing those parts that have exceeded their cyclic life limit within specified compliance times. Since the FAA issued those ADs the manufacturer has revised the engine time limits manual (TLM), introducing new and more restrictive instructions. This proposed AD would require revising the airworthiness limitations section (ALS) of the existing approved maintenance or inspection program, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by September 18, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1652; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1652.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1652; Project Identifier MCAI–2022–01528–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or

responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2003–17–15, Amendment 39–13290 (68 FR 51682, August 28, 2003) (AD 2003–17–15); AD 2013–19–17, Amendment 39–17599 (78 FR 61171, October 3, 2013); corrected November 14, 2013 (78 FR 68360) (AD 2013–19–17); AD 2013–19–18, Amendment 39–17600 (78 FR 61168, October 3, 2013) (AD 2013–19–18); AD 2015–17–21, Amendment 39–18254 (80 FR 65925, October 28, 2015) (AD 2015–17–21); and AD 2016–03–04, Amendment 39–18391 (81 FR 6755, February 9, 2016) (AD 2016–03–04) for RRD Model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines. The FAA also issued AD 2004–19–04, Amendment 39–13798 (69 FR 56683, September 22, 2004); corrected September 30, 2004 (69 FR 58257) for Model RB211–22B, RB211–524, and RB211–535 series engines. Those ADs require recalculating the cyclic life for certain engine life-limited rotating parts and replacing those parts that have exceeded their cyclic life limit within specified compliance times, and revision of the engine TLM. The FAA issued those ADs to prevent failure of critical life-limited rotating engine parts, which could result in uncontained parts release, uncontained engine failure, damage to the engine, and damage to the airplane.

Actions Since the Previous ADs Were Issued

Since the FAA issued AD 2003–17–15, AD 2004–19–04, AD 2013–19–17, AD 2013–19–18, AD 2015–17–21, and AD 2016–03–04; EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD 2022–0235, dated December 1, 2022 (EASA AD 2022–0235) (also referred to after this as the MCAI). The MCAI states that the manufacturer published a revised engine TLM introducing new or more restrictive tasks and limitations. These new or more restrictive tasks and limitations include updating declared lives of certain critical parts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1652.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0235, which specifies instructions for accomplishing the actions specified in the applicable engine TLM, including performing maintenance tasks, replacing life-limited parts, and revising the existing approved maintenance or inspection program, as applicable, by incorporating the limitations, tasks, and associated thresholds and intervals described in the engine TLM. 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**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2003–17–15, AD 2013–19–17, AD 2013–19–18, AD 2015–17–21, and AD 2016–03–04. This proposed AD would require revising the existing approved maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations, as specified in EASA AD 2022–0235, except for any differences identified as exceptions in the regulatory text of this proposed AD and as discussed under ''Differences Between this Proposed AD and the MCAI.'' This proposed AD would also terminate all requirements of AD 2004–19–04 for Model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines only.

Differences Between This Proposed AD and the MCAI

Where paragraph (3) of EASA AD 2022–0235 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0235, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 468 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the existing approved maintenance or inspection program.	1 work-hours × $85 per hour = $85	$0	$85	$39,780

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive AD 2003–17–15, Amendment 39–13290 (68 FR 51681, August 28, 2003); AD 2013–19–17, Amendment 39–17599 (78 FR 61171, October 3, 2013); corrected November 14, 2013 (78 FR 68360); AD 2013–19–18, Amendment 39–17600 (78 FR 61168, October 3, 2013); AD 2015–17–21, Amendment 39–18254 (80 FR 65925, October 28, 2015); and AD 2016–03–04, Amendment 39–18391 (81 FR 6755, February 9, 2016); and

■ b. Adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2023–1652; Project Identifier MCAI–2022–01528–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 18, 2023.

(b) Affected ADs

(1) This AD replaces AD 2003–17–15, Amendment 39–13290 (68 FR 51682, August 28, 2003).

(2) This AD affects AD 2004–19–04, Amendment 39–13798 (69 FR 56683, September 22, 2004); corrected September 30, 2004 (69 FR 58257) (AD 2004–19–04).

(3) This AD replaces AD 2013–19–17, Amendment 39–17599 (78 FR 61171, October 3, 2013); corrected November 14, 2013 (78 FR 68360).

(4) This AD replaces AD 2013–19–18, Amendment 39–17600 (78 FR 61168, October 3, 2013).

(5) This AD replaces AD 2015–17–21, Amendment 39–18254 (80 FR 65925, October 28, 2015).

(6) This AD replaces AD 2016–03–04, Amendment 39–18391 (81 FR 6755, February 9, 2016).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines, all serial numbers.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual and the life limits of certain critical rotating parts. The FAA is issuing this AD to prevent failure of critical rotating parts. The unsafe condition, if not addressed, could result in uncontained parts release, uncontained engine failure, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0235, dated December 1, 2022 (EASA AD 2022–0235).

(h) Exceptions to EASA AD 2022–0235

(1) Where EASA AD 2022–0235 defines the AMP as the Aircraft Maintenance Programme which contains the tasks on the basis of which the scheduled maintenance is conducted to ensure the continuing airworthiness of each operated engine, this proposed AD defines the AMP as the Aircraft Maintenance Program which contains the tasks of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2022–0235 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not require compliance with paragraph (1) and (2) of EASA AD 2022–0235.

(4) Where paragraph (3) of EASA AD 2022–0235 specifies revising the approved Aircraft Maintenance Programme within 12 months after the effective date of EASA AD 2022–0235, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(5) This AD does not adopt the ''Remarks'' paragraph of EASA AD 2022–0235.

(i) Provisions for Alternative Actions and Intervals

After performing the actions required by paragraph (g) of this AD, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0235.

(j) Terminating Action for AD 2004–19–04

Accomplishing the actions required by this AD terminates all requirements of AD 2004–19–04 for Model RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 engines only.

(k) 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 (l) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0235, dated December 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0235, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 27, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16535 Filed 8–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1488; Project Identifier AD–2023–00182–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –200PF series airplanes. This proposed AD was prompted by a report of cracks found at the main deck cargo door forward and aft hinge attachment holes. This proposed AD would require a maintenance records check for repairs at the forward and aft hinge areas of the main deck cargo door cutout; repetitive open-hole high frequency eddy current (HFEC) inspections for cracks in the unrepaired areas of the bear strap, skin, doubler, and upper sill chord at the main deck cargo door forward and aft hinge attachment holes; and corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 18, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1488; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1488.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1488; Project Identifier AD–2023–00182–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *wayne.ha@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of cracks on three Model 757–200PF airplanes at the main deck cargo door forward and aft hinge attachment holes found while the airplanes were undergoing a routine maintenance check. The airplanes had reached between 16,380 and 19,221 total flight cycles and between 24,646 and 28,158 total flight hours at the time of the crack findings. It has been determined that certain existing maintenance inspections are not sufficient to detect cracks around attachment holes in areas where the hinge obstructs the inspection, without the removal of the main deck cargo door hinge fasteners. Undetected cracks in the main deck cargo door hinge could result in reduced structural integrity of the airplane.

After the cracking was reported on Model 757–200PF series airplanes, Boeing conducted a cross-model evaluation and crack-growth analysis on Model 757–200 and –200CB series airplanes because the fuselage design in the affected location is the same on all three airplane models. The FAA has determined that the unsafe condition could exist on Model 757–200, –200CB, and –200PF series airplanes.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or

develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023. This service information specifies procedures for a maintenance records check for repairs at the forward and aft hinge areas of the main deck cargo door cutout; repetitive open-hole high frequency eddy current (HFEC) inspections for cracks in the unrepaired areas of the bear strap, skin, doubler, and upper sill chord at the main deck cargo door forward and aft hinge attachment holes; and corrective actions including obtaining and following procedures for alternative inspections and crack repairs.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2023–1488.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 445 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance records check	1 work-hour * × $85 per hour = $85	$0	$85	$37,825
HFEC inspections	26 work-hours × $85 per hour = $2,210, per inspection cycle.	0	2,210	983,450

* The time to do the maintenance records check will vary by operator but would likely take no more than 1 work-hour per airplane.

The FAA has received no definitive data on which to base the cost estimates for the crack repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2023–1488; Project Identifier AD–2023–00182–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 18, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –200PF series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report indicating an operator has found cracks on three Model 757–200PF airplanes at the main deck cargo door forward and aft hinge attachment holes. The FAA is issuing this AD to detect and correct cracks in the main deck cargo door hinge area. Undetected cracks in the main deck cargo door hinge could result in reduced structural integrity of the aircraft.

(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 757–53A0106 RB, dated January 3, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0106, dated January 3, 2023, which is referred to in Boeing Alert

Requirements Bulletin 757–53A0106 RB, dated January 3, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column and notes of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023, use the phrase ''the original issue date of Requirements Bulletin 757–53A0106 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023, specifies contacting Boeing for repair instructions and doing the repair, this AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions, before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, 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 (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@FAA.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, 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.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 757–53A0106 RB, dated January 3, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on July 8, 2023.

Michael Linegang,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16365 Filed 8–3–23; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416, and 422

[Docket No. SSA–2023–0018]

RIN 0960–AI22

Changes to the Administrative Rules for Claimant Representation and Provisions for Direct Payment to Entities

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations to enable us to directly pay entities fees we may authorize to their employees, as required by the decision of the United States Court of Appeals for the First Circuit (First Circuit) in *Marasco & Nesselbush, LLP* v. *Collins.* To make direct payments, issue the necessary tax documents, and properly administer these rules, we propose to require all entities that want to receive direct payment of assigned fees and all representatives who want to be appointed on a claim, matter, or issue to register with us. We also propose to standardize the registration, appointment, and payment processes. We expect that this proposed rule will help us implement the changes required by the *Marasco* decision, increase accessibility to our electronic services, reduce delays, and help us prepare for more automation, thereby improving our program efficiencies.

DATES: To ensure that your comments are considered, we must receive them by no later than October 3, 2023.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket Number SSA–2023–0018 so that we may associate your comments with the correct regulation.

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

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the ''*search*'' function to find Docket Number SSA–2023–0018. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Social Security Administration, Mail Stop 3253 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

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

FOR FURTHER INFORMATION CONTACT: Mary Quatroche, Director, Office of Disability Policy, Office of Vocational Evaluation and Process Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–4794. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Any person who claims a benefit under our programs may appoint a representative(s) to assist with their claim, and the representative(s) may seek a fee for the services they provide. We must generally authorize any fee that the representative(s) wants to charge or collect. If we authorize a fee to the representative(s), we may also pay

that fee directly out of the claimant's past-due benefits, if certain conditions are met.[1] These representatives may be employed by an entity, but currently, we do not directly pay the entity for work performed by a representative it employs.[2]

In 2017, Marasco & Nesselbush, LLP, a law firm, brought an action in Federal court alleging, among other things, that the law firm's employees had no direct right to authorized fees and that their salaries do not depend on the amount of fees generated by the disability cases in which they act as representatives. On July 16, 2021, the First Circuit issued a decision instructing us to find a reasonably reliable means for law firms to receive direct payment of fees we authorize to their salaried employees while correctly reporting the income to the Internal Revenue Service (IRS).[3] On remand, the United States District Court for the District of Rhode Island issued an order requiring us to, among other things, undertake good faith efforts to develop a process within 24 months from the date of its March 23, 2022 order to ensure that law firms that employ salaried associates to represent claimants may receive direct payment of fees to which the associates are entitled for representation performed while employed by the law firms.[4]

Each year we directly pay, on average, almost a billion dollars in fees authorized to appointed representatives in title II cases alone.[5] Standardization and accuracy are essential to meet our stewardship duties because these direct fee payments are made from claimants' past-due benefits. To implement the First Circuit's decision in a responsible, timely, efficient, and practical manner, we are proposing changes to standardize several processes in our rules, including: (1) registration of representatives and entities; (2) assignment of representational fees to entities for direct payment, as well as rescission of assignment; (3) point of contact (POC) requirements for the entity; and (4) direct payment to entities by electronic funds transfer (EFT). Below, we explain why and how these four elements are necessary to implement the court's decision.

I. Definition of Terms for Purposes of This Proposed Rule

We propose to define, or redefine, certain terms as they will be used in our rules on representation.[6] These definitions would only apply within the context of our rules on representation found at 20 CFR 404.1700 *et seq.* and 416.1500 *et seq.* We would include these definitions in 20 CFR 404.1703 and 416.1503.

We propose to define *Assignment* to mean the transfer of the right to receive direct payment of an authorized fee to an entity. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1730, 416.1503, and 416.1530.

We propose to define a *Point of Contact* to mean an individual who is a registered representative selected by an entity to speak and act on the entity's behalf and who assumes the affirmative duties and obligations we prescribe. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1735, 404.1740, 416.1503, 416.1535, and 416.1540.

We propose to define *Registration* to mean a process by which a representative or entity provides the information we require to conduct business with us. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1705, 404.1735, 416.1503, 416.1505, and 416.1535.

We propose to redefine *Representative* to mean an attorney who meets all the requirements of 20 CFR 404.1705(a) and 416.1505(a), or a person other than an attorney who meets all the requirements of 20 CFR 404.1705(b) and 416.1505(b), and whom you appoint to represent you in dealings with us. For purposes of our rules of conduct and standards of responsibility, *Representative* also includes an individual who provides representational services and an individual who is listed as a POC for an entity, as applicable to their identified role. This defined term is used in changes proposed to 20 CFR 404.1703, 404.1720, 404.1740, 416.1503, 416.1520, and 416.1540.

II. Allowing Representatives To Assign Direct Payment of Authorized Fees to Entities

Under this proposal, to comply with the *Marasco* decision, reduce burden, and improve efficiency, we would allow representatives to assign their right to receive direct payment of an authorized fee to an entity on each claim. If the applicable conditions explained in Section VI are met, we would accept an assignment and certify payment of the authorized fee to the entity. We would make these changes in 20 CFR 404.1720 and 416.1520.

III. Registration by All Representatives and Use of the Representative ID (Rep ID)

Currently, representatives who want direct payment of fees or access to our electronic claim(s) file (eFolder) must register with us.[7] To register, representatives complete and submit Form SSA–1699 (OMB No. 0960–0732), ''Registration for Appointed Representative Services and Direct Payment.'' [8] To protect representatives' privacy, we created the Representative Identification number or Rep ID, which we issue to the representatives during registration to use in lieu of their Social Security number (SSN). The Rep ID is meaningful only within our systems. Among other purposes, we use the information we collect during registration to issue checks or EFT to the representative's preferred banking institution and to report the income on Form IRS 1099 (OMB No. 1545–0119), as required by the IRS.[9] This information is also necessary to assess a user fee on each direct payment, as required by sections 206(d) and 1631(d)(2)(C) of the Social Security Act (the Act).[10] We currently have several thousand registered representatives.[11]

[1] Generally, we will pay the fee directly if the representative is registered and eligible for direct payment; has not withdrawn or been revoked prior to the favorable decision; and did not waive the fee or direct payment of the fee. *See* Program Operations Manual System (POMS) GN 03920.017.

[2] *Entity* means any business, firm, or other association, including but not limited to partnerships, corporations, for-profit organizations, and not-for-profit organizations. *See* 20 CFR 404.1703 and 416.1503.

[3] *Marasco,* 6 F.4th 150, 178 (1st Cir. 2021).

[4] *See* Order, ECF No. 63, *Marasco & Nesselbush, LLP* v. *Collins,* No. 17–cv–317 (D.R.I. Mar. 23, 2022). A copy of the district court's order has been submitted to the rulemaking record in the supporting documents.

[5] In 2022, we paid $923.9 million in authorized fees for title II claims. *See https://www.ssa.gov/representation/statistics.htm#2022.*

[6] 20 CFR part 404, subpart R and part 416, subpart O.

[7] 71 FR 58043 (Oct. 2, 2006).

[8] *Id.,* at 58043–44.

[9] To pay an authorized fee directly to a representative we must collect certain information that enables us to meet our obligations under sections 6041(a) and 6045(f) of the Internal Revenue Code (IRC) as implemented by 26 CFR 1.6041–1. These sections require us to issue a Form 1099–MISC or 1099–NEC (whichever is applicable) to those who receive aggregate fees of $600 or more in a calendar year. To comply with this requirement, we collect the requisite information such as the representative's taxpayer identification number (TIN), and the address where we can send a check or the financial institution where we can send an EFT payment.

[10] The Debt Collection Improvement Act of 1996 (DCIA) provides that when an individual is doing business with an agency, such as when that person is assessed a fee, the agency head must require the individual to provide their TIN to the agency. 31 U.S.C. 7701(c)(1), (c)(2)(D).

[11] As of May 3, 2023, 43,620 attorneys and 2,955 eligible for direct payment non-attorneys (EDPNAs) were registered for direct payment and access to our

Currently, we generally communicate with unregistered representatives via manual notifications. In this rule, we propose to require all representatives to register with us prior to being appointed on any claim. We expect several benefits from this proposed requirement. We expect that this requirement would allow us to conduct business more efficiently because it would allow us to automate more notices, minimize manual errors, properly track transactions and related communications, and improve our sanctions process. The proposed registration requirement would help us further automate communications that are managed by our centralized representative database and share the information with our secondary databases used to process cases at different adjudicatory levels, so these systems can also automate their communications. We expect that this increased automation would also make the processing of appointments and fee payments more efficient by reducing errors associated with manual actions. In addition, the registration requirement would enable us to better track all representatives' actions and conduct on their cases, rather than just those who choose to register with us, and it would extend access to our electronic services to more representatives. Access to our Electronic Records Express (ERE) system, for example, has been an important tool for representatives to obtain real-time information from our files in an easy and efficient way without the need to contact an agency employee for that information. Registration will continue to be a one-time process unless the representative's information changes and registration data must be updated.

We will also require representatives to register before being named as a POC for an entity. Requiring representatives to register with us before being designated as POCs would facilitate quicker processing of the entity's registration because the representative's information would already be in our system and would not need to be manually keyed-in by a technician prior to processing the entity's registration. It would also allow us to readily identify and verify the POC when we share certain claim information to resolve fee matters and, if needed, ensure accountability under our rules of conduct as explained in Section VIII below. Registration would also help us ensure that we keep accurate and comprehensive records of our communications with the entities and their POCs. We would make these changes in 20 CFR 404.1705 and 416.1505.

IV. Requiring Entity Registration Before We Accept a Request To Directly Pay an Entity

To enable direct payments to entities and meet our mandatory tax reporting obligations to the IRS, we will need to collect information such as tax identification numbers, addresses, and banking institutions from entities. We currently ask representatives to voluntarily register the entity with which they are affiliated so that we can issue a copy of Form IRS 1099 to their employer to assist the parties in their accounting and tax reporting duties. When an entity elects not to register with us, we cannot issue a Form IRS 1099 to that entity. To pay an entity, we will need the entity to register before we can accept any assignment of direct payment so that we can ascribe income to the entity correctly. To register entities, we developed the standard Form SSA–1694 (OMB No. 0960–0731), ''Request for Business Entity Taxpayer Information'' to collect the entity's name and address to mail the Form IRS 1099.

Under this proposed rule, registration would continue to be voluntary for entities not being assigned direct payment of authorized fees. Like representative registration, entity registration would be a one-time transaction unless the entity needs to update its information. However, any entity previously registered under our prior process that wants to receive direct payment of assigned fees would have to register again to provide additional information we do not currently have, such as its banking information and information regarding a designated POC. Entities would then be responsible, through their POC, for keeping their information accurate and current. To ensure we collect all the information we need to make direct payment and issue tax forms, we propose to require use of a standard process (currently this involves submission of the Form SSA–1694) to register. This would ensure that the information we need would be collected in one document to facilitate processing. We would make these changes in 20 CFR 404.1735 and 416.1535.

V. Standardizing the Representative Appointment Process

Our rules in 20 CFR 404.1707 and 416.1507 require claimants and their representatives to submit a written notice of appointment to inform us about the claimants' decision to engage representation. This notice allows us to confirm the person has the requisite qualifications to be a representative and recognize the person as the representative.[12] Currently, we do not require the use of our standard notice of appointment Form SSA–1696 (OMB No. 0960–0527), ''Claimant's Appointment of a Representative,'' to document representative appointments. However, in practice we find that most representatives and claimants use this form. We also do not currently require attorney representatives to sign a notice of appointment, whether they use our standard form or another writing, but do require non-attorneys to sign.[13]

Our standard Form SSA–1696 collects information that helps us properly identify the claimant, the principal representative,[14] and any other representative. It helps us collect other important information, such as the fee arrangement, which helps us determine whether we should withhold funds from past-due benefits for possible direct payment of any fee we authorize. It also helps us determine the representative's affiliation with an entity, which enables us to link the representative, the case, and the entity in our records, so that we may issue appropriate form(s) IRS 1099 for any payments we make in the case.

In any adjudicatory system as large as ours, which processes millions of claims each year, ''the need for efficiency is self-evident.'' [15] To increase our efficiency, we propose to require use of our prescribed form for the appointment of a representative (currently the SSA–1696 or its electronic equivalent (e1696)). We expect that the use of our prescribed form will allow us to standardize the appointment process, facilitate the assignment of fees, and allow quicker processing of each appointment. Use of a prescribed process and form for each individual appointment will enable us to collect

electronic claim files in our centralized database, Registration, Appointment and Services for Representatives (RASR). Because we are unable to maintain detailed information on unregistered representatives in our centralized representative database, we do not have specific numerical data or statistics about this group.

[12] *See* POMS GN 03910.020A.

[13] 20 CFR 404.1707 and 416.1507.

[14] A claimant may appoint multiple representatives. However, if a claimant appoints more than one individual to serve concurrently, the claimant must designate one representative to be the principal representative. We contact and send notices or requests for development only to the principal representatives. They are expected to provide copies to other representatives. *See* POMS GN 03910.040C (*https://secure.ssa.gov/apps10/poms.nsf/lnx/0203905040*), and Hearing, Appeals and Litigation Law manual (HALLEX) I–1–1–10C (*https://www.ssa.gov/OP_Home/hallex/I-01/I-1-1-10.html*) and I–1–1–11 (*https://www.ssa.gov/OP_Home/hallex/I-01/I-1-11.html*).

[15] *See Barnhart* v. *Thomas,* 540 U.S. 20, 29 (2003); *Heckler* v. *Campbell,* 461 U.S. 458, 461, n.2 (1983).

necessary information, such as the Rep ID we issue at registration and fee arrangement information, with every appointment. We also would require a signature by all representatives, whether the representative is an attorney or a non-attorney.

Additionally, under our current process, we have difficulty identifying individuals or processing their documents when we do not receive certain information at the start of the appointment. Considering the large number of claims that we process each year, it is only prudent that we require the use of a prescribed process and form, rather than relying on representatives to develop their own method to supply the information we need. In addition to the efficiencies discussed above, this standardized process would also minimize inconsistencies and reduce the need for recontacts that can cause delays and inconvenience. Lastly, when processing appointments under our current rules, technicians must confirm different requirements are met depending on the representative's status as an attorney or non-attorney. Standardizing the signature requirement will improve efficiency by implementing a uniform rule.

Requiring a prescribed form (*e.g.,* the Form SSA–1696 or e1696) and signatures from all representatives will also strengthen uniformity in the processing of appointments. We would make these changes in 20 CFR 404.1707 and 416.1507, with additional language changes to accommodate potential developments in the method for submitting appointments. With this proposed rule, we are not changing our current signature method requirements.

VI. Payment to Entities via EFT/Direct Deposit Only

Currently, we collect preferences and pay individual representatives by check or EFT.[16] We propose to pay entities to whom fees have been assigned through EFT only. Generally, EFT is the safest and most convenient method to receive Federal payments. It is a reliable, secure, fast, and contact-free method to receive payments. In recent years, EFT has also become increasingly popular because for most recipients it is more convenient than paper checks.[17] For over a decade, EFT has also been required by law for Federal nontax payments, with limited exceptions.[18] One of those exceptions allows agencies to waive the EFT requirement when the agency does not anticipate making payments to the same recipient on a regular, recurring basis within a one-year period and the recipient's financial institution does not make remittance data explaining the purpose of the payment readily available.[19] As the Department of the Treasury explained in a 2010 rulemaking proceeding, this exception arose to address the needs of individual representatives seeking fee payments from us who claimed that their banks were not able or willing to provide all the information needed to identify the client on whose account the deposit was made and who were precluded from electronically depositing their fee payments into their employer/firm's bank account.[20] However, even at the time of that 2010 rulemaking, we had taken steps to begin transmitting information to banks to enable representatives to link payments to clients, and we encouraged those banks to pass that information on to their account holders as quickly as possible, thus addressing the issue of the availability of information tying payments to specific clients.[21] Allowing direct payment to entities will resolve the representatives' concern about the inability to deposit their fee payments into their employer's bank account. Because we propose to resolve the issues that led to the waiver rule and because the Department of the Treasury discourages use of this waiver and advised that it only be used sparingly,[22] we propose not to apply the waiver to entity payments.

Further, offering check payments to entities would require changes to our systems that would involve significant time and resources. Limiting entity payments to EFT would help us ensure that our implementation of direct payment to entities is timely and that, upon the effective date of any final rule based on this proposal, we would begin certifying payment of fees directly to entities. The proposed rule would not change our current payment process or options for individual representatives. We would include these changes in 20 CFR 404.1735 and 416.1535.

VII. Establishing a New Process for Appointed Representatives To Request Direct Payment of Authorized Fees to an Entity

To assign direct payment of an authorized fee, the representative would need to: (1) be eligible for and seek direct payment; (2) be associated (affiliated) with the entity through our registration process; and (3) make the assignment timely and in the manner we prescribe. In addition, the entity would need to be eligible for direct payment as described later in this proposed rule. Where all these conditions are satisfied, we propose to accept or honor an assignment. We would check eligibility at the time we process the assignment and at the time we certify the direct payment. An invalid assignment would not affect the processing of an otherwise valid notice of appointment.

Although we will not limit representatives to only assigning fees at the time of an appointment, we believe that it will be most efficient to collect the representative's intent to assign direct payment of the fee at that time. Capturing information about assignments during the appointment process would ensure we record each assignment early in the claim(s) process, help us streamline fee payments, allow us to automate as many fee payments as possible, and prevent delays and errors, all of which help us improve the timeliness and accuracy of our fee payment process.

We propose to allow representatives to rescind a previously submitted assignment in the same manner they established it. We would allow a representative to withdraw an assignment by submitting an updated version of our prescribed form on which the representative deselects the assignment option, provided that the representative does so before the date we notify the claimant of our first favorable determination or decision.[23] We would not accept any request to rescind an assignment after this date. Having a deadline for assignments and revisions to assignments also helps to ensure the accuracy and timeliness of our fee payments. After our decision makers render a favorable determination or decision, we transfer the case to the appropriate office for final review and payment (called ''effectuation''). New representational documents received after the date we notify the claimant of a favorable determination or decision

[16] *See* 31 CFR 208.4 (enumerating certain exceptions to the requirement that all non-tax payments made by Federal agencies be made by EFT).

[17] U.S. Dept. of the Treasury, *Final Rule for Electronic Government Payment Will Balance Recipient Needs With Benefits of Electronic Payment* (June 25, 1998), *available at https://home.treasury.gov/news/press-releases/rr2560.*

[18] *See* 31 U.S.C. 3332(e), (f); 31 CFR 208.1; *but see* 31 CFR 208.3 and 208.4 (enumerating certain exceptions to the EFT requirement).

[19] 31 CFR 208.4(a)(6).

[20] *See* 75 FR 80315, 80325.

[21] *Id.*

[22] *Id.*

[23] Throughout this preamble, ''favorable determination or decision'' refers to either a fully or partially favorable determination or decision.

will delay the effectuation process or cause inaccurate payments.

An assignment would remain valid regardless of continued employment with the entity unless other reasons would invalidate the assignment. Some reasons to invalidate an assignment would include a disqualification or suspension of the representative, because an entity's eligibility for direct payment in a case depends on the representative's eligibility for direct payment; the entity becoming ineligible for direct payment; or the representative's timely rescission of the assignment, as explained above. By its own actions, an entity could become ineligible for direct payment, such as if it retains unauthorized fees or fees that exceed the amount we authorized,[24] as explained more fully later in this preamble.

We propose to reject an assignment if the representative and entity did not properly register prior to submission of the assignment, or if the representative did not properly identify the entity by providing the entity's name and EIN when making the assignment. We would also reject any assignment that was made to an entity that is ineligible for direct payment, that was made by a representative who is not eligible for or requesting direct payment of an authorized fee, or that was not filed before the date that we notify the claimant of our first favorable determination or decision. To prevent individuals from circumventing our direct payment and professional conduct rules, we would allow direct payment to entities only when the assignment is made by a representative eligible for direct payment.[25] We would notify the representative if we rejected an assignment. The rejection of an assignment would not affect processing of an otherwise valid appointment or the representative's eligibility for direct payment.

Payments to entities would be subject to all our other rules governing payment of fees, including the requirement that past-due benefits are available and that we have withheld them. If, at the time we calculate the fee, the assignment meets all the criteria for a valid assignment, we would certify payment of the authorized fee to the entity. However, we would not charge claimants with an overpayment to make direct payment to an entity in situations where, through no error of our own, we did not withhold funds from past-due benefits; where we were not timely informed of an assignment of fees; where the entity was, at the time of payment, ineligible for direct payment but later became eligible; or where the representative waived the fee, even if the representative withdrew the waiver, if that withdrawal occurred after we already made all payments and released the past-due benefits.

We would allow only one assignment per representative per case. This restriction means representatives could not assign direct payment to multiple entities in a single case. Doing so could create confusion and increase the administrative burden of processing these payments. Additionally, allowing a representative to assign fees to multiple entities could lead to manual processing errors which would be contrary to our goal of increasing the timeliness and efficiency of our fee payment process. If multiple representatives involved in a case are affiliated with different entities, we would make fee payments following our existing rules for payments to multiple representatives and apply the rules proposed herein to qualify and fulfill each assignment. If all other conditions for a valid assignment are met, we would accept or honor the most recently updated (and timely submitted, as described above) request to assign a fee, which would supersede all prior assignment requests made by that representative. We would make these changes in 20 CFR 404.1730, 404.1735, 416.1530, and 416.1535.

VIII. Recovery of Excess or Erroneously Paid Fees, the Requirement To Name an Entity POC, and Entity Eligibility for Direct Payment

With this proposal, we would establish a business process to ensure that fee errors can be corrected, consistent with our obligations to claimants and our stewardship obligation to protect taxpayer money. To facilitate resolution of fee discrepancies and other fee related issues, such as correcting a Form IRS–1099, we would require an entity to name a POC during the entity's registration. This POC would need to be a registered representative who is not currently suspended or disqualified from practicing before us. However, we would not require the POC to be eligible for direct payment to serve as a POC or for the entity to receive an assigned fee. We would collect the POC's information, including the POC's name, Rep ID, and phone number, during the entity's registration. We would reject any registration that is missing this information and notify the entity or representative to provide the missing information. To ensure consistent communication, we would make the POC and the entity jointly responsible for keeping this information current.

We would expect the POC to assist us in resolving fee-related matters and to conduct all entity affairs with us with diligence, truthfulness, and competence. We would hold the POC responsible under our Rules of Conduct and Standards of Responsibility if these duties are not met, but we would not hold the POC financially responsible for repayment of excess or otherwise erroneous fee payments made directly to the entity. The entity would be responsible for repayment of excess or otherwise erroneous fees. We propose to revise our Rules of Conduct and Standards of Responsibility for Representatives to account for the new POC role in our processes. We would make these changes in 20 CFR 404.1735, 404.1740, 416.1535, and 416.1540.

IX. Restricting Eligibility for Direct Payment for Certain Entities

We propose to make entities ineligible for direct payment if they do not remit excess or otherwise erroneous fees; if they do not maintain an active POC; if they, through their POCs, do not assist us in correcting a fee payment error; or if they do not comply with our rules. An entity would need to update the entity registration to name a new POC immediately if there is any change in the current POC's status. This would ensure that any necessary communications regarding fees and fee payments would not be disrupted. We would work with the POC to correct possible fee inaccuracies or recover erroneous fees.

We will maintain a list of entities that are ineligible for direct payment. We would place an entity on this list if that entity failed to resolve an excess or otherwise erroneous fee, after notice to the POC in our records. We would halt direct payments to any entity on this list and not accept new assignments from representatives made to an entity on this list. We would remove an entity from the list and accept new assignments when the entity resolves to our satisfaction the fee matter or other issue restricting eligibility. If the entity is ineligible for direct payment at the time we are ready to make direct payment, we will make the payment to the representative who created the assignment if that representative remains eligible for direct payment. If the representative is no longer eligible for direct payment at that time, we would, as we currently do, release the funds to the claimant.

[24] POMS GN 03920.051A.

[25] 42 U.S.C. 406 and 1383; *see also* POMS GN 03920.017.

Establishing a process to recover fees and correct errors is necessary to preserve program integrity, safeguard claimants' past-due benefits, and ensure that we properly and efficiently manage financial matters with entities. We would make these changes in 20 CFR 404.1735 and 416.1535.

X. Waivers' Effect on Direct Payment to Entities

To avoid circumvention of our direct payment rules, as discussed above, representatives who waive their fee, direct payment, or both would not be permitted to make an assignment, since there would be no fee or direct payment to assign. We would not accept fee or direct payment waivers made by representatives who previously assigned a fee and did not timely rescind that assignment. Issues arising from untimely assignment submissions or rescissions, improper waivers, or similar events would be matters between the entity and the representative. We would make these changes in 20 CFR 404.1730 and 416.1530.

XI. Replacing Form SSA–1695

We previously issued a **Federal Register** Notice (FRN), ''Identifying Information For Possible Direct Payment of Authorized Fees,'' that required the submission of Form SSA–1695 (OMB No. 0960–0730), a now-obsolete form that required the representatives' SSN and other personally identifiable information, in each case in which a representative sought direct payment.[26]

We have included relevant information from this collection instrument in the SSA–1696, while eliminating the SSN requirement. The 2006 FRN's requirements would be obsolete if we finalize this proposal by publishing a final rule.

Authority: The Commissioner of Social Security is authorized to make rules and regulations to carry out the provisions of the Act, including recognition of representatives, under sections 205(a), 206(a)(1), 702(a)(5), 810(a), and 1631(d) of the Act.[27]

Solicitation for Public Comment: As discussed elsewhere in this rulemaking, we are seeking public comment on this proposed rule. The initial impetus for this proposal was to ensure we are in compliance with the *Marasco* decision guidelines. However, as previously stated, we also want to use this opportunity to minimize inconsistencies and reduce the need for recontacts associated with the representative fee direct payment or appointment processes (within the scope of this proposed rule). Accordingly, while we encourage public comments on all aspects of the proposed rule, we note these comments can include thoughts and suggestions on other, related improvements, provided they are within the scope of this proposal.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order (E.O.) 12866, as supplemented by E.O. 13563 and E.O. 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use this proposed rule?

We will not use this proposed rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. When we publish a final rule, we will include a summary of the significant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and they determined that this proposed rule does not meet the criteria for a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and is not subject to OMB review.

We also determined that this proposed rule meets the plain language requirement of E.O. 12866.

Anticipated Accounting Costs of This Proposed Rule

Anticipated Costs to Our Programs

Our Office of the Chief Actuary estimates that implementation of these proposed rules would result in negligible changes (*i.e.,* less than $500,000) in scheduled OASDI benefits and Federal SSI payments. This estimate is based primarily on the assumption that these proposed rules would not materially affect the availability and quality of representation.

Anticipated Administrative Costs to the Social Security Administration

The systems upgrades necessary to comply with the *Marasco* decision are funded and currently underway. We do not expect that additional funding will be needed. Once the rule becomes effective, the Office of Budget, Finance, and Management estimates administrative costs of less than 15 work years and $2 million annually from the updates to our current business processes.

Anticipated Time-Savings and Qualitative Benefits

Beyond complying with the *Marasco* decision, we also anticipate this proposed rule will be less burdensome and more efficient for the affected public. Currently, entities that employ representatives must spend time and effort working with those representatives so the latter can remit Social Security fee remuneration back to the firm. By making the payment directly to an entity rather than only to a representative, we save both the entity and the representative the time and effort they would have otherwise spent on completing the requisite paperwork and financial transactions involved in transferring funds (on the representative's end) and adjusting accounting records to reflect the transfer (on the part of the entity's accounting or bookkeeping staff). Ultimately, then,

[26] 71 FR 58043 (Oct. 2, 2006).

[27] 42 U.S.C. 405(a), 406(a)(2), 902(a)(5), 1010(a), and 1383(d).

this change will ensure a faster and more efficient process for representatives and the entities who employ them. This may also have downstream positive effects for claimants seeking representation; if representatives and their employing entities do not need to spend as much time dealing with accounting and paperwork, they could perhaps work on existing cases faster, or could take on more claimants to represent.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by E.O. 13132 and determined that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. Although this proposed rule would require small entities who want to receive direct payment of authorized fees to provide us with certain information, maintain an active POC responsible for interacting with the agency, and accept payment by EFT, these requirements would not disadvantage small entities or limit their ability to compete with larger competitors. Additionally, this proposed rule does not place significant costs on entities.

We estimate that the time required for a small entity to complete the one-time transaction required to fill out and submit a basic registration form, provide banking information, and identify a POC would be minimal. Once the initial registration is complete, there would be no additional burden on the entity unless and until the entity needed to update its registration information. We anticipate that small entities that take advantage of the opportunity to receive direct payment of authorized fees through the assignment process may experience slight cost savings because of improved accuracy and efficiency in their recordkeeping processes and because they would no longer need to collect and properly account for payments made to individual representative employees. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain public reporting requirements. For some sections in these rules, we previously accounted for the public reporting burdens under the following OMB approved information collections: 0960–0527 (SSA–1696, Appointment of Representative, which allows an individual to appoint a representative, and requires the representative's agreement to serve as representative), 0960–0731 (SSA–1694, Request for Business Entity Taxpayer Information, which requests specific taxpayer data from representatives requesting a fee), and 0960 0732 (SSA–1699, Registration for Appointed Representative Services and Direct Payment, which requires the representatives to prove eligibility when they register with SSA and allows them to request a fee). Consequently, we are not reporting those sections below.

The sections below pose new public reporting burdens not currently covered by an existing OMB-approved form; therefore, we provide burden estimates for them. We are seeking approval for these regulation sections under the revised SSA Forms SSA–1694 (0960–0731) and SSA 1696 (OMB No. 0960–0527), which we will use to collect the information required by these revised sections. Below we provide burden estimates for the public reporting requirements we are revising:

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
404.1707(a), 416.1507(a), SSA–1696 (0960–0527).	You [claimant] complete and sign our prescribed appointment form, and	1,100,000	1	7	128,333	** $12.81	*** $1,643,946
404.1707(a), 416.1507(a), SSA–1696 (0960–0527).	Your representative completes and signs our prescribed appointment form, and	1,100,000	1	5	91,667	** 73.86	*** 6,770,525
404.1720(f), 416.1520(f), SSA–1696 (0960–0527).	A representative who is eligible for direct payment of an authorized fee may assign direct payment of the authorized fee to an entity that is eligible for direct payment.	500,000	1	5	* 41,667	** 73.86	*** 3,077,525
404.1730(e)(2), 416.1530(e)(2), SSA–1696 (0960–0527).	A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.	150,000	1	3	7,500	** 73.86	*** 553,950

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) **	Total annual opportunity cost (dollars) ***
404.1735, 416.1535, SSA–1694 (0960–0731).	An entity is eligible for direct payment if the entity: (a) has an Employment Identification Number, (b) is registered with us in the manner we prescribe, (c) has not been found ineligible for direct payment, (d) designates and maintains a registered representative as a point of contact to speak and act on the entity's behalf, (e) accepts payment via electronic transfer, and (f) conforms to our rules.	7,000	1	18	2,100	** 73.86	*** 155,106
Totals		2,857,000			271,267		*** 12,201,052

* This is not additional burden but part of the existing burden for those representatives who complete this instrument but also check the assignment box. We include it here to indicate a change in burden for this regulatory section.

** We based these figures on average Legal Service hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes231011.htm*) and the average DI payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*).

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. There is no actual charge to respondents to complete the application.

SSA submitted revised Information Collection Requests under both OMB Numbers 0960–0527 and 0960–0731 for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

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

Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

You can submit comments until October 3, 2023, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by September 5, 2023, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, parts 404, 416 and 422, as set forth below:

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

Subpart R—Representation of Parties

■ 1. The authority citation for subpart R of part 404 is revised to read as follows:

Authority: 42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6.

■ 2. In § 404.1703, add definitions for ''Assignment,'' ''Point of Contact,'' and ''Registration'' in alphabetical order, and revise the definition of Representative to read as follows:

§ 404.1703 Definitions.

Assignment means the transfer of the right to receive direct payment of an authorized fee to an entity as described in § 404.1730(e).

* * * * *

Point of Contact means an individual who is a registered representative selected by an entity to speak and act on the entity's behalf and who assumes the affirmative duties and obligations we prescribe.

Registration means a process by which a representative or entity provides the information we require to conduct business with us.

* * * * *

Representative means an attorney who meets all of the requirements of § 404.1705(a), or a person other than an attorney who meets all of the requirements of § 404.1705(b), and whom you appoint to represent you in dealings with us. For purposes of our rules of conduct and standards of responsibility, *Representative* also includes an individual who provides representational services and an individual who is listed as a point of contact for an entity, as applicable to their identified role.

* * * * *

■ 3. In § 404.1705, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c), and revise newly redesignated paragraph (d) to read as follows:

§ 404.1705 Who may be your representative.

* * * * *

(c) Your representative(s) must be registered with us in the manner we prescribe before you submit the appointment(s).

(d) We may refuse to recognize your chosen representative if the person does not meet the requirements in this section. We will notify you and the proposed representative if we do not recognize the person as your representative.

■ 4. Revise § 404.1707 to read as follows:

§ 404.1707 Appointing a representative.

We will recognize a person as your representative if:

(a) You and your representative complete and sign our prescribed appointment form, and

(b) You or your representative file our prescribed appointment form in the manner we designate.

■ 5. In § 404.1720, add new paragraph (f) to read as follows:

§ 404.1720 Fee for a representative's services.

* * * * *

(f) *Assignment of fees.* A representative who is eligible for direct payment of an authorized fee may assign the authorized fee to an entity that is eligible for direct payment of fees (see 404.1730(e) and 404.1735).

■ 6. In § 404.1730, revise the heading of paragraph (b), revise paragraph (b)(1), redesignate (b)(1)(i) as (b)(1)(iii) and (b)(1)(ii) as (b)(1)(iv), add new paragraphs (b)(1)(i) and (b)(1)(ii), and add a new paragraph (e) to read as follows:

§ 404.1730 Payment of fees.

* * * * *

(b) *Fees we may pay*—(1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney (see § 404.1717), and as a result of the determination or decision you have past-due benefits,

(i) We will pay your representative out of the past-due benefits the lesser of the amounts in paragraph (b)(1)(iii) or (iv) of this section, less the amount of the assessment described in paragraph (d) of this section, unless the representative submits to us in writing a waiver of the fee or direct payment of the fee, and

(ii) If there is a valid assignment (see paragraph (e) of this section), we will pay the representative's fee (see paragraph (b)(1)(i) of this section) to an entity.

* * * * *

(e) *Assignment of a fee to designated entity* (1) A representative may assign the fee we authorize to an eligible entity if the representative:

(i) Is eligible for direct payment,

(ii) Has not waived the fee or direct payment,

(iii) Assigns the entire fee we authorize to one entity,

(iv) Makes the assignment before the date on which we notify you of our first favorable determination or decision, and

(v) Affiliates with the entity through registration.

(2) A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.

(3) A representative may not assign a fee to an entity that is ineligible to receive direct payment.

(4) A representative may not waive a fee or direct payment of a fee if the representative previously assigned a fee in accordance with paragraph (e)(1) of this section and did not timely rescind that assignment in accordance with paragraph (e)(2) of this section.

■ 7. Add § 404.1735 to read as follows:

§ 404.1735 Entity eligible for direct payment of fees.

An entity is eligible for direct payment of an authorized fee if the entity:

(a) Has an Employer Identification Number,

(b) Has registered with us in the manner we prescribe,

(c) Has not been found ineligible for direct payment,

(d) Designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity's behalf,

(e) Accepts payment via electronic funds transfer, and

Conforms to our rules.

■ 8. In § 404.1740, add a new paragraph (c)(15) to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(c) * * *

(15) While serving as a point of contact for an entity, violate applicable affirmative duties, engage in prohibited actions, or conduct dealings with us in a manner that is untruthful or does not further the efficient and prompt correction of a fee error.

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

Subpart O—Representation of Parties

■ 9. The authority citation for subpart O of part 416 is revised to read as follows:

Authority: 42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6.

■ 10. In § 416.1503, add definitions for ''Assignment,'' ''Point of Contact,'' and ''Registration'', and revise the definition of ''Representative'' to read as follows:

§ 416.1503 Definitions.

* * * * *

Assignment means the transfer of the right to receive direct payment of an authorized fee to an entity as described in § 416.1530(e).

* * * * *

Point of Contact means an individual who is a registered representative selected by an entity to speak and act on the entity's behalf and who assumes the affirmative duties and obligations we prescribe.

Registration means a process by which a representative or entity provides the information we require to conduct business with us.

* * * * *

Representative means an attorney who meets all of the requirements of § 416.1505(a), or a person other than an attorney who meets all of the requirements of § 416.1505(b), and whom you appoint to represent you in dealings with us. For purposes of our rules of conduct and standards of responsibility, *Representative* also includes an individual who provides representational services and an individual who is listed as a point of contact for an entity, as applicable to their identified role.

* * * * *

■ 11. In § 416.1505, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c), and revise newly redesignated paragraph (d) to read as follows:

§ 416.1505 Who may be your representative.

* * * * *

(c) Your representative(s) must be registered with us in the manner we prescribe before you submit the appointment(s).

(d) We may refuse to recognize your chosen representative if the person does

not meet the requirements in this section. We will notify you and the proposed representative if we do not recognize the person as your representative.

■ 12. Revise § 416.1507 to read as follows:

§ 416.1507 Appointing a representative.

We will recognize a person as your representative if:

(a) You and your representative complete and sign our prescribed appointment form, and

(b) You or your representative file our prescribed appointment form in the manner we designate.

■ 13. In § 416.1520, add new paragraph (f) to read as follows:

§ 416.1520 Fee for a representative's services.

* * * * *

(f) *Assignment of fees.* A representative who is eligible for direct payment of an authorized fee may assign the authorized fee to an entity that is eligible for direct payment of fees (see 416.1530(e) and 416.1535).

■ 14. In § 416.1530, revise the heading of paragraph (b), revise paragraph (b)(1), and add a new paragraph (e) to read as follows:

§ 416.1530 Payment of Fees.

* * * * *

(b) *Fees we may pay.* (1) *Attorneys and eligible non-attorneys.* Except as provided in paragraph (c) of this section, if we make a determination or decision in your favor and you were represented by an attorney or an eligible non-attorney (see 416.1517), and as a result of the determination or decision you have past-due benefits,

(i) We will pay your representative out of the past-due benefits the lesser of the amounts in paragraph (b)(1)(iii) or (iv) of this section, less the amount of the assessment described in paragraph (d) of this section, unless the representative submits to us in writing a waiver of the fee or direct payment of the fee, and

(ii) If there is a valid assignment (see paragraph (e) of this section), we will pay the representative's fee (see paragraph (b)(1)(i) of this section) to an entity.

* * * * *

(e) *Assignment of a fee to designated entity* (1) A representative may assign the fee we authorize to an eligible entity if the representative:

(i) Is eligible for direct payment,

(ii) Has not waived the fee or direct payment,

(iii) Assigns the entire fee we authorize to one entity,

(iv) Makes the assignment before the date on which we notify you of our first favorable determination or decision, and

(v) Affiliates with the entity through registration.

(2) A representative may rescind an assignment before the date on which we notify you of our first favorable determination or decision.

(3) A representative may not assign a fee to an entity that is ineligible to receive direct payment.

(4) A representative may not waive a fee or direct payment of a fee if the representative previously assigned a fee in accordance with paragraph (e)(1) of this section and did not timely rescind that assignment in accordance with paragraph (e)(2) of this section.

■ 15. Add § 416.1535 to read as follows:

§ 416.1535 Entity eligible for direct payment of fees.

An entity is eligible for direct payment of an authorized fee if the entity:

(a) Has an Employer Identification Number

(b) Has registered with us in the manner we prescribe,

(c) Has not been found ineligible for direct payment,

(d) Designates and maintains an employee who is a registered representative as a point of contact to speak and act on the entity's behalf,

(e) Accepts payment via electronic funds transfer, and

Conforms to our rules.

■ 16. In § 416.1540, add a new paragraph (c)(15) to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(c) * * *

(15) While serving as a point of contact for an entity, violate applicable affirmative duties, engage in prohibited actions, or conduct dealings with us in a manner that is untruthful or does not further the efficient and prompt correction of a fee error.

PART 422—ORGANIZATION AND PROCEDURES

Subpart F—Applications and Related Forms

■ 17. The authority citation for subpart F of part 422 is revised to read as follows:

Authority: 42 U.S.C. 1320b–10(a)(2)(A).

■ 18. In § 422.515, revise the designation of form SSA–1696 to read as follows:

§ 422.515 Forms used for withdrawal, reconsideration and other appeals, and appointment of representative.

* * * * *

SSA–1696—Claimant's Appointment of Representative. (For use by claimants or representatives as a notice of their appointment of a representative in a claim, issue, or other matter that is pending a determination or a decision before the agency).

* * * * *

[FR Doc. 2023–16405 Filed 8–3–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109348–22]

RIN 1545–BQ69

Identification of Monetized Installment Sale Transactions as Listed Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would identify monetized installment sale transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in those transactions as well as material advisors. This document also provides a notice of a public hearing on the proposed regulations.

DATES:

Comments: Electronic or written comments must be received by October 3, 2023.

Public Hearing: The public hearing is scheduled to be held on October 12, 2023, at 10:00 a.m. ET. Pursuant to Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone. Requests to speak and outlines of topics to be discussed at the

public hearing must be received by October 3, 2023. If no outlines are received by October 3, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5:00 p.m. ET on October 6, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–109348–22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–109348–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–4718 (not a toll-free number); concerning submissions of comments and requests for hearing, Vivian Hayes at (202) 317–5306 (not a toll-free number) or *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions as ''listed transactions'' for purposes of section 6011.

I. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), ''any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e).

Reportable transactions are identified in § 1.6011–4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Section 1.6011–4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011–4(d) and (e) provide that the disclosure statement Form 8886, *Reportable Transaction Disclosure Statement* (or successor form) must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) may also determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of

limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

II. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 6111(a) provides that each material advisor with respect to any reportable transaction shall make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return shall be filed not later than the date specified by the Secretary.

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (1) $200,000, or (2) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Additionally, section 6112(a) provides that each material advisor with respect to any reportable transaction shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with § 301.6112–1(e).

A material advisor may be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

III. Installment Sales

Section 61(a)(3) provides that a taxpayer's gross income includes gains from dealings in property. Under section 1001(a), a taxpayer's gain on a sale of property is equal to the excess of the amount realized on the sale over the taxpayer's adjusted basis in the property and, generally, a taxpayer must recognize the gain in the taxable year of the sale. The taxpayer's amount realized generally includes cash actually or constructively received, plus the fair market value of any property received or, in the case of a debt instrument issued in exchange for property, the issue price of the debt instrument. *See* § 1.1001–1 of the Income Tax Regulations.

Section 453 provides an exception to the general rule that gain from the sale of property must be recognized in the year of sale. Section 453(a) provides, in general, that income from an installment sale is accounted for under the installment method. Under section 453(b), an installment sale is one in which a taxpayer disposes of property and at least one payment is to be received after the close of the taxable year of the disposition. The installment method, as described in section 453(c), requires a taxpayer to recognize income from a disposition as payments are actually or constructively received, in an amount equal to the proportion of the payment received that the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

Under section 453(f)(3) and 26 CFR 15a.453–1(b)(3) (Temporary Income Tax Regulations Under the Installment Sales Revision Act), a taxpayer generally does not receive a ''payment,'' as such term is used in section 453(b), to the extent the taxpayer receives evidence of indebtedness ''of the person acquiring the property'' (installment obligation). As a result, notwithstanding that a taxpayer has received an installment obligation from the buyer evidencing the buyer's obligation to pay an amount equal to the purchase price, the taxpayer is not treated as having received full payment in the year in which the taxpayer received the installment obligation. Instead, the taxpayer is treated as receiving payments when the taxpayer receives (or constructively receives) payments under the installment obligation.

However, to the extent that the taxpayer receives a note or other evidence of indebtedness in the year of sale from a person other than ''the

person acquiring the property,'' section 453(f)(3) is inapplicable. A note or other evidence of indebtedness received in the year of sale issued by a person other than the person acquiring the property is, under § 15a.453–1(b)(3), the receipt of a payment for purposes of section 453. Likewise, under § 15a.453–1(b)(3), the taxpayer's receipt of a note or other evidence of indebtedness that is secured directly or indirectly by cash or a cash equivalent is treated as the receipt of payment for purposes of section 453.

Section 453A(d) provides rules relating to certain installment obligations arising from a disposition of property, the sales price of which is more than $150,000. Under section 453A(d), if any indebtedness is secured by an installment obligation to which section 453A applies, the net proceeds of the secured indebtedness are treated as a payment received on the installment obligation as of the later of the time the indebtedness becomes secured by the installment obligation or the time the taxpayer receives the proceeds of the indebtedness (the pledging rule). To the extent installment payments are received after the date payment is treated as received under section 453A(d), the tax on such payments is treated as having already been paid.

IV. Tax Avoidance Using Monetized Installment Sales

The Treasury Department and the IRS are aware that promoters are marketing transactions that purport to convert a cash sale of appreciated property by a taxpayer (seller) to an identified buyer (buyer) into an installment sale to an intermediary (who may be the promoter) followed by a sale from the intermediary to the buyer. In a typical transaction, the intermediary issues a note or other evidence of indebtedness to the seller requiring annual interest payments and a balloon payment of principal at the maturity of the note, and then immediately or shortly thereafter, the intermediary transfers the seller's property to the buyer in a purported sale of the property for cash, completing the prearranged sale of the property by seller to buyer. In connection with the transaction, the promoter refers the seller to a third party that enters into a purported loan agreement with the seller. The intermediary generally transfers the amount it has received from the buyer, less certain fees, to an account held by or for the benefit of this third party (the account). The third party provides a purported non-recourse loan to the seller in an amount equal to the amount the seller would have received from the buyer for the sale of the property, less certain fees. The ''loan'' is either funded or collateralized by the amount deposited into the account. The seller's obligation to make payments on the purported loan is typically limited to the amount to be received by the seller from the intermediary pursuant to the purported installment obligation. Upon maturity of the purported installment obligation, the purported loan, and the funding note, the offsetting instruments each terminate, giving rise to a deemed payment on the purported installment obligation and triggering taxable gain to the seller purportedly deferred until that time.

The promotional materials for these transactions assert that engaging in the transaction will allow the seller to defer the gain on the sale of the property under section 453 until the taxpayer receives the balloon principal payment in the year the note matures, even though the seller receives cash from the purported lender in an amount that approximates the amount paid by the buyer to the intermediary. The IRS intends to use multiple arguments to challenge the reported treatment of these transactions as installment sales to which section 453 purportedly applies, including the arguments described below.

First, the intermediary is not a bona fide purchaser of the gain property that is the subject of the purported installment sale. In these transactions, the intermediary is interposed between the seller and the buyer for no purpose other than Federal income tax avoidance, and the intermediary neither enjoys the benefits nor bears the burdens of ownership of the gain property. The interposition of the intermediary typically takes place after the seller has decided to sell the gain property to a specific buyer at a specific negotiated purchase price, and the purported resale by the intermediary to such buyer generally takes place almost simultaneously with the purported sale to the intermediary for approximately the same negotiated purchase price, less certain fees. The seller's only purpose for entering into an agreement with the intermediary is to defer recognition of the gain on the sale of the gain property to the buyer. Other than the Federal income tax deferral benefits provided by the installment method provisions of section 453, the sole economic effect of entering the monetized installment sale transaction from the perspective of the seller is to pay direct and indirect fees to the intermediary and the purported lender in an amount that is substantially less than the Federal tax savings purportedly achieved from using section 453 to defer the realized gain on the sale.

When an intermediate transaction with a third party is interposed and lacks independent substantive (non-tax) purpose, such transaction is not respected for Federal income tax purposes and the transaction is appropriately treated as a sale of the property by the seller directly to the buyer in the taxable year in which the gain property is transferred by the seller. *See Commissioner* v. *Court Holding Co.,* 324 U.S. 331, 334 (1945) (''A sale by one person cannot be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress'' (footnote omitted)); *Wrenn* v. *Commissioner,* 67 T.C. 576 (1976), (holding that a taxpayer did not engage in a bona fide installment sale when the taxpayer transferred stock to his spouse under a purported installment sale contract, followed by the spouse immediately selling the stock to a third party for a negligible gain); *Blueberry Land Co.* v. *Commissioner,* 361 F.2d 93, 100 (5th Cir. 1966), (holding that a corporation's transaction with an unrelated intermediary entered into solely to avoid Federal income taxes on the sale should be disregarded for Federal income tax purposes and the corporation should be taxed as if it sold the property directly to the ultimate buyer); *Enbridge Energy Co. Inc.* v. *United States,* 354 F. App'x 15 (5th Cir. 2009) (holding that an intermediate sale was a sham, the intermediary lacked a ''bona fide role in the transaction,'' as its only purpose for being a party in the transaction, and indeed for existing, was to mitigate the Federal tax bill arising from the transaction, and that the transaction should be treated, for Federal tax purposes, as a sale directly from the seller to the taxpayer).

In addition, it is inappropriate to treat the intermediary in the monetized installment sale transaction described in this NPRM as the acquirer of the gain property that is the subject of the purported installment sale because the intermediary neither enjoys the benefits nor bears the burdens of ownership of the gain property that a person must possess to be considered the owner of property for Federal income tax purposes. *See Grodt & McKay Realty Inc.* v. *Commissioner,* 77 T.C. 1221 (1981). *See also Derr* v. *Commissioner,* 77 T.C. 708 (1981) and *Baird* v. *Commissioner,* 68 T.C. 115 (1977).

Second, in these transactions the seller is appropriately treated as having already received the full payment at the time of the sale to the buyer because (1) the purported installment obligation received by the seller is treated as the receipt of a payment by the seller under § 15a.453–1(b)(3) since it is indirectly secured by the sales proceeds, or (2) the proceeds of the purported loan are appropriately treated as a payment to the seller because the purported loan is not a bona fide loan for Federal income tax purposes, or (3) the pledging rule of section 453A(d) deems the seller to receive full payment on the purported installment obligation in the year the seller receives the loan proceeds.

Third, the transaction may be disregarded or recharacterized under the economic substance rules codified under section 7701(o) or the substance over form doctrine. The step transaction doctrine and conduit theory may also apply to recharacterize monetized installment sale transactions described in this NPRM.

V. Purpose of Proposed Regulations

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551–559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. See *Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

Relying on the Sixth Circuit's analysis in *Mann Construction,* three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. See *Green Rock, LLC* v. *IRS,* 2023 WL 1478444 (N.D. AL., February 2, 2023) (Notice 2017–10); *GBX Associates, LLC,* v. *United States,* 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022) (same); see also *CIC Services, LLC* v. *IRS,* 2022 WL 985619 (E.D. Tenn. March 21, 2022), as modified by 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016–66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid any confusion and ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify monetized installment sale transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

Explanation of Provisions

These proposed regulations would require taxpayers that participate in monetized installment sale transactions and substantially similar transactions, and persons who act as material advisors with respect to these transactions, to disclose the transactions in accordance with the regulations issued under sections 6011 and 6111. Material advisors would also be required to maintain lists as required by section 6112.

I. Definition of Monetized Installment Sale Transaction

Proposed § 1.6011–13(a) would provide that a transaction that is the same as, or substantially similar to, a monetized installment sale transaction described in proposed § 1.6011–13(b) is a listed transaction for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112. ''Substantially similar'' is defined in § 1.6011–4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy.

The transaction described in proposed § 1.6011–13(b) includes the following elements:

(1) A taxpayer (seller), or a person acting on the seller's behalf, identifies a potential buyer for appreciated property (gain property), who is willing to purchase the gain property for cash or other property (buyer cash).

(2) The seller enters into an agreement to sell the gain property to a person other than the buyer (intermediary) in exchange for an installment obligation.

(3) The seller purportedly transfers the gain property to the intermediary, although the intermediary either never takes title to the gain property or takes title only briefly before transferring it to the buyer.

(4) The intermediary purportedly transfers the gain property to the buyer in a sale of the gain property in exchange for the buyer cash.

(5) The seller obtains a loan, the terms of which are such that the amount of the intermediary's purported interest payments on the installment obligation correspond to the amount of the seller's purported interest payments on the loan during the period. On each of the installment obligation and loan, only interest is due over identical periods, with balloon payments of all or a substantial portion of principal due at or near the end of the instruments' terms.

(6) The sales proceeds from the buyer received by the intermediary, reduced by certain fees (including an amount set aside to fund purported interest payments on the purported installment obligation), are provided to the purported lender to fund the purported loan to the seller or transferred to an escrow or investment account of which the purported lender is a beneficiary. The lender agrees to repay these amounts to the intermediary over the course of the term of the installment obligation.

(7) On the seller's Federal income tax return for the taxable year of the purported installment sale, the seller treats the purported installment sale as an installment sale under section 453.

A transaction may be ''substantially similar'' to the transaction described above even if such transaction does not include all of the elements described above. For example, a transaction would be substantially similar to a monetized installment sale if a seller transfers property to an intermediary for an installment obligation, the intermediary simultaneously or after a brief period transfers the property to a previously identified buyer for cash or other property, and in connection with the transaction, the seller receives a loan for which the cash or property from the buyer serves indirectly as collateral.

II. Participation

Whether a taxpayer has participated in the listed transaction described in proposed § 1.6011–13(b) would be determined under § 1.6011–4(c)(3)(i)(A). Participants would include the seller, the intermediary, the purported lender, and any other person whose Federal income tax return reflects tax consequences or the tax strategy described in proposed § 1.6011–13(b), or a substantially similar transaction.

Under the proposed regulations, the buyer of the gain property that provides the buyer cash or other consideration

would not be treated as a participant in the listed transaction described in proposed § 1.6011–13(b) under § 1.6011–4(c)(3)(i)(A). The Treasury Department and the IRS request comments on whether the buyer of the gain property should be treated as a participant given the buyer's key role in the transaction. If the final regulations include the buyer as a participant, that change would apply only with respect to transactions entered into after the date on which the final regulations are published in the **Federal Register**.

III. Material Advisors

Material advisors who make a tax statement with respect to monetized installment sale transactions described in proposed § 1.6011–13(b) would have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§ 301.6111–3 and 301.6112–1.

IV. Effect of Transaction Becoming a Listed Transaction

Participants required to disclose listed transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose listed transactions under § 1.6011–4 who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose listed transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708. In addition, the IRS may impose other penalties on persons involved in listed transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of tax liability.

The Treasury Department and IRS recognize that some taxpayers may have filed Federal income tax returns taking the position that they were entitled to the purported tax benefits of the type of transactions described in these proposed regulations. Because the IRS will take the position in litigation that taxpayers are not entitled to the purported tax benefits of transactions described in these proposed regulations, taxpayers who have participated in those transactions should consider the best way to make corrections, whether by filing an amended return, an administrative adjustment request under section 6227, or a Form 3115, *Application for Change in Accounting Method* (whichever is applicable), or if the taxpayer has been contacted by the IRS for examination for a taxable year in which the taxpayer participated in the transaction, by working with an IRS employee to reverse the purported tax benefits.

In addition, the proposed regulations would subject material advisors to disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors would be required to disclose only if they have made a tax statement on or after [the date that is 6 years before the date that Final Regulations are published in the **Federal Register**].

V. Applicability Date

Proposed § 1.6011–13(a) would identify monetized installment sale transactions, and transactions that are the same as, or substantially similar to, the monetized installment sale transactions described in proposed § 1.6011–13(b) as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

Special Analyses

I. Paperwork Reduction Act

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

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 displays a valid OMB control number.

II. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that these proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and time at which an identified Monetized Installment Sale Transaction must be reported.

Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. According to the American Institute of CPAs 2016 National MAP Survey, the median billing cost for a CPA is approximately $100 per hour. *See* 2016 AICPA PCPS/CPA.com National MAP Survey 8–9 (2016), *https://www.riscpa.org/writable/news-items/documents/2016_pcps_national_map_survey_commentary.pdf* (last accessed July 3, 2023). For 2018, the median billing cost for a CPA is approximately $210.50 per hour. *See* National MAP Survey 2018 Executive Summary, 13 (2018), *https://us.aicpa.org/content/dam/aicpa/interestareas/privatecompaniespracticesection/financialadminoperations/nationalmapsurvey/downloadabledocuments/2018-national-map-survey-executive-summary.pdf* (last accessed July 3, 2023). Thus, for the initial reporting period, it is estimated that taxpayers may incur costs ranging from $2,150 to $4,700 per respondent, although this amount is anticipated to be significantly less for all subsequent reporting periods.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that

includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. 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.

V. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, *Review of Treasury Regulations under Executive Order 12866* (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing is being held on October 12, 2023, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by October 3, 2023. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by October 3, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list The subject line of the email must contain the regulation number REG–109348–22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–109348–22.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–109348–22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–109348–22.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number (REG–109348–22) and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–109348–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG–109348–22) and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–109348–22. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 10, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least October 6, 2023.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Jonathan A. Dunlap, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.6011–13 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.6011–13 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–13 is added to read as follows:

§ 1.6011–13 Monetized installment sale listed transaction.

(a) *Identification as a listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2).

(b) *Monetized installment sale transaction.* A transaction is a

monetized installment sale transaction if, in connection with the transaction, and regardless of the order of the steps, or the presence of additional steps or parties—

(1) A taxpayer (seller), or a person acting on the seller's behalf, identifies a potential buyer for appreciated property (gain property), who is willing to purchase the gain property for cash or other property (buyer cash);

(2) The seller enters into an agreement to sell the gain property to a person other than the buyer (intermediary), in exchange for an installment obligation;

(3) The seller purportedly transfers the gain property to the intermediary, although the intermediary either never takes title to the gain property or takes title only briefly before transferring it to the buyer;

(4) The intermediary purportedly transfers the gain property to the buyer in a sale of the gain property in exchange for the buyer cash;

(5) The seller obtains a loan, the terms of which are such that the amount of the intermediary's purported interest payments on the installment obligation correspond to the amount of the seller's purported interest payments on the loan during the period. On each of the installment obligation and loan, only interest is due over identical periods, with balloon payments of all or a substantial portion of principal due at or near the end of the instruments' terms;

(6) The sales proceeds from the buyer received by the intermediary, reduced by certain fees (including an amount set aside to fund purported interest payments on the purported installment obligation), are provided to the purported lender to fund the purported loan to the seller or transferred to an escrow or investment account of which the purported lender is a beneficiary. The lender agrees to repay these amounts to the intermediary over the course of the term of the installment obligation; and

(7) On the seller's Federal income tax return for the taxable year of the purported installment sale, the seller treats the purported installment sale as an installment sale under section 453.

(c) *Substantially similar transactions.* A transaction may be substantially similar to a transaction described in paragraph (b) of this section if the transaction does not include all of the elements described in that paragraph. For example, a transaction would be substantially similar to a monetized installment sale described in paragraph (b) of this section if a seller transfers property to an intermediary for an installment obligation, the intermediary simultaneously or after a brief period transfers the property to a previously identified buyer for cash or other property, and in connection with the transaction, the seller receives a loan for which the cash or property from the buyer serves indirectly as collateral.

(d) *Participation in a monetized installment sale transaction.* Participants in a monetized installment sale transaction described in paragraph (b) of this section include sellers, intermediaries and purported lenders described in paragraph (b) of this section and any other taxpayer whose Federal income tax return reflects tax consequences or the tax strategy described in paragraph (b) of this section or a substantially similar transaction. Buyers of gain property described in paragraph (b) of this section are not treated as participants.

(e) *Applicability date.* This section's identification of transactions that are the same as, or substantially similar to, the transaction described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 of the Code is effective the date that these regulations are published as final regulations in the **Federal Register**. Notwithstanding section 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is 6 years before the date that these regulations are published as final regulations in the **Federal Register**.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–16650 Filed 8–3–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2023–0597]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events, Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise existing regulations by updating the duration of an existing event in the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone. This action is necessary to provide for the safety of life on these navigable waters in Clearwater, FL, during the Clearwater Offshore Nationals/Race World Offshore event. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 5, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0597 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Mara J. Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191 (ext. 8151), email *Mara.J.Brown@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to revise the Recurring Marine Events in the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone that are listed in 33 CFR 100.703, Table 1 to § 100.703. The proposed change is to Line No. 6 located under Date/time, existing as ''One Sunday in September; Time (Approximate): 11:30 a.m. to 4 p.m.'' The event sponsor has changed the duration of the event to a two-day event; revising the Date/time as ''One weekend (Saturday and Sunday) in September; Time (Approximate): 8 a.m. to 4 p.m.''

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

This rule proposes to make the following changes in 33 CFR 100.703:

1. Revise Table 1 to § 100.703, Line No. 6, to reflect a date and time change.

Marine events listed in Table 1 to § 100.703 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific

events change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and the rule would allow vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves revising an existing recurring event to reflect a date and time change for the event. Normally such actions are categorically excluded from further review under paragraphs L61 in Table 3–1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, because it involves a revised special local regulation related to a marine event permit for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. In § 100.703, revise Table 1 to read as follows:

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
1. One Saturday in January. Time (Approximate): 11:30 a.m. to 2 p.m.	Gasparilla Invasion and Parade/Ye Mystic Krewe of Gasparilla.	Tampa, Florida	Location: A regulated area is established consisting of the following waters of Hillsborough Bay and its tributaries north of 27°51′18″ N and south of the John F. Kennedy Bridge: Hillsborough Cut ''D'' Channel, Seddon Channel, Sparkman Channel and the Hillsborough River south of the John F. Kennedy Bridge. Additional Regulation: (1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 6 p.m. EST on the day of the event. (2) The regulated area will include a 100 yard Safety Zone around the vessel JOSE GASPAR while docked at the Tampa Yacht Club until 6 p.m. EST on the day of the event. (3) The regulated area is a ''no wake'' zone. (4) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade. (5) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage. (6) Jet skis and vessels without mechanical propulsion are prohibited from the parade route. (7) Vessels less than 10 feet in length are prohibited from the parade route unless capable of safely participating. (8) Vessels found to be unsafe to participate at the discretion of a present Law Enforcement Officer are prohibited from the parade route. (9) Northbound vessels in excess of 65 feet in length without mooring arrangement made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. (10) Vessels not officially entered in the Gasparilla Marine Parade may not enter the parade staging area box within the following coordinates: 27°53′53″ N, 082°27′47″ W; 27°53′22″ N, 082°27′10″ W; 27°52′36″ N, 082°27′55″ W; 27°53′02″ N, 082°28′31″ W.
2. One Saturday in February. Time (Approximate): 9 a.m. to 9 p.m.	Bradenton Area River Regatta/City of Bradenton.	Bradenton, FL	Location(s) *Enforcement Area #1.* All waters of the Manatee River between the Green Bridge and the CSX Train Trestle contained within the following points: 27°30′43″ N, 082°34′20″ W, thence to position 27°30′44″ N, 082°34′09″ W, thence to position 27°30′00″ N, 082°34′04″ W, thence to position 27°29′58″ N, 082°34′15″ W, thence back to the original position, 27°30′43″ N, 082°34′20″ W. *Enforcement Area #2.* All waters of the Manatee River contained within the following points: 27°30′35″ N, 082°34′37″ W, thence to position 27°30′35″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′37″ W, thence back to the original position, 27°30′35″ N, 082°34′37″ W.
3. One weekend (Friday, Saturday, and Sunday) in March. Time (Approximate): 8 a.m. to 5 p.m.	Gulfport Grand Prix/Gulfport Grand Prix LLC.	Gulfport, FL	Location(s): (1) Race *Area.* All waters of Boca de Ciego contained within the following points: 27°44′10″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′40″ W, thence to position 27°44′06″ N, 082°42′40″ W, thence to position 27°44′04″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′19″ W, thence to position 27°44′08″ N, 082°42′19″ W, thence back to the original position, 27°44′10″ N, 082°42′29″ W. (2) *Buffer Zone.* All waters of Boca de Ciego encompassed within the following points: 27°44′10″ N, 082°42′47″ W, thence to position 27°44′01″ N, 082°42′44″ W, thence to position 27°44′01″ N, 082°42′14″ W, thence to position 27°44′15″ N, 082°42′14″ W.

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG—Continued

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
4. One weekend (Saturday and Sunday) in July. Time (Approximate): 8 a.m. to 5 p.m.	Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC.	Sarasota, FL	Location: All waters of the Gulf of Mexico contained within the following points: 27°18′44″ N, 082°36′14″ W, thence to position 27°19′09″ N, 082°35′13″ W, thence to position 27°17′42″ N, 082°34′00″ W, thence to position 27°16′43″ N, 082°34′49″ W, thence back to the original position, 27°18′44″ N, 082°36′14″ W
5. One weekend (Saturday and Sunday) in September. Time (Approximate): 8 a.m. to 4 p.m.	St. Petersburg P–1 Powerboat Grand Prix.	St. Petersburg, FL	Location: All waters of the Tampa Bay encompassed within the following points: 27°46′56.22″ N, 082°36′55.50″ W, thence to position 27°47′08.82″ N, 082°34′33.24″ W, thence to position 27°46′06.96″ N, 082°34′29.04″ W, thence to position 27°45′59.22″ N, 082°37′02.88″ W, thence back to the original position 27°46′24.24″ N, 082°37′30.24″ W.
6. One weekend (Saturday and Sunday) in September. Time (Approximate): 8 a.m. to 4 p.m.	Clearwater Offshore Nationals/Race World Offshore.	Clearwater, FL	Locations: (1) *Race Area.* All waters of the Gulf of Mexico contained within the following points: 27°58′34″ N, 82°50′09″ W, thence to position 27°58′32″ N, 82°50′02″ W, thence to position 28°00′12″ N, 82°50′10″ W, thence to position 28°00′13″ N, 82°50′10″ W, thence back to the original position, 27°58′34″ N, 82°50′09″ W. (2) *Spectator Area.* All waters of Gulf of Mexico seaward no less than 150 yards from the race area and as agreed upon by the Coast Guard and race officials. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 28°58′40″ N, 82°50′37″ W, thence to position 28°00′57″ N, 82°49′45″ W, thence to position 27°58′32″ N, 82°50′32″ W, thence to position 27°58′23″ N, 82°49′53″ W, thence back to position 28°58′40″ N, 82°50′37″ W.
7. One Thursday, Friday, and Saturday in October. Time (Approximate): 10 a.m. to 5 p.m.	Roar Offshore/OPA Racing LLC.	Fort Myers Beach, FL	Locations: All waters of the Gulf of Mexico west of Fort Myers Beach contained within the following points: 26°26′27″ N, 081°55′55″ W, thence to position 26°25′33″ N, longitude 081°56′34″ W, thence to position 26°26′38″ N, 081°58′40″ W, thence to position 26°27′25″ N, 081°58′8″ W, thence back to the original position 26°26′27″ N, 081°55′55″ W.
8. One weekend (Friday, Saturday, and Sunday) in November. Time (Approximate): 8 a.m. to 6 p.m.	OPA World Championships/Englewood Beach Waterfest.	Englewood Beach, FL	Locations: (1) Race *Area.* All waters of the Gulf of Mexico contained within the following points: 26°56′00″ N, 082°22′11″ W, thence to position 26°55′59″ N, 082°22′16″ W, thence to position 26°54′22″ N, 082°21′20″ W, thence to position 26°54′24″ N, 082°21′16″ W, thence to position 26°54′25″ N, 082°21′17″ W, thence back to the original position, 26°56′00″ N, 082°21′11″ W. (2) *Spectator Area.* All waters of the Gulf of Mexico contained with the following points: 26°55′33″ N, 082°22′21″ W, thence to position 26°54′14″ N, 082°21′35″ W, thence to position 26°54′11″ N, 082°21′40″ W, thence to position 26°55′31″ N, 082°22′26″ W , thence back to position 26°55′33″ N, 082°22′21″ W. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 26°56′09″ N, 082°22′12″ W, thence to position 26°54′13″ N, 082°21′03″ W, thence to position 26°53′58″ N, 082°21′43″ W, thence to position 26°55′56″ N, 082°22′48″ W, thence back to position 26°56′09″ N, 082°22′12″ W.

Dated: July 26, 2023.

Michael P. Kahle,

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

[FR Doc. 2023–16665 Filed 8–3–23; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 88, No. 149
Friday, August 4, 2023

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by September 5, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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

Agricultural Marketing Service

Title: National Science Laboratories.

OMB Control Number: 0581–NEW.

Summary of Collection: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), The Agricultural Marketing Service (AMS) administers programs that create domestic and international marketing opportunities for U.S. producers of food, fiber, and specialty crops. AMS also provides the agricultural industry with valuable services to ensure the quality and availability of wholesome food for consumers across the country and around the world.

AMS' Science & Technology Program (S&T) provides scientific, certification and analytical services to the agricultural community to improve the quality, wholesomeness and marketing of agricultural products domestically and internationally. S&T provides support to USDA Agencies, Federal and State agencies, and private sector food and agricultural industries. S&T is organized into four divisions: Laboratory Approval & Testing Division (LATD); Monitoring Programs Division (MPD); the Plant Variety Protection Office (PVPO); and the Seed Regulatory and Testing Division (SRTD). AMS' S&T, LATD provides analytical lab testing and approval services to facilitate domestic and international marketing of food and agricultural commodities. AMS, LATD's National Science Laboratories (NSL) provides objective, timely, and cost-effective analytical testing services to facilitate marketing of food and agricultural products. Regulations implementing AMS' NSL appear at 7 CFR part 91.

Pursuant to this authority, AMS' National Science Laboratories (NSL) is a fee-for-service lab network (7 CFR parts 91) utilized by both industry and government. Through laboratories located in Gastonia, NC, and Blakely, GA, NSL provides chemical, microbiological, and bio-molecular analyses on food and agricultural commodities. NSL provides testing service for AMS commodity programs, other USDA agencies, Federal and State agencies, U.S. Military, research institutions, and private sector food and agricultural industries.

Need and Use of the Information: The National Science Laboratories (NSL) collects, voluntarily from the applicant, customer/business information and specific information about the sample(s) being submitted to perform chemical, microbiological, and bio-molecular analyses on food and agricultural commodities, provide an analytical report/certificate, and collect payment for services. The customer/business information requested is used by the Administrative Officer to identify the applicant in the billing system, to set up an account in the billing system and contact the party responsible for payment of the fee for services. The Sample information documentation requested, to be provided with sample(s), is used by NSL staff to uniquely identify sample, sample conditions, and requested analytical test(s). This is a ''fee for service'' program with voluntary participation. All costs are recovered. Only information essential to provide service is requested.

Description of Respondents: Business or other for-profit.

Number of Respondents: 490.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,613.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–16599 Filed 8–3–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0053]

Notice of Request for Revision to and Extension of Approval of an Information Collection; U.S. Origin Health Certificate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the export of animals

and animal products from the United States.

DATES: We will consider all comments that we receive on or before October 3, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0053 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0053, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the export of animals and animal products from the United States, contact Dr. Mark Remick, National Director, Veterinary Export Trade Services, Field Operations, VS, APHIS, 4700 River Road, Riverdale, MD 20737; phone: (443) 924–0720; email: *mark.a.remick@usda.gov.* You may also contact Dr. Timothy Rector, Acting Director, Port Services, Field Operations, VS, APHIS; phone: (701) 400–0206; email: *timothy.s.rector@usda.gov.* For more information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Origin Health Certificate.

OMB Control Number: 0579–0020.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, among other things, has the authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict the import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing APHIS' ability to compete in the world market of animal and animal product trade. The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission to facilitate the export of U.S. animals and products, APHIS' Veterinary Services maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Among other things, to ensure a favorable balance of trade, APHIS uses information collection activities, such as U.S. Origin Health Certificates; U.S. Origin Health Certificates for the Export of Horses from the United States to Canada; Health Certificates for the Export of Live Finfish, Mollusks, and Crustaceans (and their Gametes); Country Specific Health Certificates; United States Interstate and International Certificate of Health Examination for Small Animals (Exporters); Inspection and Certification for Animal Products; Undue Hardship Explanations-Animals; Applications for Approval of Inspection Facility-Environmental Certification; Annual Inspections of Export Inspection Facilities; Opportunities to Present Views Concerning Withdrawal of Facility Approval; Certifications to Carry Livestock; Inspections of Vessel Prior to Voyage; Notarized Statements; Aircraft Cleaning and Disinfection; and Travel Time.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1.05 hours per response.

Respondents: Owners and operators of livestock facilities/exporters, accredited veterinarians, and owners or masters of an ocean vessel.

Estimated annual number of respondents: 1,320.

Estimated annual number of responses per respondent: 372.

Estimated annual number of responses: 491,678.

Estimated total annual burden on respondents: 516,556 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of July 2023.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–16619 Filed 8–3–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0054]

Notice of Request for Extension of Approval of an Information Collection; Bees and Related Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of bees and related articles into the United States.

DATES: We will consider all comments that we receive on or before October 3, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–

2023–0054 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of bees and related articles, contact Mr. Ben Slager, Senior Entomologist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (810) 626–8841; *benjamin.h.slager@usda.gov.* For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bees and Related Articles.

OMB Control Number: 0579–0207.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

Under the Honeybee Act (7 U.S.C. 281 through 286), the Secretary is authorized to prohibit or restrict the importation of honeybees and honeybee semen to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species such as the African honeybee. This authority has been delegated to the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

The establishment of certain bee diseases, parasites, or undesirable species and subspecies of honeybees in the United States could cause substantial reductions in pollination by bees. These reductions could cause serious damage to crops and other plants and result in substantial financial losses to American agriculture.

Regulations for the importation of honeybees and honeybee semen and regulations to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping products, and used beekeeping equipment are contained in 7 CFR part 322, ''Bees, Beekeeping Byproducts, and Beekeeping Equipment.'' These regulations require the use of certain information collection activities, including application for a permit, State consultation, written agreement to permit conditions, appealing denial of a permit application or revocation of permit, packaging and labeling, notice of arrival for shipments from approved regions, transit shipment, port of entry inspection, notification of escaped organisms, emergency action notification, request for release, request for risk assessment, request for facility approval, and recordkeeping for containment facilities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.26 hours per response.

Respondents: Importers, exporters, and shippers of bees and related articles; foreign and State governments; and containment facilities.

Estimated annual number of respondents: 8.

Estimated annual number of responses per respondent: 31.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 64 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of July 2023.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–16618 Filed 8–3–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between the Lakes Advisory Board

AGENCY: Forest Service, Department of Agriculture (USDA).

ACTION: Solicitation for members.

SUMMARY: The United States Department of Agriculture (USDA) is seeking nominations for the Land Between the Lakes Advisory Board pursuant to the authority of the Land Between the Lakes Protection Act of 1998 and the Federal Advisory Committee Act (FACA), as amended. Additional information on the Land Between the Lakes Advisory Board can be found by visiting the committee website at: *https://landbetweenthelakes.us/about/working-together/advisory-board/.*

DATES: Nominations may be mailed to the address listed in **ADDRESSES** and must be postmarked by September 22, 2023. Nominations may also be sent via email to the person listed in **FOR FURTHER INFORMATION CONTACT**. Nominations must contain a completed application packet that includes the nominee's name, resume, and completed *Form AD–755 (Advisory Committee or Research and Promotion Background Information).*

ADDRESSES: Please submit nominations and resumes for appointments by the Secretary or legislative designees to the Land Between the Lakes National Recreation Area, Attention: Christine Bombard, 100 Van Morgan Drive, Golden Pond, Kentucky 42211.

FOR FURTHER INFORMATION CONTACT: Christine Bombard, Advisory Board Liaison, USDA Forest Service, Land Between the Lakes National Recreation Area, 100 Van Morgan Drive, Golden

Pond, Kentucky 42211 or by email *christine.bombard@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the FACA and the Acts pursuant to the Land Between the Lakes, the U.S. Forest Service is seeking nominations for the purpose of providing advice to the Secretary of Agriculture on the following:

- Means of promoting public participation for the Land and Resource Management Plan;
- Environmental education;
- Develop an annual work plan for recreation and environmental education areas in the Recreation Area, including the heritage program, with the nonappropriated amounts in the Land Between the Lakes Management Fund;
- Develop an annual forest management and harvest plan for the Recreation Area; and
- Maintain the balance and status of the Fund.

Membership Balance

The Advisory Board will be comprised of 13 members approved by the Secretary of Agriculture where each will serve a 5-year term. Memberships shall include representation from the following interest areas:

(1) Four persons appointed by the Secretary of Agriculture, including:

(a) Two residents of the State of Kentucky

(b) Two residents of the State of Tennessee

(2) Two persons appointed by the Commissioner (or designee) of the Kentucky Department of Fish and Wildlife Resources;

(3) One person appointed by the Commissioner (or designee) of the Tennessee Wildlife Resources Agency; and

(4) 2 individuals shall be appointed by appropriate officials of each of the 3 counties containing the Recreation Area.

Nomination and Application Information

The appointment of members to the Land Between the Lakes Advisory Board will be made by the Secretary of Agriculture, or legislative designees. The public is invited to submit nominations for membership either as a self-nomination or a nomination of any qualified and interested person. Any individual or organization may nominate one or more qualified persons to represent the interest areas listed above. To be considered for membership, nominees must:

1. Be a resident of the State of Kentucky or

2. Be a resident of the State of Tennessee and

3. May not have served on the Land Between the Lakes Advisory Board within the past 5 years.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact 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 in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: July 31, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–16634 Filed 8–3–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public 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 Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 11:00 a.m. ET on Monday, August 14, 2023. The purpose of the meeting is to continue discussing the draft report on voting rights in the state. Members of the public may request a copy of the draft report in advance of the meeting. To do so, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov.*

DATES: Monday, August 14, 2023, from 11:00 a.m.–1:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1609402507.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 940 2507.

FOR FURTHER INFORMATION CONTACT: David Mussatt, Designated Federal Officer, at *dmussatt@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, 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. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

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 emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida 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 Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Committee Discussion: Report Draft
III. Public Comment
IV. Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of finalizing the committee report on voting rights.

Dated: July 31, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–16637 Filed 8–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

RIN 0694–XC098

Notice of Report Publication From the Titanium Sponge Working Group

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of publication of a report.

SUMMARY: The Bureau of Industry and Security (BIS), with this notice, is informing the public that the interagency Titanium Sponge Working Group (TSWG) report and recommendations have been published on the BIS website: *https://www.bis.doc.gov/232.* On February 27, 2020, the President directed the establishment of the interagency TSWG to address the United States' severe reliance on imported sources of titanium sponge. The TSWG, co-led by the Secretaries of Commerce and Defense as designated by the President's memorandum, began meeting in July 2020 and completed its report and recommendations in 2022. The final report and recommendations were posted on the BIS website in July 2023. As directed by the President's memorandum establishing the TSWG, the report discusses and recommends measures to ensure access to titanium sponge in the United States for use for national defense and critical industries in an emergency.

DATES: The report was finalized in 2022. The report was posted on the BIS website in July 2023.

ADDRESSES: The full report, including the appendices to the report, are available online at *https://bis.doc.gov/232.*

FOR FURTHER INFORMATION CONTACT: For further information about this report contact the TSWG team at *TSWG@bis.doc.gov.* For more information about the Office of Technology Evaluation and the Section 232 Investigations, please visit: *http://www.bis.doc.gov/232.*

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–16624 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review in Part; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on welded line pipe from the Republic of Korea to correct certain ministerial errors. The period of review (POR) is December 1, 2020, through November 30, 2021.

DATES: Applicable August 4, 2023.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2023, Commerce published the *Final Results* in the **Federal Register**.[1] On July 3, 2023, we received a timely submitted ministerial error allegation from SeAH Steel Corporation (SeAH).[2] We are amending the *Final Results* to correct the ministerial errors raised by SeAH.

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any . . . ministerial error by amending the final results of review . . . .''

Ministerial Errors

In the *Final Results,* we made certain revisions to SeAH's preliminary results calculations,[4] including: (1) adjustments to SeAH's affiliate State Pipe & Supply, Inc.'s (State Pipe's) further manufacturing general and administrative (G&A) expense ratio; [5] (2) revisions to SeAH's G&A expense ratio; [6] and (3) revisions to SeAH's financial expense ratio.[7] In its Ministerial Error Comments, SeAH alleged that, in revising State Pipe's G&A expense ratio, Commerce included certain adjustments that it rejected in the *Final Results.* SeAH also alleged that in the comparison market and margin programs, Commerce failed to multiply SeAH's G&A and financial expense ratios by SeAH's total cost of manufacturing (COM) to determine the G&A and financial expenses included in SeAH's total cost of production.[8]

We agree with SeAH that we made ministerial errors in the *Final Results* pursuant to section 751(h) of the Act and 19 CFR 351.224(f) and have amended our calculations to correct State Pipe's G&A expense ratio and to apply SeAH's G&A and financial expense ratios to total COM in the comparison market and margin programs.

[1] *See Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 42295 (June 30, 2023) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

[2] *See* SeAH's Letter, ''Comments on Ministerial Errors in the Final Determination,'' dated July 3, 2023 (Ministerial Error Comments).

[3] *See* 19 CFR 351.224(f).

[4] *See* Memorandum, ''SeAH Final Calculation Memorandum,'' dated June 26, 2023.

[5] *See Final Results* IDM at Comment 12.

[6] *Id.* at Comment 7.

[7] *Id.* at Comment 8.

[8] *See* Ministerial Error Comments at 2–4.

Pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct these ministerial errors in the calculation of the weighted-average dumping margin for SeAH, which changes from 4.23 percent to 4.17 percent.

For a complete discussion of the ministerial error allegations, as well as Commerce's analysis, *see* the accompanying Ministerial Error Memorandum.[9] The Ministerial Error Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.*

Furthermore, we are also amending the rate for the companies not selected for individual examination in this review based on the weighted-average dumping margins calculated for the mandatory respondents,[10] which changes from 3.27 percent to 3.24 percent.[11]

Amended Final Results of Review

As a result of correcting the ministerial errors described above, we determine the following weighted-average dumping margins for the period December 1, 2020, through November 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
SeAH Steel Corporation	4.17
Companies Not Selected for Individual Review[12]	3.24

Disclosure

We intend to disclose the calculations performed in connection with these amended final results of review to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

SeAH did not report the actual entered value for all of its U.S. sales; in such instances, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. NEXTEEL's dumping margin did not change in these amended results; therefore, we continue to calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies not selected for individual review, we used an assessment rate based on the weighted average of the cash deposit rates calculated for NEXTEEL and SeAH. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for the future deposits of estimated duties where applicable.[13]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by SeAH for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following amended cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 30, 2023, the publication date of the *Final Results,* as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the less-than-fair-value investigation.[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[9] *See* Memorandum, ''Analysis of Ministerial Error Allegations,'' dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum); *see also* Memorandum, ''Calculations for SeAH Steel Corporation for the Amended Final Results,'' dated concurrently with this notice.

[10] The margin for the other mandatory respondent, NEXTEEL Co., Ltd. (NEXTEEL), remains unchanged from the *Final Results* and continues to be 2.38 percent.

[11] *See* Memorandum, ''Calculation of the Amended Final Cash Deposit Rate for Non-Selected Companies,'' dated concurrently with this notice.

[12] *See* Appendix for a full list of these companies.

[13] *See* section 751(a)(2)(C) of the Act.

[14] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: July 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Companies Not Selected for Individual Examination Receiving the Review-Specific Rate

1. AJU BESTEEL Co., Ltd.
2. BDP International, Inc.
3. Daewoo International Corporation
4. Dong Yang Steel Pipe
5. Dongbu Incheon Steel Co.
6. Dongbu Steel Co., Ltd.
7. Dongkuk Steel Mill
8. EEW Korea Co., Ltd.
9. Husteel Co., Ltd.
10. Hyundai RB Co. Ltd.
11. Hyundai Steel Company/Hyundai HYSCO
12. Kelly Pipe Co., LLC
13. Keonwoo Metals Co., Ltd.
14. Kolon Global Corp.
15. Korea Cast Iron Pipe Ind. Co., Ltd.
16. Kurvers Piping Italy S.R.L.
17. Miju Steel MFG Co., Ltd.
18. MSTEEL Co., Ltd.
19. Poongsan Valinox (Valtimet Division)
20. POSCO
21. POSCO Daewoo
22. R&R Trading Co. Ltd.
23. Sam Kang M&T Co., Ltd.
24. Sin Sung Metal Co., Ltd.
25. SK Networks
26. Soon-Hong Trading Company
27. Steel Flower Co., Ltd.
28. TGS Pipe
29. Tokyo Engineering Korea Ltd.

[FR Doc. 2023–16687 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that heavy walled rectangular welded carbon steel pipes and tubes (HWR) from the Republic of Korea (Korea) were not sold at less than normal value during the period of review (POR) September 1, 2021, through August 31, 2022. In addition, Commerce is rescinding this administrative review in part with respect to two companies for which the request for review was timely withdrawn. We invite interested parties to comment on these preliminary results of review.

DATES: Applicable August 4, 2023.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2016, Commerce published in the **Federal Register** the antidumping duty order on HWR from Korea.[1] On September 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On November 3, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an antidumping duty administrative review of three producers and exporters of the subject merchandise.[3] On November 7, 2022, Dong-A-Steel Co., Ltd. and SeAH Steel Corporation (collectively, DOSCO/SeAH) withdrew its request for an administrative review.[4] Commerce issued the antidumping duty (AD) questionnaire to the two remaining companies, HiSteel Co., Ltd. (HiSteel) and NEXTEEL Co., Ltd. (NEXTEEL). On December 20, 2022, HiSteel withdrew its request for an administrative review.[5] Thus, we conducted a review with respect to the sole remaining company subject to the administrative review, NEXTEEL.

On May 5, 2023, Commerce extended the preliminary results of this review until August 1, 2023.[6] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[7]

Scope of the Order

The products covered by the *Order* are certain heavy walled rectangular welded steel pipes and tubes from Korea.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws its request within 90 days of the date of publication of notice of initiation. Because as stated above, DOSCO/SeAH and HiSteel withdrew

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865 (September 13, 2016) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 53719 (September 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 66275 (November 3, 2022).

[4] *See* DOSCO/SeAH's Letter, ''Withdrawal of Request for Administrative Review for DOSCO and SeAH Steel,'' dated November 7, 2022. In a prior administrative review, Commerce collapsed Dong-A Steel Co., Ltd. with its affiliated producer, SeAH Steel Corporation, and we continue to treat these companies as a single entity, in accordance with 19 CFR 351.401(f). *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 35060, 35061 (July 1, 2021).

[5] *See* HiSteel's Letter, ''Withdrawal of Request for Administrative Review for HiSteel,'' dated December 20, 2022.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of the 5th Antidumping Duty Administrative Review,'' dated May 5, 2023.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2021–2022: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] For a complete description of the scope of the *Order, see* Preliminary Decision Memorandum.

their respective review requests, and no other party requested an administrative review of these companies, we are rescinding the administrative review with respect to DOSCO/SeAH and HiSteel, pursuant to 19 CFR 351.213(d)(1).

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period September 1, 2021, through August 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose the calculations performed to interested parties within five days after public announcement of the preliminary results.[9] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS.[14] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Verification

On February 7, 2023, Nucor Tubular Products Inc., a domestic interested party, requested that Commerce conduct verification of NEXTEEL's responses. Accordingly, as provided in section 782(i)(3) of the Act, we verified information relied upon for the preliminary results of this review.

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[15] If the weighted average dumping margin for NEXTEEL is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we intend to calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[16] If the weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[17] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[18]

For entries of subject merchandise during the POR produced by NEXTEEL for which it did not know that the merchandise it sold was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19]

Because Commerce is rescinding this review with respect to DOSCO/SeAH and HiSteel, Commerce will instruct CBP to assess antidumping duties on all appropriate entries of HWR during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporter listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific cash deposit rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, or a previous segment, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.24 percent, the all-others rate established in the less-than-fair-value investigation.[20] These deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised by interested

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c).

[11] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.212(b).

[16] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[17] *Id.* 77 FR at 8102; *see also* 19 CFR 351.106(c)(2).

[18] *See* section 751(a)(2)(C) of the Act.

[19] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Order.*

parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

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

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 31, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–16688 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–816]

Certain Steel Nails From Malaysia: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) July 1, 2021, through June 30, 2022. In addition, we preliminarily find that certain companies had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 4, 2023.

FOR FURTHER INFORMATION CONTACT: John K. Drury or Tyler R. Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2015, we published in the **Federal Register** an antidumping duty order on certain steel nails from Malaysia.[1] On July 1, 2022, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On September 6, 2022, Commerce published the notice of initiation of the administrative review of the *Order*.[3] On March 28, 2023, we extended the time limit for completion of these preliminary results to July 28, 2023, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).[4]

Scope of the Order

The products covered by the scope of the *Order* are certain steel nails from Malaysia. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

Preliminary Determination of No Shipments

Between September 21 and 29, 2022, we received letters from non-selected respondents Astrotech Steels Private Limited (Astrotech), Geekay Wires Limited (Geekay), Modern Factory for Steel Industries Co. Ltd. (Modern), and Trinity Steel Private Limited (Trinity), timely notifying Commerce that they had no exports, sales, or entries of subject merchandise during the POR.[6] We issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP) with respect to each of these four companies, and CBP responded that it has no record of any shipments of subject merchandise for these companies during the POR.[7] Thus, we preliminarily determine that Astrotech, Geekay, Modern, and Trinity had no shipments during the POR. Consistent with Commerce's practice, we find that it is not appropriate to rescind the review with respect to Astrotech, Geekay, Modern, and Trinity, but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of this review.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.[9] A list of the topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be found at

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Injury Service List,* 87 FR 39461 (July 1, 2022).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 28, 2023.

[5] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2021–2022: Certain Steel Nails from Malaysia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Geekay Wires Limited's Letter, ''Request for No Shipment during the Period of Review (POR),'' dated September 21, 2022; Modern Factory for Steel Industries Co. Ltd.'s Letter, ''Request for No Shipment during the Period of Review (POR),'' dated September 29, 2022; Trinity Steel Private Limited's Letter, ''Notice of No sales during the Period of Review (POR),'' dated September 29, 2022; and Astrotech Steels Private Limited's Letter, ''Request for No Shipment during the Period of Review (POR),'' dated September 29, 2022.

[7] *See* Memorandum, ''Steel Nails from Malaysia; No Shipment Inquiry for Multiple Companies During the Period 07/01/2021 through 06/30/2022,'' dated June 26, 2023.

[8] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR 51306 (August 28, 2014); and *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[9] *See* Preliminary Decision Memorandum.

https://access.trade.gov/public/FRNoticesListLayout.aspx.

Rate for Non-Selected Respondents

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

In these preliminary results, we have calculated a non-*de minimis* weighted-average margin for Region International Co., Ltd. and Region System Sdn. Bhd. (collectively, Region). Region's weighted-average dumping margin was not determined entirely on the basis of facts available. However, we calculated a weighted-average margin of zero for Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd. (collectively, Inmax). Accordingly, for the preliminary results of this review, we are assigning the dumping margin determined for Region to the non-selected mandatory respondents. Therefore, the preliminary rate for non-selected respondents is 1.08 percent.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 2021, through June 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Inmax Sdn. Bhd. and Inmax Industries Sdn. Bhd	0.00
Region International Co., Ltd. and Region System Sdn. Bhd	1.08
Non-Selected Respondents [10]	1.08

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this administrative review within five days after public announcement of the preliminary results, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12] Parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[15] If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16] For entries of subject merchandise during the period of review produced by the respondents for which they did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries.[17]

If we continue to find in the final results that Astrotech, Geekay, Modern, and Trinity had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their antidumping duty case numbers (*i.e.,* at that exporter's rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of

[10] *See* Appendix II for the list of non-selected respondents.

[11] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'')

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* 19 CFR 351.303 (for general filing requirements).

[14] *See* 19 CFR 351.310(c).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[16] *Id.* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[17] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 2.66 percent, the all-others rate established in the less-than-fair-value investigation.[18] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: July 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

List of Non-Selected Respondents

Alsons Manufacturing India, LLP
Atlantic Marine Group Ltd.
Chia Pao Metal Co., Ltd.
Chin Lai Hardware Sdn., Bhd.
Chuan Heng Hardware Paints and Building Materials Sdn., Bhd.
Come Best (Thailand) Co., Ltd.
Gbo Fastening Systems AB
Impress Steel Wire Industries Sdn., Bhd.
Inmax Industries Sdn., Bhd.
Inmax Sdn., Bhd.
Kerry-Apex (Thailand) Co., Ltd.
Kimmu Trading Sdn., Bhd.
Madura Fasteners Sdn., Bhd.
Oman Fasteners LLC
Region System Sdn., Bhd.
Region International Co., Ltd.
RM Wire Industries Sdn., Bhd.
Soon Shing Building Materials Sdn., Bhd.
Storeit Services LLP
Sunmat Industries Sdn., Bhd.
Tag Fasteners Sdn., Bhd.
Tag Staples Sdn., Bhd.
Tampin Sin Yong Wai Industry Sdn., Bhd.
Top Remac Industries
UD Industries Sdn., Bhd.
Vien Group Sdn., Bhd.
Watasan Industries Sdn., Bhd.
WWL India Private Ltd.

[FR Doc. 2023–16609 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–DS–P

[18] *See Certain Steel Nails from Malaysia: Amended Final Determination of Sales at Less Than Fair Value,* 80 FR 34370 (June 16, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD223]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning (EOP) Committee and Advisory Panel (AP) will hold a joint meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Tuesday, August 22, 2023, from 9 a.m. through 11 a.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the meeting will be available at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the EOP Committee and AP will resume their comprehensive review of the Council's Ecosystem Approach to the Fisheries Management (EAFM) risk assessment. This meeting is a continuation of the July 7, 2023, EOP meeting where the Committee and AP will finish providing input on the remaining draft risk elements, definitions, and indicators that may be included in an updated risk assessment. The EOP Committee and AP will continue their review later this summer with an updated risk assessment for Council review and consideration in the fall of 2023.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 1, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–16693 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD213]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held Wednesday, August 23, 2023, from 1 p.m. to 4:30 p.m., Pacific Daylight Time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to familiarize the HMSAS with relevant topics to be taken up at the September 2023 Pacific Council meeting and begin considering the contents of reports the HMSAS may wish to submit to the Council. The HMSAS also may discuss a joint meeting with the HMS Management Team coincident with the September Council meeting to plan a workshop on West Coast swordfish fisheries and transition of the California drift gillnet fishery. An agenda for the HMSAS meeting will be posted on the Council's website at least one week prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* ((503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: August 1, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–16691 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD172]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the California Department of Transportation (Caltrans) to incidentally harass marine mammals during construction activities associated with the Richmond-San Rafael Bridge Restoration project in Richmond, CA.

DATES: This authorization is effective from August 1, 2023 through March 30, 2024.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 28, 2022, NMFS received a request from Caltrans for an IHA to take marine mammals incidental to construction activities to restore portions of the Richmond-San Rafael Bridge. Following NMFS' review of the application, Caltrans submitted a revised version on April 14, 2023, which was deemed adequate and complete on May 11, 2023. Caltrans' request is for take of harbor seals (*Phoca vitulina*) by Level B harassment only. Neither Caltrans nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed authorization to the final authorization.

Description of the Specified Activity

Overview

Caltrans will conduct construction activities to restore a portion of the Richmond-San Rafael Bridge. Prior to restoration work Caltrans will install a debris containment system to ensure contaminants from construction are not deposited into San Francisco Bay. During the deployment and retrieval of the containment system disturbance (*i.e.,* Level B harassment) of harbor seals may occur. Once the debris containment system is deployed the restoration work on the bridge is not expected to result in any takes of marine mammals, as the containment system is expected to shield seals from disturbance as a result of visual and acoustic stimuli. Takes of harbor seals will occur at the nearby Castro Rocks haulout. The Richmond-San Rafael Bridge is located in the northern portion of San Francisco Bay and is located between Richmond, CA and San Rafael, CA. The debris

containment system will be used on Piers 52–57. The deployment and retrieval of the containment system will only occur during between August 1 and March 30 to avoid pupping and molting seasons of harbor seals.

It is expected that the debris containment system will take up to 20 days to deploy and 10 days to remove (30 total days). The debris containment system will only be deployed during daylight hours but restoration work will occur throughout the day and night following deployment.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 41920, June 28, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Caltrans was published in the **Federal Register** on June 28, 2023 (88 FR 41920). That notice described, in detail, Caltrans' activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period, NMFS did not receive any public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions in materials that are referenced in the document, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in this region are assessed in NMFS' Pacific SARs, and NMFS has reviewed the most current information for the species. All values presented in Table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	California	N	30,968 (N/A, 27,348, 2012).	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

A detailed description of the species likely to be affected by the construction project, including a brief introduction to the affected stock as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 41920, June 28, 2023); since that time, we are not aware of any changes in the status of the stock; therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of the installation and removal of the debris containment system from Caltrans' construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (88 FR 41920, June 28, 2023) included a discussion of the effects of the visual disturbance of the installation and removal of the debris containment system on marine mammals and the potential effects of that activity on marine mammals and their habitat. That information and analysis is not repeated here; please refer to the notice of proposed IHA (88 FR 41920, June 28, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the novel stimulus of the installation and removal of the debris containment system. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is authorized for this activity. Below, we describe how the take numbers are estimated.

Marine Mammal Occurrence and Take Estimates

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations. We will also describe how this information is brought together to produce a quantitative take estimate for each species.

Castro Rocks is the largest harbor seal haulout site in northern San Francisco Bay and is the second largest pupping site in San Francisco Bay (Kopec and Harvey 1995). The harbor seal pupping season is from April to July in San Francisco Bay. Seals are present on the haulout year round during medium to low tides (Green *et al.,* 2004). Recent observations at the Castro Rocks haulout site reported approximately 300 seals during the pupping and molting seasons (Codde and Allen, 2020). The highest mean number of harbor seals observed at Castro Rocks during recent annual National Park Service surveys was 237 seals observed in 2019 (Codde and Allen, 2013, 2015, 2017, 2020; Codde 2020).

Caltrans expects to harass approximately 300 harbor seals per day during the installation and removal of the debris containment system. It is expected to take 30 days for Caltrans to complete this process. Based on these assumptions Caltrans requested authorization of 9,000 takes by Level B harassment of harbor seals while hauled out. NMFS concurs with this request.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

Caltrans must implement the following measures during Phase II of the Richmond-San Rafael Bridge Restoration Project:

(1) Seasonal Work Restrictions: installation or removal of the debris containment system must not occur between Piers 52–57 from April 1–July 31 due to the pupping and molting period of harbor seals.

(2) Work must not take place outside of the containment system on the bridge between Piers 52–57 from April 1 to July 31.

(3) A non-disturbance buffer will be established within 400 feet (121 meters) of Castro Rocks on the south side of bridge.

(4) Staging of barges will not be allowed in the project area.

(5) Routes for watercraft to reach work locations will be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks.

(6) No piles may be driven or vibrated to create staging locations for any watercraft. Barges and vessels will be tethered to the existing concrete bridge piers.

Based on our evaluation of the applicant's measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through

better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Caltrans will monitor to collect data on marine mammal behavior, counts of the individuals observed, and the frequency of the observations. Caltrans will collect sighting data and observations on behavioral responses to construction for marine mammal species observed in the region of activity during the period of construction. All observers will be trained in the identification of marine mammals and marine mammal behaviors.

- Protected species observers (PSOs) must be independent observers (*i.e.,* not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors. Caltrans must submit their resumes to NMFS for approval;
- Biological monitoring must occur 5 days prior to the Project's start date, to establish baseline observations.
- Observation periods will encompass different tide levels and hours of the day. Monitoring of marine mammals around the construction site will be conducted using binoculars as necessary.
- The location of the PSOs will be at a monitoring platform positioned on Pier 55 of the Richmond-San Rafael Bridge, at the closest pier of the Richmond-San Rafael Bridge to Castro Rocks. Pier 55 is approximately 21 meters from the nearest rock at Castro Rocks harbor seal colony.

Data Collection

Caltrans will record detailed information about counts and behaviors of all marine mammal species observed, times of observations, construction activities that occurred, any visual disturbances, and weather conditions, with particular focus on harbor seals at Castro Rocks. PSOs will use approved data forms to record the following information:

- Observation position and start and end times of observations;
- Weather conditions (sunny/cloudy, wind speed, fog, visibility), temperature, tide level, current, and sea state;
- Species counts (including with or without pup, and, if possible, sex and age classes of any observed marine mammal species;
- Identifying marks or color (scars, red pelage, *etc.*);
- Position relative to Richmond-San Rafael bridge (distance and direction);
- Movement (direction and relative speed);
- Behavior (logging (resting at the surface), swimming, spyhopping (raising above the water surface to view the area), foraging, *etc.*);
- Duration of sighting or times of multiple sightings of the same individual; and
- Details of any marine mammal behavioral disturbances, including information regarding the activity (*e.g.* disturbance from the containment system installation and removal or construction related disturbance within or outside the containment system), the type of behavioral response to the disturbance (flushing or head posturing), and the rate of disturbance on Castro Rocks. Disturbance events must be categorized according to the 3-point scale as shown in Table 2.

TABLE 2—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

Reporting Measures

Caltrans shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period including: (a) what type of restoration work is being completed, and (b) the total duration of work completed;
- PSO locations during monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), and PSO confidence in identification;
- Distance and location of each observed marine mammal relative to the bridge restoration work;
- Estimated number of animals by species (min/max/best estimate);
- Estimated number of animals by cohort (adults, pups, and group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such flushing or head posturing); and
- Detailed information about implementation of any mitigation measures, a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Caltrans will immediately cease the specified activities and immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and the West Coast Regional Stranding Coordinator. The report will include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved (if applicable);
- Vessel's speed during and leading up to the incident (if applicable);
- Description of the incident;
- Status of all sound source used in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Caltrans to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance. Caltrans will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Caltrans will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report will include the same information identified in the section above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Caltrans to determine whether modifications in the activities are appropriate.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Caltrans will report the incident to Office of Protected Resources, NMFS, and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Caltrans will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Construction activities will be permitted to continue.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS does not expect Caltrans' construction activities to cause long-term behavioral disturbance that will negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although the installation and deployment of the debris containment system may disturb harbor seals hauled out at Castro Rocks, NMFS expects those impacts to be of short duration (20 days for installation and 10 day for removal) with minimal effect to the animals. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

The harbor seal stock for which incidental take is authorized is not listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The mitigation and monitoring measures, including the establishment of seasonal work schedules, a non-disturbance buffer around Castro Rocks, and watercraft routes, will minimize disturbance of seals on Castro Rocks and make Level A harassment unlikely. Therefore, the mitigation and monitoring measures are expected to eliminate the potential for Level A harassment as well as reduce the amount and intensity for Level B harassment. The construction activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term

Level B harassment (behavioral disturbance) as construction activities will occur over the course of 30 days. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* Thorson and Reyff 2006). Individual animals, even if taken multiple times, would likely move away from the visual disturbance of the debris containment system installation and removal. Repeated exposures of individuals to this visual disturbance that could cause Level B harassment are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there will be no adverse impacts to the stock as a whole.

There is no unusual mortality event (UME) currently associated with the harbor seal stock and there are no Biologically Important Areas or known important habitat, aside from Castro Rocks itself, within the project area. While essential fish habitat (EFH) for several fish species does exist in the project area, the activities will not modify existing marine mammal habitat since there is no in-water work. This construction activity should not impact marine mammals' foraging opportunities.

In summary and as described above, the following factors support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Anticipated impacts of Level B harassment include temporary behavior modifications;
- Short duration and intermittent nature of the debris containment system deployment and removal;
- The specified project area is very small relative to the overall habitat ranges of the species and do not include habitat areas of special significance (Biologically Important Areas);
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The presumed efficacy of the mitigation measures in reducing the effects of the specified activity; and,
- Monitoring reports from other construction work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on the affected marine mammal stock.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes in the IHA is below one-third of the estimated stock abundance for harbor seals (see Estimated Take of Marine Mammals). The take percentage of the estimated stock of harbor seals, if all estimated take events are assumed to occur to new individuals, is 29.1 percent. However, this take estimate is assumed to represent repeated takes of the same individuals over time and, therefore, the take estimate represents a significantly smaller actual percentage of the total stock. It is expected that approximately 300 harbor seals are hauled out on Castro Rocks on any given day during the project. The majority of these 300 individuals are expected to be comprised of the same animals during the duration of the project. Therefore, it can be reasonably expected that the percentage of individuals of the overall stock of harbor seals is closer to approximately 1 percent.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the issuance of an IHA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Caltrans for the potential harassment of small numbers of harbor seals incidental to the Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, CA, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: July 31, 2023

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–16604 Filed 8–1–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD189]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 23, 2023 at 9 a.m.

ADDRESSES: Webinar registration URL information: *https://attendee.gotowebinar.com/register/7856590455563190106.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss draft alternatives for the Northern Edge Habitat Scallop Framework. They will discuss progress towards completion of the Council's 5-year EFH review. They will also review recent Council coordination with BOEM and NOAA related to offshore wind leasing in the Gulf of Maine, and on other offshore wind issues. Also on the agenda is habitat work priorities for 2024. In addition to habitat actions, the Advisory Panel should identify offshore wind and aquaculture-related work items. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: August 1, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–16690 Filed 8–3–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* September 3, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/31/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Grounds/Range Maintenance
Mandatory for: US Air Force, Camp Bullis US Army Training Center, San Antonio, TX
Designated Source of Supply: Goodwill Industries of San Antonio Contract Services, San Antonio, TX
Contracting Activity: DEPT OF THE AIR FORCE, FA3016 502 CONS CL JBSA

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Department of the Air Force Camp Bullis US Army Training Center, San Antonio, TX contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the Department of the Air Force will refer its business elsewhere, this addition must be effective on 8/27/2023, ensuring timely

execution for a 9/1/2023 start date while still allowing 23 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on 6/30/2023 and did not receive any comments from any interested persons. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

Deletions

On 6/30/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–346–4296—Folder, File, Medical Records, Type II, Manila, Letter
7530–01–347–5227—Folder, File, Administrative Records, Type I, Manila, Letter
Designated Source of Supply: CLOVERNOOK CENTER FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s):
4235–01–572–3892—Sorbent, Hazardous Material, Granular, Biobased, 20 LB
4235–01–572–3902—Sorbent, Hazardous Material, Granular, Biobased, 4 LB
4235–01–599–3952—Sorbent, Hazardous Material, Granular, Biobased, 40 LB
Designated Source of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX
Contracting Activity: DLA AVIATION, RICHMOND, VA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–16646 Filed 8–3–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to deletes product(s) that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* September 3, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
8415–01–518–4561—Pants, Physical Training Uniform, USAF, Blue, X-Small/Short
8415–01–518–4562—Pants, Physical Training Uniform, USAF, Blue, X-Small/Regular
8415–01–518–4563—Pants, Physical Training Uniform, USAF, Blue, X-Small/Long
8415–01–518–4564—Pants, Physical Training Uniform, USAF, Blue, Small/Short
8415–01–518–4565—Pants, Physical Training Uniform, USAF, Blue, Small/Regular
8415–01–518–4566—Pants, Physical Training Uniform, USAF, Blue, Small/Long
8415–01–518–4567—Pants, Physical Training Uniform, USAF, Blue, Medium/Short
8415–01–518–4568—Pants, Physical Training Uniform, USAF, Blue, Medium/Regular
8415–01–518–4570—Pants, Physical Training Uniform, USAF, Blue, Medium/Long
8415–01–518–4571—Pants, Physical Training Uniform, USAF, Blue, Large/Short
8415–01–518–4572—Pants, Physical Training Uniform, USAF, Blue, Large/Regular
8415–01–518–4573—Pants, Physical Training Uniform, USAF, Blue, Large/Long
8415–01–518–4574—Pants, Physical Training Uniform, USAF, Blue, X-Large/Short
8415–01–518–4575—Pants, Physical Training Uniform, USAF, Blue, X-Large/Regular
8415–01–518–4576—Pants, Physical Training Uniform, USAF, Blue, X-Large/Long
8415–01–518–4577—Pants, Physical Training Uniform, USAF, Blue, XX-Large/Short
8415–01–518–4578—Pants, Physical Training Uniform, USAF, Blue, XX-Large/Regular
8415–01–518–4579—Pants, Physical Training Uniform, USAF, Blue, XX-Large/Long
8415–01–518–4580—Pants, Physical Training Uniform, USAF, Blue, XXX-Large/Short
8415–01–518–4581—Pants, Physical Training Uniform, USAF, Blue, XXX-Large/Regular
8415–01–518–4582—Pants, Physical Training Uniform, USAF, Blue, XXX-Large/Long
8415–01–518–4583—Pants, Physical Training Uniform, USAF, Blue, XXXX-Large/Short
8415–01–518–4584—Pants, Physical Training Uniform, USAF, Blue, XXXX-Large/Regular
8415–01–518–4585—Pants, Physical Training Uniform, USAF, Blue, XXXX-Large/Long
8415–01–521–0426—Pants, Physical Training Uniform, USAF, Blue, Small/X-Short
8415–01–521–0452—Pants, Physical Training Uniform, USAF, Blue, Medium/X-Short
8415–01–521–0453—Pants, Physical Training Uniform, USAF, Blue, Large/X-Short
8415–01–521–0454—Pants, Physical Training Uniform, USAF, Blue, X Large/X-Short

8415–01–521–0455—Pants, Physical Training Uniform, USAF, Blue, XXX Large/X-Short
8415–01–521–0456—Pants, Physical Training Uniform, USAF, Blue, XX Large/X-Short
8415–01–521–0458—Pants, Physical Training Uniform, USAF, Blue, XXXX Large/X-Short
8415–01–528–8025—Pants, Physical Training Uniform, USAF, X Small/X-Short
Designated Source of Supply: Alphapointe, Kansas City, MO
Mandatory Source of Supply: Lions Services, Inc., Charlotte, NC
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Mandatory Source of Supply: Goodwill Vision Enterprises, Rochester, NY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA
NSN(s)—Product Name(s): MR 1114—Mat, Sink, Small
Mandatory Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–16647 Filed 8–3–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Friday, August 11, 2023.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

(Authority: 5 U.S.C. 552b.)

Dated: August 2, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–16803 Filed 8–2–23; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement and Initiate Section 106 Public Consultation Regarding Removal of the Confederate Memorial From Arlington National Cemetery

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent (NOI); public meetings.

SUMMARY: The Department of the Army intends to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) and to conduct the section 106 public consultation process under the National Historic Preservation Act (NHPA) to address potential environmental effects associated with the congressionally-mandated removal of the Confederate Memorial from Arlington National Cemetery (ANC). This notice initiates a 30-day public scoping period, during which the Army will solicit comments on the proposed action. The 30-day public scoping period will include a virtual public meeting.

DATES: Written scoping comments must be sent within 30 days of publication of this NOI in the **Federal Register**. Public comment under NEPA and the NHPA may be executed concurrently to optimize efficiency, transparency, and accountability. There will be a virtual public meeting covering both the NEPA and NHPA processes. This virtual public meeting will take place August 23, 2023. The meeting time and instructions on how to access the meeting will be publicly announced, including on the ANC web page.

ADDRESSES: Written comments may be sent by the following methods:

Website form located at: https://www.arlingtoncemetery.mil/About/Confederate-Memorial-Removal.

Mail: Ms. Renea Yates, Director, Office of Army Cemeteries, 1 Memorial Avenue, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea Yates, Director, Office of Army Cemeteries, 1 Memorial Avenue, Arlington, VA 22211; email: *anc-commemorative-works@army.mil;* (877) 907–8585.

SUPPLEMENTARY INFORMATION: Congress directed the establishment of the Commission on the Naming of Items of the DoD that Commemorate the Confederate States of America or Any Person Who Served Voluntarily with the Confederate States of America (the Naming Commission) in section 370 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA). Regarding the Confederate Memorial, the Naming Commission recommended the following:

—''The statue atop . . . the monument should be removed. All bronze elements on the monument should be deconstructed, and removed, preferably leaving the granite base and foundation in place to minimize risk of inadvertent disturbance of graves.''
—''The work should be planned and coordinated with the Commission of Fine Arts and the Historical Review Commission to determine the best way to proceed with removal of the monument.''
—''The Department of [the] Army should consider the most cost-effective method of removal and disposal of the monument's elements in their planning.''

The FY21 NDAA, section 370(a), requires that ''[n]ot later than three years after the date of the enactment of this Act, the Secretary of Defense shall implement the plan submitted by [the Naming Commission] and remove all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederate States of America . . . or any person who served voluntarily with the Confederate States of America from all assets of the Department of Defense.''

The purpose of the proposed action is to remove from ANC a monument that commemorates the Confederate States of America. The need for the proposed action is to comply with non-discretionary congressional direction. The removal of the Confederate Memorial must be conducted in a manner that ensures the safety of the people who work at and visit ANC and that protects surrounding graves and monuments. The entire process, including disposition, must occur according to applicable laws, policies, and regulations.

The EIS will look at the impacts of removal of the statue atop the monument, disassembly of the bronze elements, and disposition of both. The Army intends to leave the granite base and foundation in place. NEPA requires consideration of a no-action alternative as a baseline against which impacts of the proposed action can be analyzed. The no-action alternative—while serving as a baseline for analysis—will not be considered for implementation, as it would not comply with congressional direction.

The EIS will consider potential adverse impacts associated with the proposed action. The EIS will also contemplate measures that would avoid, minimize, or mitigate identified adverse impacts. The proposed action is expected to require review and approval by the Commission of Fine Arts and coordination with the National Capital Planning Commission. The decision-making process will include publication of a Draft EIS, a Final EIS, and a Record of Decision.

Federal, Tribal, state, and local agencies, along with members of the public, are invited to participate in the NEPA and NHPA processes. The NEPA scoping process will identify factors that will influence the NEPA analysis, including alternatives and mitigation. The EIS will address input provided during the August 23, 2023, meeting and the 30-day public scoping period, along with other information and analyses relevant to the proposed action.

The August 23, 2023 meeting will initiate the public consultation process required by the NHPA. The Army will seek input regarding alternatives that will avoid, minimize, or mitigate adverse effects of the monument's removal. In terms of the NHPA, the scoping process will provide the public with information about the undertaking and its effects on historic properties and will seek public comment and input in accordance with 36 CFR 800.2(d). Interested persons may submit written comments. Written comments must be sent within 30 days of publication of this NOI in the **Federal Register**.

A virtual public meeting will be held August 23, 2023. The meeting time and instructions on how to access the meeting will be publicly announced, including on the ANC web page. Pertinent materials, including all posters, fact sheets, and comment forms, will be made available online at: *https://www.arlingtoncemetery.mil/About/Confederate-Memorial-Removal.*

James W. Satterwhite Jr.,

U.S. Army Federal Register Liaison Officer.

[FR Doc. 2023–16639 Filed 8–3–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Extension of Comment Period for Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Matagorda Ship Channel Improvement Project, Calhoun and Matagorda Counties, TX

AGENCY: Corps of Engineers, Department of the Army, DoD.

ACTION: Extension of comment period for notice of intent to prepare a draft supplemental environmental impact statement for the Matagorda Ship Channel Improvement Project, Calhoun and Matagorda Counties, TX.

SUMMARY: The Galveston District, U.S. Army Corps of Engineers (USACE) intends to prepare a Draft Supplemental Environmental Impact Statement (SEIS) for the Matagorda Ship Channel Improvement Project consistent with the National Environmental Policy Act of 1969 (NEPA). While a Record of Decision (ROD) for this project was signed on April 22, 2020, during the pre-construction engineering and design (PED) phase, USACE identified a discrepancy between its current calculations on the quantity of material to be dredged from the Matagorda Ship Channel and the quantity reflected in the ROD. Due to the discrepancy, USACE will prepare a SEIS to document and disclose the impacts of substantial changes to the proposed action and new information that are relevant to environmental concerns. By publication of this NOI, USACE is extending the scoping period and accepting comments due to a previously published incorrect email address.

DATES: Public scoping comments should be submitted on or before September 5, 2023, electronically or mailed as written letters.

ADDRESSES: Submit all electronic public comments via email to *MSC_SEIS@usace.army.mil.* Written comments may be mailed to U.S. Army Corps of Engineers, Galveston District, ATTN: Matagorda Ship Channel Improvement Project, P.O. Box 1229, Galveston, TX 77553–1229.

Pertinent information about the study can be found at: *https://www.swg.usace.army.mil/Projects/Matagorda-Ship-Channel/.*

FOR FURTHER INFORMATION CONTACT: Questions or comments regarding the proposed Draft SEIS can be addressed by contacting Franchelle Nealy by phone at (409) 766–3187, emailing at *MSC_SEIS@usace.army.mil,* or mailed to U.S. Army Corps of Engineers, Galveston District, ATTN: Matagorda Ship Channel Improvement Project, P.O. Box 1229, Galveston, TX 77553–1229.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period. On June 2, 2023, a Notice of Intent (NOI) was published in the **Federal Register** for a 30-day scoping period for the MSCIP SEIS (88 FR 36285). However, it was brought to USACE's attention that one of the email addresses provided in the June 2, 2023 NOI and the June 7, 2023 scoping meeting invitation and meeting materials was incorrect. Emails sent to the incorrect address may not have been received; those who submitted comments are welcome to resubmit them. This notice also announces USACE intent to seek public input on the scope of the SEIS, information, or topics to be addressed, and public concerns surrounding the proposed action. A public meeting was held on June 7, 2023 in Port Lavaca, TX. Comments received during the June scoping period in addition to this additional scoping period, will be considered during development of the SEIS. The extension of the comment period ends on September 5, 2023.

Public Disclosure Statement. If you wish to comment, you may use the mail or email your comments as indicated under the **ADDRESSES** section of this notice. Before including your address, phone number, email address, or any other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can request in your comment for us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Wesley E. Coleman, Jr.,

Programs Director, Southwestern Division.

[FR Doc. 2023–16677 Filed 8–3–23; 8:45 am]

BILLING CODE 3720–58–P

DENALI COMMISSION

Denali Commission Fiscal Year 2024 Draft Work Plan

AGENCY: Denali Commission.

ACTION: Notice.

SUMMARY: The Denali Commission (Commission) is an independent Federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure, and support for economic development and training in Alaska by delivering federal

services in the most cost-effective manner possible. The Commission is required to develop an annual work plan for future spending which will be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment. This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2024 (FY 2024).

DATES: Comments and related material are to be received by, September 8, 2023.

ADDRESSES: Submit comments to the Denali Commission, Attention: Elinda Hetemi, 550 W 7th Avenue, Suite 1230, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Elinda Hetemi, Denali Commission, 550 W 7th Avenue, Suite 1230, Anchorage, AK 99501. Telephone:907–271–3415. Email: *ehetemi@denali.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Denali Commission's mission is to partner with tribal, federal, state, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to build and ensure the operation and maintenance of Alaska's basic infrastructure, and to develop a well-trained labor force employed in a diversified and sustainable economy.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities. Pursuant to the Denali Commission Act, the Commission determines its own basic operating principles and funding criteria on an annual federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual work plan. The FY 2024 Work Plan was developed in the following manner.

- At a meeting of the Denali Commissioners the Commissioners voted to adopt the FY 2024 Workplan.
- The work plan was published on *Denali.gov* for review by the public in advance of public testimony.
- A public hearing was held to record public comments and recommendations on the preliminary draft work plan.
- No public comments were received.
- The Federal Co-Chair prepared the draft work plan for publication in the **Federal Register** providing a 30-day period for public review and written comment. During this time, the draft work plan will also be disseminated to Commission program partners including, but not limited to, the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), Department of Agriculture—Rural Utilities Service (USDA/RUS), and the State of Alaska.
- At the conclusion of the Federal Register Public comment period Commission staff will provide the Federal Co-Chair with a summary of public comments and recommendations, if any, on the draft work plan.
- If no revisions are made to the draft, the Federal Co-Chair will provide notice of approval of the work plan to the Commissioners, and forwards the work plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co-Chair provides notice of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the work plan to the Secretary of Commerce for approval.
- The Secretary of Commerce approves the work plan.
- The Federal Co-Chair then approves grants and contracts based upon the approved work plan.

FY 2023 Appropriations Summary

The Commission has historically received federal funding from several sources. The two primary sources at this time include the Energy & Water Appropriation Bill (''base'' or ''discretionary'' funds), Transportation Housing and Urban Development (THUD) and an annual allocation from the Trans-Alaska Pipeline Liability (TAPL) fund. The proposed FY 2024 Work Plan assumes the Commission will receive $15,000,000 of base funds, which is the amount referenced in the reauthorization of the Commission passed by Congress in 2016 (ref: Public Law 114–322), $20,000,000 from THUD, less administrative expenses, and a $2,917,000 TAPL allocation based on discussions with the Office of Management and Budget (OMB). Approximately $4,000,000 of the base funds will be used for administrative expenses and non-project program support. The total base funding shown in the Work Plan also includes an amount typically available from project closeouts and other de-obligations that occur in any given year. Approximately $117,000 of the TAPL funds will be utilized for administrative expenses and non-project program support, leaving $2,800,000 available for program activities. Absent any new specific direction or limitations provided by Congress these funding sources are governed by the following general principles, either by statute or by language in the Work Plan itself:

- Funds from the Energy & Water Appropriation are eligible for use in all programs.
- TAPL funds can only be used for bulk fuel related projects and activities while THUD funds can only be used for Transportation.
- Appropriated funds may be reduced due to Congressional action, rescissions by OMB, and other federal agency actions.
- All investment amounts identified in the work plan, are ''up to'' amounts, and may be reassigned to other programs included in the current year work plan, if they are not fully expended in a program component area or a specific project.
- Funds set aside for administrative expenses that subsequently become available, may be used for program activities included in the current year work plan.

DENALI COMMISSION FY 2024 FUNDING SUMMARY

Source	Available for program activities
Energy and Water Funds	$13,000,000
TAPL Funds	2,800,000
THUD Funds	19,800,000
Grand Total	35,600,000

Notes:
[1] If the final appropriation is less than indicated the Federal Co-Chair shall reduce investments to balance the FY 2024 Work Plan.

	Base	TAPL	THUD	Total
Energy Reliability and Security:				
Diesel Power Plants and Interties	$3,700,000	.....	.....	$3,700,000
Wind, Hydro, Biomass, Other Proven Renewables and Emerging Technologies	800,000	.....	.....	$800,000
Audits, TA, & Community Energy Efficiency Improvements	400,000	.....	.....	400,000

	Base	TAPL	THUD	Total
RPSU Maintenance and Improvement Projects	1,000,000			1,000,000
Subtotal	5,900,000			5,900,000
Bulk Fuel Safety and Security:				
New/Refurbished Facilities		$1,500,000		1,500,000
Maintenance and Improvement Projects		700,000		700,000
Subtotal		2,200,000		2,200,000
Village Infrastructure Protection	500,000			500,000
Transportation:				
Surface Transportation			$14,800,000	14,800,000
Waterfront Improvements			5,000,000	5,000,000
Subtotal			19,800,000	19,800,000
Sanitation:				
Village Water, Wastewater and Solid Waste	1,500,000			1,500,000
Subtotal	1,500,000			1,500,000
Community Facilities:				
Housing	1,000,000			1,000,000
Health and Wellness	500,000			500,000
Subtotal	1,500,000			1,500,000
Broadband	250,000			250,000
Workforce Development:				
Energy and Bulk Fuel	300,000	600,000		900,000
Other	1,000,000			1,000,000
Subtotal	1,300,000	600,000		1,900,000
Flexible Funding	2,050,000			2,050,000
Subtotal	2,050,000			2,050,000
TOTALS	13,000,000	2,800,000	19,800,000	35,600,000

Authority: Pub. L. 105–277 section 304(b)(1).

Anne Stanislowski,

Administrative Officer.

[FR Doc. 2023–16638 Filed 8–3–23; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF EDUCATION

Reopening; Applications for New Awards; Education Innovation and Research (EIR) Program—Early-Phase Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On May 23, 2023, we published in the **Federal Register** a notice inviting applications (NIA) for fiscal year (FY) 2023 for the EIR program—Early-phase Grants competition, Assistance Listing Number 84.411C (Early-phase Grants). The NIA established a deadline date of August 1, 2023, for the transmittal of applications. For eligible applicants located in the New York counties of Clinton, Dutchess, Essex, Hamilton, Ontario, Orange, Putnam, and Rockland; the Oklahoma counties of Beaver, Cimarron, Comanche, Cotton, Craig, Creek, Delaware, Harper, Jefferson, Love, Major, Mayes, McCurtain, Payne, Pushmataha, Rogers, Stephens, Tulsa, and Woodward; and the State of Vermont, which are covered by major disaster declarations issued by the President, this notice reopens the competition until August 16, 2023 and extends the date of intergovernmental review until October 16, 2023.

DATES:

Deadline for Transmittal of Applications for Affected Applicants: August 16, 2023.

Deadline for Intergovernmental Review: October 16, 2023.

FOR FURTHER INFORMATION CONTACT: Yvonne Crockett, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E344, Washington, DC 20202–5900. Telephone: (202) 453–7122. Email: *eir@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 May 23, 2023, we published the NIA in the **Federal Register** (88 FR 33126) for Early-phase Grants. Under the NIA, applications were due on August 1, 2023. We are reopening this competition to allow affected applicants (as defined under *Eligibility*) more time—until August 16, 2023—to prepare and submit their applications.

Eligibility: The extended application deadline only applies to eligible applicants under the Early-phase Grants 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 areas 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 New York Severe Storms and Flooding (DR–4723–NY), Vermont Severe Storms, Flooding, Landslides, and Mudslides (DR–4720–VT), and Oklahoma Severe Storms, Straight-line Winds, and Tornadoes (DR–4721–OK). See the disaster declarations at: *https://www.fema.gov/disaster/4723, https://www.fema.gov/disaster/4720,* and *https://www.fema.gov/disaster/4721.*

Affected applicants that have already timely submitted applications under the FY 2023 Early-phase Grants competition may resubmit applications on or before the extended application deadline of August 16, 2023, 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 16, 2023.

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 one of the applicable federally declared disaster areas 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 applicants, as defined above, will not be accepted past the August 1, 2023 deadline.

Note: All information in the NIA for this competition remains the same, except for the extended deadline for the transmittal of applications for affected applicants and the deadline for intergovernmental review.

Program Authority: 20 U.S.C. 7261.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, 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, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–16684 Filed 8–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline; Supporting America's School Infrastructure (SASI) Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On June 2, 2023, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2023 SASI competition, Assistance Listing Number 84.184K. The NIA established a deadline date of August 7, 2023, for the transmittal of applications. This notice extends the deadline date for transmittal of applications for all eligible applicants until August 18, 2023, and extends the date of intergovernmental review until October 17, 2023.

DATES:

Deadline for Transmittal of Applications: August 18, 2023.

Deadline for Intergovernmental Review: October 17, 2023.

FOR FURTHER INFORMATION CONTACT: Staci Cummins, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6450. Telephone: 202–987–1674. Email: *oese.school.infrastructure@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 2, 2023, we published the NIA for the FY 2023 SASI competition in the **Federal Register** (88 FR 36294). The NIA established a deadline of August 7, 2023, for eligible applicants to submit applications. We are extending the deadline for transmittal of applications for all eligible applicants under this competition until August 18, 2023. We are extending the deadline in order to allow all applicants more time to prepare and submit their applications. Applicants that have already timely submitted applications under this competition may resubmit applications, 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.

Note: All information in the NIA, including eligibility criteria, remains the same, except for the deadline for the transmittal of applications and the deadline for intergovernmental review. The NIA is available at *https://www.federalregister.gov/documents/2023/06/02/2023-11789/applications-for-new-awards-supporting-americas-school-infrastructure-grant-program.*

Information about SASI is available on the Department's website at *https://oese.ed.gov/offices/school-infrastructure-programs-sip/.*

Program Authority: Section 4631(a)(1)(B) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7281); Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2023, H.R. 117–403, *www.congress.gov/congressional-report/117th-congress/house-report/403/1.*

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office Elementary and Secondary Education.

[FR Doc. 2023–16680 Filed 8–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the REL Midwest Teaching Fractions Toolkit

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 5, 2023.

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 Felicia Sanders, 202–245–6264.

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: Evaluation of the REL Midwest Teaching Fractions Toolkit.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 206.

Total Estimated Number of Annual Burden Hours: 187.

Abstract: The U.S. Department of Education is supporting the development and evaluation of a toolkit that supports the implementation of effective grade 6 fractions instruction based on the evidence-based recommendations in the Developing Effective Fractions Instruction for Kindergarten Through 8th Grade practice guide. The evaluation will rigorously test the efficacy of the toolkit in improving teacher self-efficacy and practices for fraction computation and rate and ratio instruction as well as student learning outcomes in grade 6 mathematics. The evaluation will use a blocked randomized controlled trial design in which schools within each district or within each block of similar schools will be randomly assigned to receive the toolkit. The evaluation will be conducted in 40 Illinois schools during the 2024/25 school year.

The evaluation will focus on measuring the toolkit's impact on three key outcomes: teacher self-efficacy for fraction computation and rate and ratio instruction, classroom practice for fraction computation and rate and ratio instruction, and students' ability to solve fraction computation and rate and ratio problems.

In addition to collecting data to measure teacher and student outcomes, the evaluation team will collect data to document the implementation of the toolkit in treatment schools and the service contrast between treatment and control schools and to describe the characteristics of participating schools, teachers, and students at baseline.

The evaluation will produce a publicly available report that summarizes evaluation findings. The findings from the evaluation will inform further refinement of the toolkit, to be released to the public after the evaluation.

Dated: August 1, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–16681 Filed 8–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Extension of the Application Deadline Date; Applications for New Awards; Full-Service Community Schools (FSCS) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: On June 7, 2023, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2023 FSCS competition, Assistance Listing Number 84.215J. The NIA established a deadline date of August 8, 2023, for transmittal of applications. For eligible applicants located in the New York counties of Clinton, Dutchess, Essex, Hamilton, Ontario, Orange, Putnam, and Rockland; the Oklahoma counties of Beaver, Cimarron, Comanche, Cotton, Craig, Creek, Delaware, Harper, Jefferson, Love, Major, Mayes, McCurtain, Payne, Pushmataha, Rogers, Stephens, Tulsa, and Woodward; and the State of Vermont, which are covered by major disaster declarations issued by the President, this notice extends the deadline date for transmittal of applications until August 16, 2023 and extends the date of intergovernmental review until October 16, 2023.

DATES:

Deadline for Transmittal of Applications for Affected Applicants: August 16, 2023.

Deadline for Intergovernmental Review: October 16, 2023.

FOR FURTHER INFORMATION CONTACT: Jane Hodgdon, U.S. Department of Education, 400 Maryland Avenue SW, Room 4E246, Washington, DC 20202. Telephone: 202–245–6057. Email: *FSCS@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 7, 2023, we published the NIA in the **Federal Register** (88 FR 37222). Under the NIA, applications are due on August 8, 2023. We are extending the deadline for transmittal of applications for affected applicants (as defined under *Eligibility*) to allow these applicants more time—until August 16, 2023—to prepare and submit their applications.

Eligibility: The application deadline extension applies only to eligible applicants under the FY 2023 FSCS 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 New York Severe Storms and Flooding (DR–4723–NY), Vermont Severe Storms, Flooding, Landslides, and Mudslides (DR–4720–VT), and Oklahoma Severe Storms, Straight-line Winds, and Tornadoes (DR–4721–OK). See the disaster declarations at: *https://www.fema.gov/disaster/4723*, *https://www.fema.gov/disaster/4720*, and *https://www.fema.gov/disaster/4721.*

Affected applicants that have already timely submitted applications under the FY 2023 FSCS competition may resubmit applications on or before the extended application deadline of August 16, 2023, 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 16, 2023.

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 one of the applicable federally declared disaster areas and, if requested, must provide appropriate supporting documentation.

The application period is not extended for all applicants. Applications from applicants that are not affected, as defined above, will not be accepted past the August 8, 2023, deadline.

Note: All information in the NIA for this competition remains the same, except for the extended date for the transmittal of applications for affected applicants and the deadline for intergovernmental review.

Program Authority: Sections 4621–4623 and 4625 of the Elementary and Secondary Education Act of 1965, as amended.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, 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, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–16704 Filed 8–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Final Determination on 2023 DOE Critical Materials List

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: By this notice, the U.S. Department of Energy (DOE) presents 2023 DOE Critical Materials List. This list includes critical materials for energy, as determined by the Secretary of Energy, acting through the Undersecretary for Science and Innovation, pursuant to authority under the Energy Act of 2020, as well as those critical minerals on the 2022 final list published by the Secretary of Interior, acting through the Director of the U.S. Geological Survey (USGS). This notice also presents the assessment that forms the basis for the designation of critical materials for energy. The final 2023 DOE Critical Materials List includes certain critical materials for energy and critical minerals as listed below.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Helena Khazdozian, 202–586–9236, *helena.khazdozian@ee.doe.gov*.

DATES: *Applicable:* July 28, 2023.

SUPPLEMENTARY INFORMATION: Section 7002(a)(2) of the Energy Act of 2020 defines ''critical materials'' to be: (A) Any non-fuel mineral, element, substance, or material that the Secretary of Energy determines (i) has high risk for supply chain disruption; and (ii) serves an essential function in one or more energy technologies, including technologies that produce, transmit, store, and conserve energy [referred to here as a critical material for energy]; or (B) a critical mineral [as designated by the Secretary of the Interior].[1] The Final 2023 DOE Critical Materials List includes the following:

- *Critical materials for energy:* aluminum, cobalt, copper*, dysprosium, electrical steel* (grain-oriented electrical steel, non-grain-oriented electrical steel, and amorphous steel), fluorine, gallium, iridium, lithium, magnesium, natural graphite, neodymium, nickel, platinum, praseodymium, terbium, silicon*, and silicon carbide*.
- *Critical minerals:* The Secretary of the Interior, acting through the Director of the U.S. Geological Survey (USGS), published a 2022 final list of critical minerals that includes the following 50 minerals: ''Aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.''

* Indicates materials not designated as critical minerals by the Secretary of

[1] 30 U.S.C. 1606(a)(2)

Interior. The critical materials for energy included on the Final 2023 DOE Critical Material List [2] are based on the criticality assessed in the short- and medium-term.[3] A detailed description of DOE's methodology can be found in the assessment.[4] The materials on the Final 2023 DOE Critical Materials List will inform crosscutting priorities including, but not limited to:

- Critical Materials Research, Development, Demonstration, and Commercial Application (RDD&CA) Program priorities
- Eligibility for the Inflation Reduction Act (IRA) 48C tax credit

Public Comment on the Draft Critical Materials List

Pursuant to authority in section 7002(a)(2) of the Energy Act of 2020, on May 3, 2023, DOE published via the EERE Exchange website a Notice of Intent [5] to issue a Request for Information (RFI) [6] on the Proposed Determination of the Draft Critical Materials List and Draft Critical Materials Assessment. The RFI was published via the EERE Exchange on May 31, 2023. The RFI provided for a 20-day public comment period, and closed on June 20, 2023.

DOE received 79 comments during the comment period. Three comments were from individuals and 76 were submitted on behalf of organizations. Due to time constraints, comments received after the deadline were not taken into consideration for this assessment. DOE may take these comments into consideration for future assessments and determinations. Additionally, DOE received some comments that were out of scope or otherwise not responsive to the requests included in the RFI. DOE considered all of the responsive comments received before the submission deadline and below is a summary of DOE's responses.

The following revisions to the Draft DOE Critical Materials List were made based on the comments received:

- Terbium was added to the Final 2023 DOE Critical Materials List as a critical material for energy. Terbium was screened and then fully assessed for criticality based on information provided through the comments received. Based on that analysis, DOE has determined that terbium meets the definition of critical materials as defined in the Energy Act of 2020. More detail is provided in the Critical Material Assessment.

The following actions were taken based on the comments received, but did not change the results of the Critical Materials Assessment:

- Boron was revisited based on the comments that in addition to neodymium iron boron magnets, boron is important for additional clean energy end-uses including wind turbine blades, boron-doped photovoltaics, and battery coatings. DOE's conclusion is that there is a lack of substantiated data that quantifies the use of boron in these applications, including electric glass for wind turbine blades, and thus these applications would not drive a significant increase in demand for boron.
- Phosphorous was revisited based on the comments that phosphorous demand is expected to experience a shortfall for use in lithium iron phosphate (LFP) batteries, geoconcentration of production outside the U.S., and that agriculture is a competing use. DOE provides further clarification that the Critical Materials Assessment considered high LFP adoption scenarios, geoconcentration of production outside the U.S., and agriculture as a competing use in the assessment of phosphorous. More details can be found in the Critical Materials Assessment report in section 4.3.15. Ultimately, phosphorous was not assessed to be critical under the DOE methodology.

DOE received a comment advocating the exclusion of copper from the Final 2023 DOE Critical Materials List based on (1) the results of the USGS methodology [7] to determine the 2022 Final List of Critical Minerals and (2) the potential to accelerate mining of copper under the IRA 48C tax credit.

- Regarding point (1), it should be noted that the methodologies employed by the USGS and DOE have several distinctions. While the USGS methodology is a supply-side approach that uses historical data to determine criticality within the context of the U.S. economy and national security, the DOE methodology is forward looking—incorporating global demand trajectories based on growth scenarios for various energy technologies, coupled with assumptions about the material intensity of those technologies, to determine criticality within the context of clean energy.
- Regarding point (2), critical materials eligibility for the IRA 48C tax credit is specifically for processing, refining, or recycling of critical materials.

DOE received a comment stating that uranium should not be excluded from the Final 2023 DOE Critical Materials List based on its categorization as a fuel-mineral because uranium does not meet the U.S. Environmental Protection Agency (EPA) definition of a fuel, ''material used to produce heat or power by burning.'' As noted in the RFI and accompanying proposed assessment, uranium was assessed for criticality under this methodology and met the threshold to be included on the list of critical materials for energy. However, section 7002(a) of the Energy Act of 2020 restricts the listing of critical materials to ''any non-fuel mineral, element, substance, or material'' and therefore DOE is not designating uranium as a critical material at this time. DOE further responds noting the following:

- What EPA ''considers a fuel to be'' [8] for the purpose of its risk management programs for chemical accident prevention is not determinative of what is a fuel mineral, element, substance, or material element that DOE is required to exclude from the Critical Materials List by section 7002(a) of the Energy Act of 2020. The Merriam-Webster Dictionary defines fuel to include, not only a material used to produce heat or power by burning, but also ''a material from which atomic energy can be liberated especially in a reactor.'' [9] Uranium used in commercial nuclear plants clearly meets this definition of a fuel material. Therefore, based on the plain meaning of fuel, DOE concludes that uranium used in commercial nuclear reactors is a fuel material. Based on the Critical Materials Assessment, which includes only use of uranium as a fuel, DOE is not designating uranium as a critical material at this time.

DOE received several comments that provided information that may have the

[2] *https://www.energy.gov/cmm/what-are-critical-materials-and-critical-minerals.*

[3] Several substances listed as critical materials for energy were also included on the U.S. Geological Survey's 2022 Final List of Critical Minerals. DOE's inclusion of these substances on its list is intended to signal the results of its criticality assessment. Under Section 7002(a), however, designation as a critical mineral is sufficient to make the substance a critical material.

[4] *https://www.energy.gov/cmm/critical-minerals-materials-program.*

[5] *https://eere-exchange.energy.gov/Default.aspx#FoaId6322a11b-4cb4-4ac7-96a2-a6814bc5fbf9.*

[6] *https://eere-exchange.energy.gov/Default.aspx#FoaId82fa533b-3d3e-4b49-839d-9ddf13d56f40.*

[7] *https://pubs.er.usgs.gov/publication/ofr20211045.*

[8] U.S. Environmental Protection Agency, *Definition of Fuel, https://www.epa.gov/rmp/definition-fuel#:~:text=There%20is%20no%20regulatory%20definition,heat%20or%20power%20by%20burning* (''There is no regulatory definition of fuel; however, EPA considers a fuel to be a material used to produce heat or power by burning.'').

[9] *https://www.merriam-webster.com/dictionary/fuel.*

potential to adjust the criticality analyses of materials already included on the USGS Critical Minerals List. These comments were considered but ultimately not included in this determination, as such minerals are by definition already deemed to be critical materials. However, DOE may use the information to inform future assessments and activities related to critical materials for energy.

DOE received several comments advocating for increasing the scores of importance to energy or potential for supply risk within the Critical Materials Assessment for several materials on the Draft Critical Materials List, including copper and silicon. These comments were not taken into account for this assessment but may be considered to inform future assessments and activities at DOE.

DOE received many comments about the scope of the assessment. The following explanation and clarification are provided:

- Section 7002(a)(2) of the Energy Act of 2020 authorized the Secretary of Energy to determine critical materials according to the statutory definition:
  - Any non-fuel mineral, element, substance, or material that the Secretary of Energy determines:
    - Has high risk for supply chain disruption; and
    - Serves an essential function in one or more energy technologies, including technologies that produce, transmit, store, and conserve energy; or
  - A critical mineral [as designated by the Secretary of the Interior].[10]
- DOE has interpreted energy technologies to be ''clean energy'' technologies in alignment with the DOE Critical Minerals and Materials Vision and Strategy.[11] The anticipated unprecedented increase in demand for critical minerals and materials is driven by the global deployment of clean energy technologies to achieve net-zero goals by 2050. The International Energy Agency has estimated the demand for critical minerals and materials will increase by 400% to 600% by 2040 to achieve these goals.[12] The specific energy technologies [13] considered in this assessment are described in Chapter 2 of the Critical Materials Assessment and are aligned with the technologies DOE assessed as part of ''America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition.''
- DOE conducted the Critical Materials Assessment to inform the determination under section 7002(a)(2). The methodology applied in the DOE Critical Materials Assessment has several unique features:
  - It is forward looking, incorporating global demand trajectories based on growth scenarios for various energy technologies, coupled with assumptions about the material intensity of those technologies.
  - A limited set of engineered materials was assessed.
- The scope of materials assessed included a limited set of engineered materials: electrical steel and silicon carbide. This set of engineered materials was selected based on two factors: (1) the materials were found to have high potential for supply risk in the ''supply chain deep dive'' reports as part of ''America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition''; and (2) the elements comprising the engineered materials (such as iron for electrical steel) were unlikely to be found critical and thus not indicate the risk posed to deploying energy technologies. Prior to the passage of the Energy Act of 2020, materials assessed for criticality were generally limited to an element. In practice, the designation of a critical material as an element does not restrict the mitigation strategies prioritized by DOE to be limited to the elemental form. For example, neodymium has been found to be critical in the past and mitigation strategies pursued by DOE include unlocking new sources, developing alternative magnets that reduce or eliminate the use of neodymium, improving efficiency of separation and metallization of neodymium as well as neodymium-based alloys and magnets, and recycling neodymium from end-of-life magnets.
  - Further clarification is provided on the definition of electrical steel. For the purposes of this assessment, electrical steel includes grain-oriented electrical steel, non-grain-oriented electrical steel, and amorphous steel.
- The scope of materials analyzed does not include materials that are used indirectly in the manufacturing process but do not contribute to the composition of the components or final products. For example, helium is used in cooling, cleaning, and creating an inert environment for semiconductors but it is not a constituent material of the semiconductor. While a disruption in helium supply chain can impact semiconductor production, the scope of this assessment has not been extended to indirect material use. DOE may consider the examination of materials used indirectly in manufacturing processes in future assessments.

DOE received many comments with recommendations to improve the methodology applied in the Critical Materials Assessment. DOE anticipates updating the assessment every three years and may evaluate these recommendations for future assessments. Such future assessments will inform additional critical materials determinations, as appropriate.

The following table summarizes a subset of the relevant comments received, categorized by material, and describes DOE's response. This does not include comments on the improvements for the methodology, or the scope of the assessment which are discussed previously.

Material	On the USGS list?	On the draft DOE list?	On the final DOE list?	Number of comments received	Summary of comment(s)	DOE action
Aluminum ..	Yes	Yes	Yes	5	Aluminum score should increase in short-term and medium-term due to supply risk (low producer diversity—China) and importance to energy (more end-uses than considered in assessment).	No action: Aluminum is already on the USGS and DOE lists. DOE may consider this input for future assessments and activities.
Antimony ...	Yes	No	No	2	Antimony should be on the list. Antimony compounds used in electronics and for fire-retardance.	No action: Antimony is already on the USGS list and no substantial data or information were provided.

[10] 30 U.S.C. 1606(a)(2).

[11] *https://www.energy.gov/cmm/critical-minerals-materials-program.*

[12] *https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions.*

[13] Vehicles, stationary storage, hydrogen electrolyzers, solar energy, wind energy, nuclear energy, electric grid, solid state lighting, and microchips.

Material	On the USGS list?	On the draft DOE list?	On the final DOE list?	Number of comments received	Summary of comment(s)	DOE action
Beryllium ...	Yes	No	No	1	Beryllium should be on the list—important for solar photovoltaics (PV), nuclear, electric vehicle (EV) batteries. Data NOT provided. Most beryllium is imported from Kazakhstan.	No action: Beryllium is already on the USGS list and no data were provided.
Boron	No	No	No	8	Boron should be on the list and is used in more end-uses than Neodymium Iron Boron magnets (wind turbine blades, boron-doped photovoltaics, battery coatings). There is increased international demand for boron.	DOE revisited the assessment of boron. DOE is not aware of any substantiated data that quantifies the use of boron in electric glass for wind turbine blades or that the use of boron in these end-use applications is driving significant increase in demand for boron.
Bromine	No	No	No	1	Bromine should be considered for the list—important to zinc bromide batteries.	No action: Zinc bromide batteries are currently an emerging battery technology with uncertainty in future deployment.
Butyllithium	No	No	No	1	Butyllithium should be on the list—important for manufacturing of ''green'' tires and lightweight automotive interior.	No action: The scope of materials for this assessment does not include materials that are used indirectly in the manufacturing process but do not contribute to the composition of the components or final products. DOE may consider this input for future assessments and activities.
Carbon Fiber.	No	No	No	1	Should be assessed for wind turbine blades	No Action. The scope of materials assessed included a limited set of engineered materials: electrical steel and silicon carbide. This set of engineered materials were selected based on two factors: (1) they were found to have high potential for supply risk in the ''supply chain deep dive'' reports as part of ''America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition,'' and (2) the elements comprising the engineered materials (such as iron for electrical steel) were unlikely to be found critical and thus would not indicate the risk posed to deploying energy technologies.
Cerium	Yes	No	No	1	The risks associated with the overproduction of elements like cerium are overstated in the assessment.	No action: Cerium was not assessed for material criticality. Cerium is on the USGS list.
Cobalt	Yes	Yes	Yes	6	Information on dependency on Democratic Republic of Congo and China. LFP/LFMP (lithium iron phosphate/lithium iron-manganese-phosphate) technology will reduce cobalt dependency for batteries. Most mining and processing of cobalt occurs outside the U.S.	No action: Cobalt is already on the USGS list. DOE may consider this input for future assessments and activities.
Copper	No	Yes	Yes	9	Copper score should increase based on importance to energy (more end-uses than considered in assessment) and supply risk. Copper should not be on the list because: (1) it is not on the USGS list and (2) will incentivize mining through the IRA 48C tax credit and most copper deposits are within 35 miles of Native American Reservations.	No Action. Copper is already on DOE draft list. DOE may consider this input for future assessment and activities. (1) The methodologies employed by the USGS and DOE have several distinctions. While the USGS methodology is a supply-side approach that uses historical data to determine criticality within the context of the economy and national security, the DOE methodology is forward looking—incorporating demand trajectories based on growth scenarios for various energy technologies, coupled with assumptions about the material intensity of those technologies, to determine criticality within the context of clean energy. (2) Critical materials eligibility for the IRA 48C tax credit is specifically for processing, refining, or recycling of critical materials.
Dysprosium	Yes	Yes	Yes	1	Add dysprosium to critical materials list because of its use in magnets.	No action: Dysprosium is already on the USGS list and DOE draft list.
Electrical Steel.	No	Yes	Yes	1	Limitations on substitutability between non-grain oriented steels, grain oriented steels, and amorphous steel.	No action: Electrical steel is already on the DOE draft list. DOE will consider this input for future assessments and activities.
Fluorine	No	Yes	Yes	2	Fluorine-based compounds are used in lithium-ion batteries.	No action: Fluorine is already on the DOE draft list.
Polyvinylidene fluoride (PVDF).	No	No	No	1	Extend analysis of fluorine to include suspension grade PVDF due to complexity of high-grade production and limited production capability and anticipated increase in demand.	No action: A limited set of engineered materials was assessed: electrical steel and silicon carbide. In practice, designation as a critical material is generally limited to an element, but does not restrict the mitigation strategies prioritized by DOE to be limited to the elemental form.

Material	On the USGS list?	On the draft DOE list?	On the final DOE list?	Number of comments received	Summary of comment(s)	DOE action
Gallium	Yes	Yes	Yes	1	Gallium's role in off-shore magnets was not well defined. Should be listed as critical to solar cells and power electronics.	No action: Gallium is already on the USGS list and DOE draft list.
Gallium Nitride.	No	No	No	2	Gallium nitride should be on list for its use ...	No action: Gallium nitride was considered, but it did not meet the threshold of the screening step of DOE methodology.
Gold	No	No	No	2	Gold should be on list due to competing uses and potential source of critical materials as byproducts.	Gold is outside the scope based on the definitions of energy technologies.
Graphite—natural.	Yes	Yes	Yes	2	U.S. has no domestic natural graphite mines	No action: Graphite is already on the USGS list and DOE draft list.
Graphite—synthetic.	Yes	No	No	6	Capacitors and supercapacitors are also end-uses. No data provided. Synthetic graphite has superior performance in EV batteries. Has multiple applications in nuclear, molten salt reactors. Most synthetic graphite is produced outside the U.S.	No action: Graphite (natural graphite and synthetic graphite) is already on the USGS list and no data were provided.
Helium	No	No	No	1	Helium, antimony, tungsten, and tin should be on the list. Helium is important for advanced technology and energy technology.	No action: The scope of materials for this assessment does not include materials that are indirectly used in the manufacturing process but not contributing to the composition of the components or final products. DOE may consider this input for future assessments and activities.
Iridium	Yes	Yes	Yes	2	U.S. needs to be strategic in importing iridium.	No action: Iridium is already on the USGS list and DOE draft list.
Iron ore	No	No	No	1	Iron ore fits the description of a critical material due to its widespread applications.	Iron ore is outside the scope based on the definitions of energy technologies.
Lanthanum	Yes	No	No	1	It is recommended that the DOE investigates the components needed for rare earth elements (REE) containing steels for carbon dioxide and hydrogen pipelines.	No action: Lanthanum was considered, but it did not meet the threshold of the screening step of DOE methodology. Lanthanum is on the USGS list.
Lead	No	No	No	1	Lead batteries provide most back up battery power for telecommunications industry. International demand for lead will begin to outpace US demand in the near term. There is no domestic primary lead production.	No action: Lead is outside the scope based on the definitions of energy technologies.
Lithium	Yes	Yes	Yes	5	Need more domestic lithium production facilities. Consider upgrading lithium as critical in short-term in Section 3.1.2.	No action: Lithium is already on the USGS list and DOE draft list. DOE will consider this input for future assessments and activities.
Manganese	Yes	No	No	2	Manganese should be on list due to lack of domestic capabilities, particularly for battery-grade manganese. Data not provided. DOE should recognize the difference between bulk mined manganese used in steel-making and high purity manganese for batteries. China controls 95% of global battery grade manganese processing.	No action: Manganese is already on the USGS list and no data were provided.
Molybdenum.	No	No	No	1	Molybdenum should be the list due to its use in high strength steels used in vehicle lightening and energy infrastructure (wind turbine supports).	No action: Molybdenum was not found to be material of concern in the DOE Wind Energy Supply Chain Deep Dive. Assessment.[14] DOE may consider this input for future assessments and activities.
Neodymium	Yes	Yes	Yes	2	Recommends DOE to investigate the components needed for REE-bearing steels needed for carbon dioxide and hydrogen pipelines. In the assessment, neodymium should be considered critical for applications in motors.	No action: Neodymium is already on the USGS list and DOE draft list. DOE may consider this input for future assessments and activities.
Nickel	Yes	Yes	Yes	2	Nickel as a copper byproduct should be seen as a factor that reduces supply risk.	No action: Nickel is already on the DOE draft list. DOE may consider this input for future assessments and activities.
Palladium ..	Yes	No	No	3	Palladium and rhodium should be on the list. Potential substitute for platinum and iridium in fuel cells and electrolyzers.	No action: Palladium is already on the USGS list. DOE may consider this input for future assessments and activities.
Phosphates	No	No	No	3	Phosphates should be on the list. Phosphates are a potential precursor material for LFP batteries, and the usage competes with agricultural and food industry uses.	No action: A limited set of engineered materials was assessed: electrical steel and silicon carbide. In practice, designation as a critical material is generally limited to an element, but does not restrict the mitigation strategies prioritized by DOE to be limited to the elemental form.

Material	On the USGS list?	On the draft DOE list?	On the final DOE list?	Number of comments received	Summary of comment(s)	DOE action
Phosphorus	No	No	No	1	Phosphorus is important for agriculture and production is geoconcentrated outside U.S. Phosphorus demand for lithium iron phosphate (LFP) batteries is expected to experience shortfall in supply. Most battery grade phosphorus has to be imported.	DOE revisited the assessment of phosphorous. DOE provides further clarification that Critical Materials Assessment considered high LFP adoption scenarios, geoconcentration of production outside the U.S., and agriculture as a competing use in the assessment of phosphorous. More details can be found in the Critical Materials Assessment report in Section 4.3.15. While phosphorous passed the initial screen, ultimately, it was not assessed as critical under the DOE methodology.
Platinum	Yes	Yes	Yes	3	Platinum supply not a risk in short-term. Propose addition of fuel cell applications to end-use and align platinum as Tier 1. Remove electrolyzers as an end-use application and replace with ''energy conservation'' category.	No action: Platinum is already on the USGS list and DOE draft list. DOE may consider this input for future assessments and activities.
Rhodium	Yes	No	No	2	Palladium and rhodium should be on the list. Potential substitute for platinum and iridium in fuel cells and electrolyzers.	No action: Rhodium is already on the USGS list. DOE may consider this input for future assessments and activities.
Silicon	No	Yes	Yes	6	Silicon should be on the list. There are multiple uses for silicon: photovoltaic solar cells, semiconductors, silicones, metallurgical processing. China produces over 70% of silicon.	No action: Silicon is already on the DOE draft list. DOE may consider this input for future assessments and activities.
Silicon carbide.	No	Yes	Yes	1	Needed for wide band-gap semiconductors. Demand is likely to exceed supply.	No action: Silicon carbide is already on the DOE draft list. DOE may consider this input for future assessments and activities.
Silicon metal.	No	No	No	2	China dominates silicon metal production. Silicon metal should be analyzed as a separate material for short- and long-term scarcity.	No Action. A limited set of engineered materials was assessed: electrical steel and silicon carbide. In practice, designation as a critical material is generally limited to an element, but does not restrict the mitigation strategies prioritized by DOE to be limited to the elemental form.
Silver	No	No	No	2	Silver should be on list due to competing uses and potential source of critical materials as byproducts.	Sliver was not found to be material of concern in the DOE Solar Photovoltaics Supply Chain Deep Dive Assessment.[15] DOE may consider this input for future assessments and activities.
Terbium	Yes	No	Yes	2	Terbium should be on the list—important for neodymium-iron-boron (NdFeB) magnets (equally so as dysprosium).	Terbium was screened and assessed for NdFeB magnets. Based on the assessment, DOE has determined that terbium is on the Final DOE Critical Materials List as a critical material for energy.
Tin	Yes	No	No	1	Tin should be on the list	No action: Tin is already on the USGS list and no substantial data or information were provided.
Titanium	Yes	No	No	1	Titanium should be on the list—important for fuel cells and lightweighting.	No action: Titanium is already on the USGS list. Titanium is unlikely to pass screening due to importance for lightweighting being primarily outside of energy end-use applications. DOE may consider this input for future assessments and activities.
Tungsten	Yes	No	No	1	Helium, antimony, tungsten, and tin should be on list.	No action: Tungsten is already on the USGS list and no substantial data or information were provided.
Uranium	No	No	No	3	Uranium should be on list due to foreign reliance. Uranium is not a fuel and doesn't meet the EPA definition for fuel.	No action: As described above, for the purposes of the assessment, DOE has determined that uranium used in commercial nuclear power reactors is a fuel based on the plain meaning of fuel.
Vanadium	Yes	No	No	1	Vanadium is needed for the emerging battery technology of ''flow batteries''.	No action: Vanadium is already on the USGS list. DOE will consider this input for future assessments and activities.
Xenon	No	No	No	1	Xenon should be considered—important for manufacturing of energy tech.	No action: The scope of materials for this assessment does not include materials that are used indirectly in the manufacturing process but not contributing to the composition of the components or final products. DOE may consider this input for future assessments and activities.

Signing Authority: This document of the Department of Energy was signed on July 28, 2023, by Dr. Geraldine Richmond, Undersecretary for Science and Innovation 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 July 31, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–16611 Filed 8–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Adoption of Nuclear Regulatory Commission National Environmental Policy Act Documentation for the Operation of Diablo Canyon Power Plant and Republication as a Final DOE Environmental Impact Statement for Award of Credits to Pacific Gas and Electric Company Under the Civil Nuclear Credit Program

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of adoption of National Environmental Policy Act documentation.

SUMMARY: The Department of Energy (DOE) is adopting the Nuclear Regulatory Commission (NRC) National Environmental Policy Act (NEPA) documentation (including that of the Atomic Energy Commission (AEC), the NRC's predecessor agency), for operation of the Diablo Canyon Power Plant (DCPP) under DCPP's operating licenses from the NRC. DOE determined these documents adequate to satisfy DOE NEPA obligations related to its award of credits to Pacific Gas and Electric Company (PG&E), pursuant to the Civil Nuclear Credit (CNC) Program, for the continued operation of the DCPP under DCPP's current operating licenses issued by the NRC. Because the actions covered by this NRC NEPA documentation and the proposed action are substantially the same, DOE is republishing and adopting those NEPA documents as a final DOE Environmental Impact Statement (EIS).

DATES: DOE will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency (EPA) of its Notice of Availability of DOE's adoption of the NRC NEPA documents (EPA Notice) in the **Federal Register**.

ADDRESSES: Copies of this Notice of Adoption may be obtained by contacting Mr. Jason Anderson, Document Manager, by mail at U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, Idaho 83415; or by email to *cnc_program_mailbox@hq.doe.gov.* This Notice of Adoption, as well as other general information concerning the DOE NEPA process, are available for viewing or download at: *https://www.energy.gov/gdo/cnc-cycle-1-diablo-canyon-conditional-award-nepa-documentation.* For general information on the CNC Program, visit *www.energy.gov/gdo/civil-nuclear-credit-program.*

FOR FURTHER INFORMATION CONTACT: Mr. Theodore Taylor, *cnc_program_mailbox@hq.doe.gov,* (202) 586–4316.

SUPPLEMENTARY INFORMATION: Part of the DOE mission is to ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. As described at *www.energy.gov/gdo/civil-nuclear-credit-program,* the CNC Program was established on November 15, 2021, when President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), also known as the Bipartisan Infrastructure Law, into law. Section 40323 of the IIJA (42 U.S.C. 18753) provides $6 billion to establish a program to award civil nuclear credits. The CNC Program is a strategic investment to help preserve the existing U.S. commercial power reactor fleet and save thousands of high-paying jobs across the country.

Under the CNC Program, owners or operators of U.S. commercial power reactors can apply for certification to bid on credits to support the nuclear reactor's continued operation. An application must demonstrate that the nuclear reactor is projected to close for economic reasons and that closure will lead to a rise in air pollutants and carbon emissions, among other conditions. An owner or operator of a certified nuclear reactor whose bid for credits is selected by DOE is then eligible to receive payments from the Federal government in the amount of the credits awarded to the owner or operator, provided it continues to operate the nuclear reactor for the four-year award period (2023 to 2026) and subject to its satisfaction of other specified payment terms. PG&E submitted its application for certification and its bid for credits under the CNC Program on September 9, 2022. DOE made a conditional award of credits to PG&E on November 21, 2022.

NEPA requires Federal agencies to evaluate the environmental impacts of proposals for major Federal actions with the potential to significantly affect the quality of the human environment. Awarding credits for continued operation of a commercial nuclear power reactor under the CNC Program is subject to NEPA. Therefore, to award credits to DCPP, an existing commercial nuclear power plant, DOE conducted a review of the existing NEPA documentation for continued operation of the reactor in accordance with the Council on Environmental Quality (CEQ) and DOE NEPA regulations, 40 CFR 1506.3 and 10 CFR 1021.200(d), respectively. DOE also considered non-NEPA documents, such as available licensing basis documents, the 2021 Safety Analysis Report, Federal and State permits, site reports and documents, and relevant public information to satisfy its obligations under NEPA.

Proposed Action

DOE proposes to award credits to PG&E under the CNC Program for the continued operation of DCPP under DCPP's current NRC operating licenses. While DCPP's current NRC operating licenses are valid until November 2, 2024 (Unit 1) and until August 26, 2025 (Unit 2), they may remain in effect by operation of law beyond those dates in accordance with NRC rules and 5 U.S.C. 558(c). DOE's review and adoption of the NRC NEPA documents covers DOE's proposed action, which occurs during the period that DCPP's current NRC operating licenses remain in effect. The issuance or payment of credits awarded to PG&E beyond the period that DCPP's current NRC operating licenses remain in effect would be dependent on PG&E's compliance with NRC requirements applicable to license renewal. DOE would consider the need for further NEPA review prior to deciding whether to issue any credits or make any

[14] *https://www.energy.gov/sites/default/files/2022-02/Wind%20Supply%20Chain%20Report%20-%20Final%202.25.22.pdf.*

[15] *https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf.*

payments during the period of operation under an NRC license renewal.[1]

NEPA Document Review

Because DOE did not participate as a cooperating agency in the preparation of the NRC NEPA documents,[2] in accordance with 10 CFR 1021.200(d), DOE conducted a review to determine if the NRC documentation ''meets the standards for an adequate statement, assessment, or determination'' under the CEQ NEPA regulations and an evaluation of whether ''the actions covered by the original environmental impact statement and the proposed action are substantially the same.'' 40 CFR 1506.3. DOE reviewed the following NRC NEPA documents:

- U.S. Atomic Energy Commission Final Environmental Statement related to the Nuclear Generating Station Diablo Canyon Units 1 & 2 (AEC 1973);
- U.S. Nuclear Regulatory Commission Addendum to the Final Environmental Statement for the Operation of the Diablo Canyon Nuclear Power Plant Units 1 & 2 (NRC 1976);
- U.S. Nuclear Regulatory Commission Pacific Gas and Electric Company Diablo Canyon Nuclear Power Plant, Units 1 and 2 Notice of Issuance of Environmental Assessment and Finding of No Significant Impact (NRC 1993);
- U.S. Nuclear Regulatory Commission Environmental Assessment Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (NRC 2003); and
- U.S. Nuclear Regulatory Commission Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (NRC 2007).

DOE's review of the DCPP NRC NEPA documents was guided by the NRC's 2013 Generic Environmental Impact Statement (GEIS) (NUREG 1437, Revision 1). The 2013 GEIS examines the possible environmental impacts that could occur as a result of renewing licenses of individual nuclear power plants under 10 CFR part 54. The GEIS, to the extent possible, establishes the bounds and significance of these potential impacts. While DOE's proposed action does not cover license renewal of DCPP beyond the current licenses in effect, the analyses in the GEIS encompass all operating light-water nuclear power reactors in the United States and provide a reasonable analytical structure for DOE's review of its proposed action to provide financial support for continued operation of existing NRC licensed light-water nuclear power reactors.

In 1967 and 1968, PG&E submitted license applications for the construction and operation of DCPP to the AEC. In 1973, the AEC issued a final Environmental Statement (ES) related to construction and operation of DCPP. The NRC updated some of the analyses and issued an addendum to the ES in 1976. The NRC documents analyzed the potential environmental impacts associated with construction and operation of DCPP. In 1981, the Atomic Safety and Licensing Board Panel, an independent adjudicatory body of the NRC, authorized the issuance to PG&E of two NRC licenses, DPR–80 and DPR–82, for operation of DCPP. Based on its review of the NRC NEPA documents, and subsequent documents as referenced in the DOE EIS (including available licensing basis documents, Federal and State permits, site reports and documents, and relevant public information), DOE has determined that the documents meet the standards for an adequate statement, assessment, or determination under CEQ NEPA regulations and the actions covered by the NRC NEPA documents are substantially the same as the actions proposed to be undertaken with respect to the award of credits described herein. In this instance, DOE's action is proposed financial support for the continuing operation of DCPP, and NRC has permitting (licensing) authority over the same project. DOE took a hard look at the environmental effects of the planned action, including the analysis in prior NRC NEPA documents and other environmental documents. DOE concluded that the NEPA documentation is adequate for continued operation during the period that DCPP's current operating licenses remain in effect. Therefore, DOE has adopted the NRC NEPA documents as a single DOE EIS (DOE/EIS–0555).

While the NRC NEPA documents themselves are the basis of this adequacy review, it is permissible to use non-NEPA documents, such as available licensing basis documents, Federal and State permits, site reports and documents, and relevant public information in DOE's analysis. Further, as a condition of the Environmental Protection Plan (EPP) which is part of the NRC licenses for operation of DCPP, PG&E is required to report ''unreviewed environmental questions'' which ''may result in a significant increase in any adverse environmental impact previously evaluated in the final environmental statement.'' Implementation of such changes are subject to prior approval by the NRC in the form of a license amendment incorporating the appropriate revision into the EPP. PG&E is required to submit an annual report identifying if any of these events occurred. For example, PG&E's most recent report to the NRC with respect to DCPP, dated May 1, 2023, reported that there were no EPP noncompliances nor changes in plant design or operation, tests, or experiments involving an unreviewed environmental question during 2022. These documents were included in DOE's review and are consistent with the NRC NEPA documents.

DOE determined that the project analyzed in the NEPA documents is substantially the same project for which DOE is considering awarding credits as part of the CNC Program, namely the continued operation of DCPP under its NRC operating licenses, and that the NEPA documents meet the standards for an adequate statement, assessment, or determination under the CEQ NEPA regulations. Additional details on that review are summarized below.

Potential Environmental Impacts

The existing NEPA documents as well as available public documents were reviewed by DOE to satisfy DOE's obligations under NEPA. The NEPA resource areas reviewed by DOE included land use and visual resources, meteorology and air quality, noise, geologic environment, biological resources, water resources, ecological resources, historic and cultural resources, socioeconomics, human health, environmental justice, waste management, transportation, intentional destructive acts, and cumulative impacts.

The NRC's 1996 GEIS (NUREG 1437) examines the possible environmental impacts that could occur because of

[1] The NRC has granted PG&E a one-time exemption for DCPP from 10 CFR 2.109(b) to allow PG&E to submit a license renewal application for DCPP less than 5 years prior to expiration of the current operating licenses, but no later than December 31, 2023. U.S. Nuclear Regulatory Commission, *Pacific Gas and Electric Company Diablo Canyon Power Plant, Units 1 and 2 Exemption,* ADAMS Accession No. ML 23026A109 (NRC 2023). As the NRC explained, ''[t]he decision to issue PG&E an exemption from 10 CFR 2.109(b) does not constitute approval of the license renewal application PG&E intends to submit by December 31, 2023. Rather, this exemption provides that if PG&E submits an application by December 31, 2023, and the application is sufficient for docketing, the licensee will receive timely renewal protection under 10 CFR 2.109(b) while the NRC evaluates that application.''

[2] For ease of reference, documents prepared by either the AEC or the NRC are referred to as ''NRC documents'' or the ''NRC NEPA documents,'' unless a specific AEC document is identified.

renewing licenses of individual nuclear power plants under 10 CFR part 54. The GEIS, to the extent possible, establishes the bounds and significance of these potential impacts. The analyses in the GEIS encompass all operating light-water power plants. As part of the review, DOE considered the resource areas analyzed in the 2013 GEIS and listed above.

DOE's review of the NRC NEPA documents and other available information for DCPP indicates the impact findings in the existing NEPA documentation remains adequate through the current operating licenses and that the impacts of continued DCPP operation would be consistent with the impacts of current and historic operations.

DOE found that there was sufficient information in the documents reviewed by DOE to complete DOE's analysis and to determine that the NEPA documents remain adequate, despite the age of many of these documents. In its review, DOE did not identify significant new circumstances or information relevant to environmental concerns and bearing on the proposed award of credits or the impact of the award of credits and therefore, no supplemental EIS is required. In addition, DCPP complies with Federal, State, and local environmental regulations, requirements, and agreements, and it operates using best management practices. Further, DOE determined that the proposed action is substantially the same as the proposed action analyzed in the existing NEPA documents: both the NRC's issuance of an operating license to DCPP pursuant to the NEPA documents and DOE's award of credits under the CNC Program for DCPP have the purpose and effect of allowing for the continued operation of DCPP. DOE's award of credits under the CNC Program for the period that DCPP's current NRC license remains in effect does not change the existing location, design, construction, size, fuel usage, production of electricity, or environmental impacts of DCPP as evaluated by the NEPA documents and for which the NRC has issued an operating license. In light of the foregoing, DOE finds the NEPA documentation is adequate for continued operation through the period that DCPP's current NRC operating licenses remain in effect. Therefore, DOE is adopting and republishing the NRC NEPA documents as a single final EIS (DOE/EIS–0555).

Signing Authority

This document of the DOE was signed on July 28, 2023, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 28, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–16448 Filed 8–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–280]

Lake Lynn Generation, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Temporary Variance from Reservoir Elevation.

b. *Project No.:* 2459–280.

c. *Date Filed:* July 14, 2023.

d. *Applicant:* Lake Lynn Generation, LLC.

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* The Lake Lynn Hydroelectric Project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ben Lenz, Licensing and Compliance Manager, 7315 Wisconsin Avenue, Ste. 1100W, Bethesda, MD 20814, (203) 240–3664.

i. *FERC Contact:* Zeena Aljibury, (202) 502–6065, *zeena.aljibury@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 20 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2459–280. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests Commission approval for a temporary variance from the reservoir elevation requirements at Lake Lynn. Due to lack of precipitation and low reservoir inflows, the applicant requests to reduce the seasonal minimum allowable reservoir elevation from 868 feet to 865 feet to increase spillway discharge in order to mitigate low tailrace dissolved oxygen levels (DO). When inflow to the reservoir is not equal to the discharge needed to maintain DO concentration in the project tailwater at the minimum standard (5.0 milligrams per liter), the applicant would increase project discharge in 25 cubic feet per second increments and subsequently lower the reservoir elevation below 868 feet but no less than 865 feet. If necessary to minimize the impact of lower reservoir elevations, the applicant proposes to open the winter boat launch at Cheat Lake Park, which allows boat access at lower reservoir elevations. Additionally, the applicant proposes to contact local

marinas, post a notice on its public information website, and provide information to Cheat Lake Environment and Recreation Association and Friends of the Cheat to inform recreation users and shoreline property owners of any expected lower reservoir elevations. The applicant requests the temporary variance to remain into effect until November 1, 2023.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16630 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3571–041]

Central Oregon Irrigation District; Notice of Application for Amending Project Boundary and Amending Article 411 Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* 3571–041.

c. *Date Filed:* June 29, 2023.

d. *Applicant:* Central Oregon Irrigation District.

e. *Name of Project:* Central Oregon Siphon Hydroelectric Project.

f. *Location:* The project is located on the Deschutes River in Deschutes County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Craig Horrell, (541) 548–6047.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* August 28, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–3571–041. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee is requesting to amend Article 411 to reflect new locations for the required recreation trail, toilet, and trash receptacle. Additionally, the licensee is requesting to modify the location of a project access road. Accordingly, the licensee is requesting to amend the project boundary to reflect these changes.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should

so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16627 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–21–000; Docket No. CP22–22–000]

Venture Global CP2 LNG, LLC; Venture Global CP Express, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed CP2 LNG and CP Express Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the CP2 LNG and CP Express Projects (Project), proposed by Venture Global CP2 LNG, LLC (CP2 LNG) and Venture Global CP Express, LLC (CP Express) in the above-referenced docket. CP2 LNG and CP Express request authorizations to construct, install, own, operate, and maintain certain liquefied natural gas (LNG) facilities in Cameron Parish, Louisiana and certain pipeline facilities in Cameron and Calcasieu Parishes, Louisiana and Jasper and Newton Counties, Texas.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts. However, most of these impacts would be less-than-significant, with the exception visual resources, including cumulative visual impacts, and visual impacts on environmental justice communities in the region. Climate change impacts are not characterized in the EIS as significant or insignificant. As part of the analysis, Commission staff developed specific mitigation measures (included in the final EIS as recommendations). Staff recommend that these mitigation measures be attached as conditions to any authorization issued by the Commission.

The U.S. Army Corps of Engineers New Orleans and Galveston Districts, U.S. Department of Energy, U.S. Coast Guard, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, and National Marine Fisheries Service participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers New Orleans and Galveston Districts will adopt and use the EIS to consider compliance with section 404 of the Clean Water Act of 1972, as amended and section 10 of the Rivers and Harbors Act of 1899. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the Project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- a liquefaction plant consisting of 18 liquefaction blocks and ancillary support facilities, each block having a nameplate capacity of about 1.1 million tonnes per annum of LNG;
- six pretreatment systems, each including an amine gas-sweetening unit to remove carbon dioxide (CO_2) and a molecular sieve dehydration system to remove water;
- four 200,000 cubic meter aboveground full containment LNG storage tanks with cryogenic pipeline connections to the liquefaction plant and the berthing docks;
- carbon capture and sequestration facilities, including carbon capture equipment within the terminal site as well as a non-jurisdictional CO_2 send-out pipeline outside of the terminal site; [1]
- a combined cycle natural gas turbine power plant with a nameplate capacity of 1,470 megawatts;
- two marine LNG loading docks and turning basins and three cryogenic lines for LNG transfer from the storage tanks to the docks;
- administration, control, maintenance, and warehouse buildings and related parking lots;
- 85.4 miles of 48-inch-diameter natural gas pipeline (CP Express Pipeline);
- 6.0 miles of 24-inch-diameter natural gas lateral pipeline connecting to the CP Express Pipeline in northwest Calcasieu Parish (Enable Gulf Run Lateral);
- one 187,000-horsepower natural gas-fired compressor station (Moss Lake Compressor Station);
- six meter stations (five at interconnects with existing pipelines and one at the terminus of the CP

[1] CP2 LNG anticipates this pipeline would be installed under the southern portion of the Terminal Site floodwall and terminate at a non-jurisdictional offshore platform in State of Louisiana waters.

Express Pipeline within the Terminal Site); and

- other appurtenant facilities.[2]

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'', and enter the docket number in the ''Docket Number'' field (*i.e.* CP22–21 or CP22–22). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16632 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

[2] The LNG terminal would also include the following non-jurisdictional facilities: electrical transmission line and substation, water pipeline, septic system, and stormwater facilities/outfalls.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–87–000.

Applicants: Spruce Power Holding Corporation.

Description: Petition for Declaratory Order of Spruce Power Holding Corporation.

Filed Date: 7/28/23.

Accession Number: 20230728–5227.

Comment Date: 5 p.m. ET 8/28/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1452–003.

Applicants: Delta's Edge Solar, LLC.

Description: Compliance filing: Compliance to 3 to be effective 12/31/9998.

Filed Date: 7/28/23.

Accession Number: 20230728–5162.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER21–1453–003.

Applicants: Crossett Solar Energy, LLC.

Description: Compliance filing: Compliance to 3 to be effective 12/31/9998.

Filed Date: 7/28/23.

Accession Number: 20230728–5166.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER22–1482–001.

Applicants: Blythe Mesa Solar II, LLC.

Description: Compliance filing: Notice of Revised Market-Based Rate Tariff to be effective 7/31/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5167.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–1569–001.

Applicants: Yellowbud Solar, LLC.

Description: Tariff Amendment: Response to Deficiency Notice to be effective 5/8/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5196.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2510–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–07–28 Short-Term Wheeling Through Self-Schedule Priorities Tariff Amendment to be effective 11/1/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5177.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2511–000.

Applicants: Hardy Hills Solar Energy LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 9/27/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5195.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2512–000.

Applicants: SR Canadaville, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5198.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2513–000.

Applicants: SR Canadaville Lessee, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/28/23.

Accession Number: 20230728–5208.

Comment Date: 5 p.m. ET 8/18/23.

Docket Numbers: ER23–2514–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Aug 2023 Membership Filing to be effective 8/1/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5008.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2515–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6167; Queue No. AE1–101 to be effective 9/29/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5047.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2516–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5889; Queue Nos. AC2–186,AC2–187 et al to be effective 9/29/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5058.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2517–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–07–31_SA 3028 Ameren IL-Prairie Power Project #39 Macomb to be effective 9/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5064.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2518–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Q2 2023 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 6/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5078.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2519–000.

Applicants: Sunrise Power Company, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status to be effective 9/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5088.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2520–000.

Applicants: SR Litchfield, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5097.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2521–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): SWE (PowerSouth Territorial) NITSA 2023 Rollover Filing to be effective 7/1/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5102.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2522–000.

Applicants: SR Georgetown, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5104.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2523–000.

Applicants: SR Lambert I, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5106.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2524–000.

Applicants: SR Lambert II, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/27/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5108.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2525–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–07–31_SA 6521 MISO-Union Electric Second SSR Agreement for Rush Island to be effective 9/1/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5113.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2526–000.

Applicants: GreenStruxure LOR008, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 9/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5125.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2527–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6887; Queue No. AE2–219 (amend) to be effective 9/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5133.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2528–000.

Applicants: NG Renewables Energy Marketing, LLC.

Description: § 205(d) Rate Filing: 2023–07–31 Notice of Change In Status, Tariff Amendment, and Waiver Requests to be effective 8/1/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5136.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2529–000.

Applicants: Dunns Bridge Solar Center, LLC.

Description: Compliance filing: Notice of Non-Material Change in Status and MBR Tariff Revisions to be effective 9/30/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5137.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2530–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 67 to be effective 9/29/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5146.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2531–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7010; Queue No. AF1–094 to be effective 6/29/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5153.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2532–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Lea County Electric Cooperative, Inc. Formula Rate Filing to be effective 10/1/2023.

Filed Date: 7/31/23.

Accession Number: 20230731–5167.

Comment Date: 5 p.m. ET 8/21/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: July 31, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16701 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and

Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–62–000.
Applicants: Hope Gas, Inc.
Description: § 284.123 Rate Filing: HGI—Revised Statement of Operating Conditions to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5001.
Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: RP23–922–000.
Applicants: Dauphin Island Gathering Partners.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—08.01.23—Chevron to be effective 8/1/2023.
Filed Date: 7/28/23.
Accession Number: 20230728–5161.
Comment Date: 5 p.m. ET 8/9/23.

Docket Numbers: RP23–923–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate—Central FL Perm Release to FPUC to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5020.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–924–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Remove Expired Negotiated Rate Agreement—7/31/2023 to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5046.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–925–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement 7.31.23 to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5050.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–926–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco August 2023) to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5052.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–927–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree Aug 2023) to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5055.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–928–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20230731 Negotiated Rate to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5063.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–929–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: National Fuel Rate Case 2023 to be effective 9/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5076.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–930–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: § 4(d) Rate Filing: SGSC General Section 4 Rate Case to be effective 9/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5079.
Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–931–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements—Southern Company and Spire AL Aug 2023 to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5084.
Comment Date: 5 p.m. ET 8/14/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–1031–005.
Applicants: Transwestern Pipeline Company, LLC.
Description: Compliance filing: RP22–1031 Settlement Compliance Filing to be effective 8/1/2023.
Filed Date: 7/31/23.
Accession Number: 20230731–5028.
Comment Date: 5 p.m. ET 8/14/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 31, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16700 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–513–000]

Port Arthur Pipeline, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on July 14, 2023, Port Arthur Pipeline, LLC (PAPL), 1500 Post Oak Blvd., Suite 1000, Houston, Texas 77056, filed an application under section 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization for its Amendment of the Louisiana Connector Project (Amendment Project). The Amendment Project consists of modifications to the pipeline alignment, construction footprint, and installation methods for the Louisiana Connector Project that was authorized by the Commission in April 2019, in Docket No. CP18–7–000 (April 2019 Order).[1] PAPL states that the Amendment Project will reduce the environmental impacts, enhance construction procedures, and accommodate landowners' requests.

[1] *Port Arthur LNG, LLC, et. al.* 167 FERC ¶ 61,052 (2019).

PAPL's application indicates that the total cost of the Louisiana Connector Project as approved in the April 2019 Order will not be altered because of the proposed modifications, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Jerrod L. Harrison, Assistant General Counsel Sempra Infrastructure, 488 8th Avenue, San Diego, CA 92101, by phone at (619) 696–2987, or by email at *jharrison@sempraglobal.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 18, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[3] and 385.211[4] of the Commission's regulations under the NGA, any person[5] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[6] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before August 18, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23–513–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23–513–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[7] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[8] and the regulations under

[2] 18 CFR (Code of Federal Regulations) § 157.9.

[3] 18 CFR 157.10(a)(4).

[4] 18 CFR 385.211.

[5] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[6] 18 CFR 385.2001.

[7] 18 CFR 385.102(d).

[8] 18 CFR 385.214.

the NGA [9] by the intervention deadline for the project, which is August 18, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–513–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–513–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Jerrod L. Harrison, Assistant General Counsel Sempra Infrastructure, 488 8th Avenue, San Diego, CA 92101 or by email at: *jharrison@sempraglobal.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [10] motions to intervene are automatically granted by operation of Rule 214(c)(1).[11] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[12] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 18, 2023.

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16626 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

[9] 18 CFR 157.10.

[10] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[11] 18 CFR 385.214(c)(1).

[12] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–516–000]

East Tennessee Natural Gas, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on July 18, 2023, East Tennessee Natural Gas, LLC (East Tennessee), 915 North Eldridge Parkway, Suite 1100, Houston, Texas 77079, filed an application under sections 7(c), of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to provide 300,000 dekatherms per day of new firm natural gas transportation capacity and up to 95,000 dekatherms of Customized Delivery Service to the (TVA) Tennessee Valley Authority by construct, modify, install, own, and operate the following facilities of Ridgeline Expansion Project (Project).

Specifically, the Project consists of: (i) approximately 110 miles of 30-inch diameter mainline pipeline and approximately 4 miles of 30-inch diameter header pipeline; (ii) approximately 8 miles of 24-inch diameter lateral pipeline; (iii) new compressor station consisting of two centrifugal compressor packages driven by electric motor drives rated to 7,300 (HP) horsepower for a total of 14,600 HP); (v) a new meter and regulating (M&R) station to receive gas from Columbia Gulf Transmission, LLC; (vi) modifications to two existing M&R stations to receive gas from Texas Eastern Transmission, LP and Midwestern Gas Transmission Company; (vii) new delivery meter station to measure gas delivered to the Kingston Fossil Plant; and (viii) related appurtenances. The Ridgeline Expansion Project are located in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, Roane, counties, Tennessee. The total cost of the Project to be $1,105,000,000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has

suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Amish George, Manger, Rates and Certificates at East Tennessee Natural Gas LLC., P.O. Box 1642, Houston, TX 77251–1642 by phone at (713) 627–5120, or by email at *anish.george@enbridge.com.*

On May 20,2022 the Commission granted the Applicant's request to utilize the National Environmental Policy Act Pre-Filing Process and assigned Docket No. PF22–7–000 to staff activities involved in the Project. Now, as of the filing of the July 18, 2023, application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP23–516–000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

East Tennessee's application states that a water quality certificate under section 401 of the Clean Water Act is required for the project from Tennessee Department of Environment and Conservation. The request for certification must be submitted to the certifying agency and to the Commission concurrently. Proof of the certifying agency's receipt date must be filed no later than five (5) days after the request is submitted to the certifying agency.

[1] 18 CFR (Code of Federal Regulations) 157.9.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 18, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before August 18, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23–516–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23–516–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is August 18, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23–516–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–516–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

Protests and motions to intervene must be served on the applicant either by mail or email at: Amish George, Manger, Rates and Certificates at East Tennessee Natural Gas LLC., P.O. Box 1642, Houston, TX 77251–1642, or by email at *anish.george@enbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on August 18, 2023.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16629 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2513–000]

SR Canadaville Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR Canadaville Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 31, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16697 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–200–000]

Transcontinental Gas Pipe Line Company, LLC; Northern Natural Gas Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Pelto Area Abandonment Project

On April 20, 2023, Transcontinental Gas Pipe Line Company, LLC (Transco) and Northern Natural Gas Company (Northern) filed an application in Docket No. CP23–200–000 requesting an Authorization pursuant to section 7(b) of the Natural Gas Act to abandon certain natural gas pipeline facilities. The facilities proposed for abandonment have not been utilized since at least 2020 and Transco and Northern do not anticipate that any additional flow through these facilities will occur in the future. The proposed project is known as the Pelto Area Abandonment Project (Project).

On May 3, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA	December 1, 2023
90-day Federal Authorization Decision Deadline[2]	February 29, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Transco and Northern seek to abandon six pipeline segments with different ownership interests that total about 32.1 miles. Project pipelines in federal waters are within a Bureau of Ocean Energy Management (BOEM) identified Significant Sediment Resource Area and BOEM requires that Transco and Northern remove those pipelines as part of the proposed abandonment. Similarly, the Louisiana Office of State Lands requires removal of abandoned pipelines within state waters. Transco and Northern propose to abandon by removal a total of 26.5 miles of pipeline in federal waters and abandon by removal a total of 5.6 miles of pipeline within Louisiana state waters. Transco and Northern also propose to abandon the pipeline in-place at active foreign pipeline crossings for a total of approximately 0.20 to 0.41 mile. Additionally, Transco proposes to abandon risers in place from the PL–10 and PL–11 Platforms, abandon risers by removal from the SS–70 Platform, and remove metering and associated equipment from the PL–10, PL–11, and SS–91 Platforms in federal waters.

Background

On June 14, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Pelto Area Abandonment Project* (Notice of Scoping). The Notice of Scoping was sent to federal and state government agencies and other interested parties. In response to the Notice of Scoping, the Commission received comments from the U.S. Environmental Protection Agency and the Choctaw Nation of Oklahoma. The primary issues raised by the U.S. Environmental Protection Agency are air quality, noise, and environmental justice. The Choctaw Nation of Oklahoma stated that the Project lies outside of its area of historic interest. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP23–200–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: July 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16631 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2511–000]

Hardy Hills Solar Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hardy Hills Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 31, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16699 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2512–000]

SR Canadaville, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SR Canadaville, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and

others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: July 31, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–16698 Filed 8–3–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–080]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed July 24, 2023 10 a.m. EST Through July 31, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230092, Final, FERC, LA, CP2 LNG and CP Express Project, Review Period Ends: 09/05/2023, Contact: Office of External Affairs 866–208–3372.

EIS No. 20230093, Final, USN, DC, Proposed Land Acquisition at Washington Navy Yard, Washington, DC, Review Period Ends: 09/05/2023, Contact: Nik Tompkins-Flagg 202–685–8437.

EIS No. 20230094, Draft Supplement, BLM, CO, Colorado River Valley Field Office and Grand Junction Field Office Supplemental EIS, Comment Period Ends: 11/01/2023, Contact: Bruce Krickbaum 970–240–5399.

EIS No. 20230095, Final, DOE, CA, ADOPTION—Final Environmental Impact Statement for the Civil Nuclear Credit Program Proposed Award of Credits to Pacific Gas and Electric Company for Diablo Canyon Power Plant, Review Period Ends: 09/05/2023, Contact: Jason Anderson 208–360–3437.

The Department of Energy (DOE) has adopted the Atomic Energy Commission's (now NRC's) Final EIS No. 73 0948F, filed 06/04/1973 with the Council of Environmental Quality. The DOE was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20230096, Draft, NHTSA, REG, Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks, Model Years 2027–2032, and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans, Model Years 2030–2035, Comment Period Ends: 10/04/2023, Contact: Hannah Fish 202–366–1099.

Dated: July 31, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–16653 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11247–01–R5]

Public Water System Supervision Program Approval for the State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has approved the State of Ohio's revisions to the State's Public Water System Supervision (PWSS) Program under the federal Safe Drinking Water Act (SDWA) for adoption of the federal Ground Water Rule. The EPA has determined that the State's PWSS program regulations and the revisions thereto are no less stringent than the corresponding federal regulations for the Ground Water Rule, and thus gives the Ohio Environmental Protection Agency primary enforcement responsibility for the Ground Water Rule. This determination on the State's request for approval of such primacy enforcement responsibility shall take effect in accordance with procedures described below, subject to timely substantial requests for public hearing.

DATES: Any interested party may request a public hearing on this determination. A request for a public hearing must be submitted by September 5, 2023. The EPA Region 5 Administrator may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made by September 5, 2023, EPA Region 5 will hold a public hearing, and a notice of such hearing will be published in the **Federal Register** and a newspaper of general circulation. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination; a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing upon her own motion, this determination shall become final and effective on September 5, 2023 and no further public notice will be issued.

ADDRESSES: To receive copies of documents related to this determination, please contact Stacy Meyers at *meyers.stacy@epa.gov* or (312) 886–0880. Documents relating to this determination are available for inspection at the following locations during normal business hours and when the offices are open: Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, Compliance Assurance Section, 50 W Town St., Suite 700, Columbus, Ohio 43215; and the U.S. Environmental Protection Agency Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 W Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Stacy Meyers, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–0880, or at *meyers.stacy@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR part 142.

Dated: July 28, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–16633 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0033; FRL–11107–01–OW]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Modification of Secondary Treatment Requirements for Discharges into Marine Waters (Renewal)'' (EPA ICR Number. 0138.12, Office of Management and Budget (OMB) Control Number. 2040–0088) 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 comment on specific aspects of the proposed information collection as described below. This is a proposed extension of the Information Collection Request (ICR), which is currently approved through April 30, 2024. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before October 3, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–2003–0033, to EPA online using *https://www.regulations.gov/* (our preferred method), by email to *OW-Docket@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: Virginia Fox-Norse, Oceans, Wetlands and Communities Division, Office of Water, (4504T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1266; email address: *fox-norse.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through April 30, 2024. 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 notice allows 60 days for public comments. Supporting documents that explain in detail the information that 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 EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, 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** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The CWA section 301(h) program involves collecting information from two sources: (1) the municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. A POTW with or applying for renewal of modified secondary treatment limits submits information to EPA, whether monitoring and toxic control program information, or its application for renewal. The state provides information on its determination whether the discharge under the proposed conditions of the 301(h) modification ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are four situations where information will be required under the CWA section 301(h) program:

(1) A POTW reapplying for a CWA section 301(h) modification. As the permits with section 301(h) modifications reach their expiration dates, EPA must have updated information on the discharge to determine whether the CWA section 301(h) criteria are still being met and whether the CWA section 301(h) modification should be reissued. Under 40 CFR 125.59(f), each CWA section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date; 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the CWA section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a permit modification has been granted, EPA must continue to assess whether the discharge is meeting CWA section 301(h) criteria, and whether the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) modification must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. In addition, 40 CFR 125.68(d) requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by 40 CFR 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: 40 CFR 125.59(d) allows a POTW to revise its application one time only,

following a tentative decision by EPA to deny the section 301(h) modification request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for CWA section 301(h) modifications, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This determination helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the CWA section 301(h) application and develops permit conditions. For revised and renewed CWA section 301(h) modification applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that any Federal license or permit meets all state water quality laws it issues with a CWA section 301(h) modification, and the state accepts all the permit conditions. This information is how the state can exercise its authority to concur with or deny a CWA section 301(h) decision made by an EPA regional office.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those municipalities that currently have CWA section 301(h) modifications from secondary treatment or have applied for a renewal of a CWA section 301(h) modification, and the states within which these municipalities are located.

Respondent's obligation to respond: Voluntary, required to obtain or retain a benefit.

Estimated number of respondents: 31 (total).

Frequency of response: From once every five years, to varies case-by-case, depending on the category of information.

Total estimated burden: 44,985 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1.3 million (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: A decrease of hours in the total estimated respondent burden is expected compared with the ICR currently approved by OMB. EPA expects the numbers will decrease due to changes in respondent universe, use of technology, etc.

Brian Frazer,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2023–16643 Filed 8–3–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institution effective as of the Date Closed as indicated in the listing.

SUPPLEMENTARY INFORMATION: This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *www.fdic.gov/bank/individual/failed/banklist.html,* or contact the Chief, Receivership Oversight at *RO@fdic.gov* or at Division of Resolutions and Receiverships, FDIC, 600 North Pearl Street, Suite 700, Dallas, TX 75201.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10544	Heartland Tri-State Bank	Elkhart	KS	07/28/2023

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on August 1, 2023.

Nicholas S. Kazmerski,

Acting Assistant Executive Secretary.

[FR Doc. 2023–16696 Filed 8–3–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9143–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published in the 3-month period, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact

persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	William Parham	(410) 786–4669
VII Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749
VIII American College of Cardiology—National Cardiovascular Data Registry Sites.	Sarah Fulton, MHS	(410) 786–2749
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby, MA	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities.	David Dolan, MBA	(410) 786–3365
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: August 4, 2022 (87 FR 47751) November 14, 2022 (87 FR 68161), February 1, 2023 (88 FR 6729), and May 12, 2023 (88 FR 30752). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (April through June 2023)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual Medicare Policy Updates for Dental Services as Finalized in the Calendar Year (CY) 2023 Physician Fee Schedule (MPFS) Final Rule (CMS-Pub. 100-02) Transmittal No. 11995.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
11991	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11992	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12046	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-01, IOM Chapter 2 Hospital Insurance and Supplementary Medical Insurance
Medicare Benefit Policy (CMS-Pub. 100-02)	
11995	Medicare Policy Updates for Dental Services as Finalized in the Calendar Year (CY) 2023 Physician Fee Schedule (MPFS) Final Rule
12047	Educational Instructions for the Implementation of the Medicare Payment Provisions for Dental Services as Finalized in the Calendar Year (CY) 2023 Physician Fee Schedule (PFS) Final Rule
Medicare National Coverage Determination (CMS-Pub. 100-03)	
	None
Medicare Claims Processing (CMS-Pub. 100-04)	
11939	Process Improvements for the National Coordination of Benefits Agreement (COBA) Detailed Error Reporting Notification Process
11941	Correction to Manual for Outlier Calculations Changes to Pricer Logic Effective April 1, 2002
11943	New Waived Tests
11955	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11957	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11963	Religious Nonmedical Health Care Institution Provisions of the Consolidated Appropriations Act (CAA) of 2023
11964	Telehealth Code Reporting and Date Matching Edit for Home Health Claims
11965	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11966	Adding Claim Through Date to Home Health Grouper interface
11978	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11980	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11981	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11983	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11987	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

11988	Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Patient-Driven Payment Model (PDPM) Claims Processing Updates to Current Editing
11998	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12003	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Create a Search Screen to Return Editing Associated to a Procedure Code
12009	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12012	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12013	Inflation Reduction Act Section 11407: Limitations on Monthly Coinsurance and Adjustments to Supplier Payment Under Medicare Part B for Insulin Furnished Through Durable Medical Equipment (DME) IMPLEMENTATION
12014	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12021	Quarterly Update for Clinical Laboratory Fee Schedule (CLFS) and Laboratory Services Subject to Reasonable Charge Payment
12023	Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Patient-Driven Payment Model (PDPM) Claims Processing Updates to Current Editing
12026	Annual Updates to the Prior Authorization/Pre-Claim Review Federal Holiday Schedule Tables for Generating Reports
12029	Quarterly Update to the End-Stage Renal Disease Prospective Payment System (ESRD PPS)
12030	Quarterly Update to Home Health (HH) Grouper
12031	October 2023 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
12033	Implement Operating Rules - Phase III Electronic Remittance Advice (ERA) Electronic Funds Transfer (EFT): Committee on Operating Rules for Information Exchange (CORE) 360 Uniform Use of Claim Adjustment Reason Codes (CARC), Remittance Advice Remark Codes (RARC) and Claim Adjustment Group Code (CAGC) Rule - Update from Council for Affordable Quality Healthcare (CAQH) CORE
12034	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
12035	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12036	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12043	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
12045	Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens and New Updates for 2023
12048	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - July 2023 Update
12050	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12052	July 2023 Quarterly Update to Healthcare Common Procedure Coding System (HCPCS) Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
12053	July 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS)
12054	Issued to a specific audience, not posted to

	Internet/Intranet due to a Confidentiality of Instruction
12055	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12059	July 2023 Integrated Outpatient Code Editor (I/OCE) Specifications Version 24.2
12060	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
12061	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12062	July 2023 Quarterly Update to Healthcare Common Procedure Coding System (HCPCS) Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
12067	New Claims Modifier Requirement for Drugs and Biologicals from a Single-Dose Container or Single-Use Package
12068	July Quarterly Update for 2023 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
12069	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
12070	Internet Only Manual Update to Publication 100-04, Chapters 9 and 18 to Clarify Vaccine Payment Instructions for Rural Health Clinics (RHCs) and Federally Qualified Health Centers (FQHCs)
12072	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - July 2023 Update
12076	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
12077	July 2023 Update of the Hospital Outpatient Prospective Payment System (OPPS)
12081	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 29.3, Effective October 1, 2023
12082	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12084	October 2023 (2024 File) Update of the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM)
12085	October 2023 (2024 File) Update of the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM)
12086	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12087	Fiscal Year (FY) 2024 Annual Update to the Medicare Code Editor (MCE) and International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) and Procedure Coding System (ICD-10-PCS)
12088	October 2023 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
12089	New Waived Tests
12096	Instructions for Downloading the Medicare ZIP Code File for October 2023 Files
12097	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) October 2023
12099	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System
Medicare Secondary Payer (CMS-Pub. 100-05)	
11996	Significant Updates to Internet Only Manual (IOM) Publication (Pub.) 100-05 Medicare Secondary Payer (MSP) Manual, Chapter 6
11997	Electronic Correspondence Referral System (ECRS) Updates to the Hierarchy Business Rules For Part D Drug Records and Added Alert Notifications Closed Request Inquiries Block,

	Completed ECRS Request and Inquiry Page, New Action Code Options and Clarified Zip File Usage
12028	Update the International Classification of Diseases, Tenth Revision (ICD-10) 2024 Tables in the Common Working File (CWF) for Purposes of Processing Non-Group Health Plan (NGHP) Medicare Secondary Payer (MSP) Records and Claims
Medicare Financial Management (CMS-Pub. 100-06)	
11945	Notice of New Interest Rate for Medicare Overpayments and Underpayments -3rd Qtr Notification for FY 2023
12027	The Fiscal Intermediary Shared System (FISS) Submission of Copybook Files to the Provider and Statistical Reimbursement (PS&R) System
Medicare State Operations Manual (CMS-Pub. 100-07)	
	None
Medicare Program Integrity (CMS-Pub. 100-08)	
11938	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11944	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11946	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11947	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11949	Third Policy Change Request (CR) Regarding Implementation of the Provider Enrollment, Chain and Ownership System (PECOS) 2.0
11959	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11960	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
11961	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11962	Updates of Chapters 4 and 8 in Publication (Pub.) 100-08, Including Point of Contact Clarification and Update to Statistical Sampling Terminology
11968	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
11970	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12010	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12016	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12024	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12028	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12039	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12040	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
12041	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

12042	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12044	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12056	Update to Chapter 3 of Publication (Pub.) 100-08 (Program Integrity Manual (PIM)) for the Voluntary Prior Authorization (PA) Process for Durable Medical Equipment, Prosthetics, Orthotics, Supplies (DMEPOS) Accessories
12057	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12058	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12063	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12064	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12065	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12073	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12074	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12079	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12098	July 2023 Update of the Ambulatory Surgical Center [ASC] Payment System

Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
11956	Updates to Pub. 100-09, Chapter 6 Beneficiary and Provider Communications Manual, Chapter 6, Provider Customer Service Program
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
126	Update to Section 20.2.4.1 on Special Cost Sharing Requirements for D-SNPs
127	Update to Section 50 on Renewal Options and Crosswalks
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
	Medicare Prescription Drug Benefit (CMS-Pub. 100-18)
	None
Demonstrations (CMS-Pub. 100-19)	
11950	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
11967	Update Existing Emails to Distribution List for CR 12791–Implementation CR
11972	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
One Time Notification (CMS-Pub. 100-20)	
11940	User Enhancement Change Request (UECR): Update the Multi-Carrier System (MCS) to Allow a User the Ability to Control Development Letter Creation for Adjustment Claims

11951	Automate Maintainer Quarterly Edit Spreadsheets - Full Agile
11952	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)—July 2023 Update
11953	User Enhancement Change Request (UECR): ViPS Medicare System (VMS) - Update Beneficiary Information Tracking System (BITS) Edit BT06 to allow the Response Date to be equal to the Receipt Date
11954	Implementation of a National Fee Schedule for Medicare Part B Vaccine Administration CMS
12015	Skilled Nursing Facility (SNF) 5-Claim Probe and Educate Review
12017	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determinations (NCDs)--October 2023 Update
12018	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12019	Healthcare Integrated General Ledger Accounting System (HIGLAS) Payment to CMSHQ – Return to Trust Fund
12022	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Automate Inpatient/Skilled Nursing Facility Common Working File (CWF) Alerts Received on the L1001 and L1002 Reports
12032	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
12037	Skilled Nursing Facility (SNF) 5-Claim Probe and Educate Review
12049	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
12066	Fiscal Intermediary Shared System (FISS) Reason Code File Updates to Correct CMS Standard for Common Working File (CWF) Reason Codes
12071	Addition of New Data Elements to the National Claims History (NCH) Claims Data Output
12080	Prior Authorization (PA) Changes to Implement the Inpatient Rehabilitation Facility (IRF) Review Choice Demonstration (RCD)
12091	Allowing Audiologists to Furnish Certain Diagnostic Tests Without a Physician Order
12092	User Enhancement Change Request (UECR): Fiscal Intermediary Shared System (FISS) - Automate Inpatient/Skilled Nursing Facility Common Working File (CWF) Alerts Received on the L1001 and L1002 Reports
12093	Provider Education for the Review Choice Demonstration (RCD) for Inpatient Rehabilitation Facility Services (IRF s)
12094	Implementation of the Award for the Jurisdiction B Durable Medical Equipment Medicare Administrative Contractor (JB DME MAC)
12095	Allow Users to Modify the Provider Demonstration File in the User Acceptance Testing (UAT) Environment - Full Agile Pilot CR
Medicare Quality Reporting Incentive Programs (CMS-Pub. 100-22)	
	None
State Payment of Medicare Premiums (CMS-Pub.100-24)	
	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

For questions or additional information, contact Ismael Torres (410-786-1864).

Addendum II: Regulation Documents Published

in the Federal Register (April through June 2023)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (April through June 2023)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings.

For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (April through June 2023)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, there were no specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/.

For questions or additional information, contact Wanda Belle, MPA (410-786-7491).

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 2023)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (April through June 2023)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain.

For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities (April through June 2023)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Flushing Hospital Medical Center 4500 Parsons Boulevard Flushing NY 11355	330193	04/18/2023	NY
University Medical Center, New Orleans 2000 Canal Street New Orleans, LA 70112	190005	04/18/2023	LA
Community Mercy Health Partners dba Mercy Health - Springfield Regional Medical Center 100 Medical Center Drive Springfield, OH 45504	360086	04/25/2023	OH
OSF Healthcare Heart of Mary Medical Center 1400 W Park Street Urbana IL, 61801	140113	04/25/2023	IL
Community Medical Center ("CMC") 99 Route 37 West Toms River, NJ 08755	310041	04/25/2023	NJ
OhioHealth Doctors Hospital 5131 Beacon Hill Road Suite 240 Columbus, OH 43228	360152	04/25/2023	OH
Methodist Hospital Northeast 12412 Judson Road Live Oak, TX 78233	450388	05/02/2023	TX
Northern Nevada Sierra Medical Center 625 Innovation Drive Reno, NV 89511	1609451327	05/09/2023	NV
DCH Regional Medical Center 809 University Boulevard East Tuscaloosa AL 35401	010092	04/13/2023	AL

Facility	Provider Number	Date Approved	State
HCA Healthcare Services of New Hampshire, Inc. D/B/A Portsmouth Regional Hospital 333 Borthwick Avenue Portsmouth, NH 03801	1518913607	07/03/2023	NH
Kaiser Permanente Santa Rosa Medical Center 401 Bicentennial Way Santa Rosa, CA 95403	050690	07/03/2023	CA
The following facilities have editorial changes (in bold).			
Previous name: Terrebonne General Medical Center **New Name:** Hospital Service District No. One Of The Parish of Terrebonne. DBA Terrebonne General Health System 8166 Main Street Houma, LA 70360	190008	04/20/2005	LA
Previous Name: St. Joseph Medical Center **New Name**: Penn State Health St. Joseph Medical Center 2500 Bernville Road Reading, PA 19605	390096	04/01/2005	PA
Previous name: Ocala Regional Medical Center **New Name:** HCA Florida Ocala Hospital 1431 SW First Avenue Ocala, FL 34471	100212	06/04/2010	FL
Previous Name: West Marion Community Hospital **New Name**: HCA Florida West Marion Hospital 4600 SW 46th Court Ocala, FL 34474	360011	07/15/2005	FL
Previous Name: Aventura Hospital and Medical Center **New Name:** HCA Florida Aventura Hospital 20900 Biscayne Boulevard Aventura, FL 33180	100131	02/24/2006	FL
Previous Name: Northern Michigan Hospital **New Name:** McLaren Northern Michigan Hospital 416 Connable Avenue Petoskey, MI 49770	230105	05/01/2006	MI
Previous Name: North Florida Regional Medical Center **New Name:** HCA Florida North Florida Hospital 6500 Newberry Road Gainesville, FL 32605	100204	04/19/2005	FL
Previous Name: HCA Houston Healthcare Mainland Campus **New Name:** HCA Houston Healthcare Mainland	450530	10/20/2006	TX

Facility	Provider Number	Date Approved	State
6801 Emmett F. Lowry Expressway Texas City, TX 77591			
Previous Name: Fawcett Memorial Hospital **New Name:** Fawcett Memorial Hospital INC d/b/a HCA Florida Fawcett Hospital 21298 Olean Boulevard Port Charlotte, FL 33952	100236	07/30/2019	FL
Previous Name: Kendall Regional Medical Center **New Name:** Kendall Healthcare Group, LTD. d/b/a HCA Florida Kendall Hospital 11750 Bird Road Miami, FL 33175	1710931522	05/18/2015	FL
Previous Name: Mercy Hospital **New Name:** HCA Florida Mercy Hospital 3663 South Miami Avenue Miami, FL 33133	100167	08/26/2005	FL
Previous Name: Summit Medical Center **New Name:** Tristar Summit Medical Center 5655 Frist Boulevard Hermitage, TN 37076	440150	09/01/2006	TN
Previous Name: Houston Northwest Medical Center **New Name:** HCA Houston Healthcare Northwest 710 FM 1960 West Houston, TX 77090	450638	08/26/2005	TX
Previous Name: Clear Lake Regional Medical Center **New Name:** HCA Houston Healthcare Clear Lake 500 Medical Center Boulevard Webster, TX 77598	450617	04/01/2005	TX
Previous Name: Tomball Regional Hospital **New Name:** HCA Houston Healthcare Tomball 605 Holderrieth Street Tomball, TX 77375	450670	07/07/2005	TX
Previous Name: Regional Medical Center Bayonet Point **New Name:** HCA Florida Bayonet Point Hospital 14000 Fivay Road Hudson, FL 34667	100256	06/20/2005	FL
Previous Name: Medical Center of Arlington **New Name:** Medical City Arlington 3301 Matlock Road Arlington, TX 76015	450675	05/09/2012	TX
Previous Name: New Port Richey Hospital Inc.	100191	06/15/2015	FL

Facility	Provider Number	Date Approved	State
d/b/a Medical Center of Trinity **New Name:** New Port Richey Hospital Inc. d/b/a HCA Florida Trinity Hospital 9330 State Road 54 Trinity, FL 34655			
Previous Name: Palms of Pasadena Hospital **New Name:** HCA Florida Pasadena Hospital 1501 Pasadena Avenue South St. Petersburg, FL 33707	100126	07/15/2011	FL
Previous Name: North Florida Regional Medical Center **New Name:** HCA Florida North Florida Hospital 6500 Newberry Road Gainesville, FL 32605	100204	04/19/2005	FL
Previous Name: Capital Regional Medical Center **New Name:** HCA Florida Capital Hospital 2626 Capital Medical Boulevard Tallahassee, FL 32308	100254	02/27/2014	FL
Previous Name: Brandon Regional Hospital **New Name:** HCA Florida Brandon Hospital 119 Oakfield Drive Brandon, FL 33511	100243	11/01/2005	FL
Previous Name: Plaza Medical Center of Fort Worth **New Name:** Medical City Fort Worth 900 Eighth Avenue Fort Worth, TX 76104	450672	05/23/2005	TX
Previous Name: Northwest Medical Center **New Name:** HCA Florida Northwest Hospital 2801 North State Road 7 Margate, FL 33063-9002	100189	07/07/2005	FL
Previous Name: Citrus Memorial Health Foundations, INC **New Name:** HCA Florida Citrus Hospital 502 W. Highland Boulevard Inverness, FL 34452-4754	100023	12/05/2005	FL
Previous Name: Riverside Healthcare Systems, LP. **New Name:** Riverside Community Hospital 4445 Magnolia Avenue Riverside, CA 92501 Other Information: Dba Riverside Community Hospital	050022	12/28/2005	CA

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 2023)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2023)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27.

There were three CMS Coverage-Related Guidance Documents published during the 3-month period.

CMS published three proposed guidance documents on June 22, 2023 to provide a framework for more predictable and transparent evidence development and encourage innovation and accelerate beneficiary access to new items and services. The documents are available at:

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=35&docTypeId=1&sortBy=title&bc=16

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=34&docTypeId=1&sortBy=title&bc=16

https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=33&docTypeId=1&sortBy=title&bc=16

For questions or additional information, contact Lori Ashby, MA (410 786 6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2023)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov .

For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (April through June 2023)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a

facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (April through June 2023)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities have editorial changes (in bold).				
Emory Saint Joseph's Hospital of Atlanta, Inc. 5665 Peachtree Dunwoody Road Atlanta, GA 30342 Other information: Joint Commission ID # 6652 Previous Re-certification Dates: 07/13/2010; 07/11/2012; 06/03/2014; 07/12/2016; 06/05/2018; 05/08/2021	110082	07/13/2010	**02/22/2023**	GA
Kaiser Foundation Hospital - Santa Clara 700 Lawrence Expressway Santa Clara, CA 95051 Other information: Joint Commission ID # 10123 Previous Re-certification Dates: 03/25/2021	050071	03/25/2021	**04/14/2023**	CA

Scripps Memorial Hospital La Jolla 9888 Genesee Avenue La Jolla, CA 92037 Other information: Joint Commission ID # 9880 Previous Re-certification Dates: 11/14/2012; 09/09/2014; 10/18/2016; 12/16/2020	050324	11/14/2012	**02/22/2023**	CA
University of North Carolina Hospitals 101 Manning Drive Chapel Hill, NC 27514 Other information: Joint Commission ID # 6478 Previous Re-certification Dates: 10/16/2008; 10/19/2010; 10/26/2012; 10/16/2014; 11/08/2016; 11/28/2018; 2/17/2021	340061	05/05/2004	**02/16/2023**	NC
Sharp Memorial Hospital 7901 Frost Street San Diego, CA 92123 Other information: Joint Commission ID # 3910 Previous Re-certification Dates: 07/17/2008; 06/29/2010; 08/14/2012; 09/09/2014; 08/09/2016; 8/15/2018; 6/5/2021	050100	12/01/2003	**03/08/2023**	CA
University of Wisconsin Hospitals and Clinics Authority 600 Highland Avenue Madison, WI 53792 Other information: Joint Commission ID # 7656 Previous Re-certification Dates: 08/05/2008; 08/24/2010; 08/07/2012; 07/17/2014; 08/09/2016; 6/4/21	520098	12/03/2003	**02/17/2023**	WI

Bon Secours St. Mary's Hospital 5801 Bremo Road Richmond, VA 23226 Other information: Joint Commission ID # 6387 Previous Re-certification Dates: 12/15/2011; 12/17/2013; 01/26/2016; 02/21/2018; 06/11/2021	490059	12/15/2011	**03/04/2023**	VA
North Shore University Hospital 300 Community Drive Manhasset, NY 11030 Other information: Joint Commission ID# 2091 Previous Re-certification Dates: 09/27/2016; 9/19/2018; 06/26/2021	330106	09/27/2016	**03/29/2023**	NY
INTEGRIS Baptist Medical Center 3300 Northwest Expressway Oklahoma City, OK 73112 Other information: Joint Commission ID # 370028 Previous Re-certification Dates: 08/12/2008; 07/20/2010; 07/24/2012; 07/08/2014; 08/23/2016; 06/19/2021	370028	08/13/2008	**03/18/2023**	OK
University of Maryland Medical Center 22 South Greene Street Baltimore, MD 21201-1595 Other information: Joint Commission ID # 6264 Previous Re-certification Dates: 09/16/2008; 08/25/2010; 08/15/2012; 08/19/2014; 09/20/2016; 9/26/2018; 07/03/2021	210002	11/12/2003	**03/31/2023**	MD

Tufts Medical Center 800 Washington Street Boston, MA 02111 Other information: Joint Commission ID # 5518 Previous Re-certification Dates: 10/23/2008; 10/01/2010; 10/03/2012; 09/23/2014; 11/08/2016; 12/5/2018; 06/23/2021	220116	06/11/2003	**03/16/2023**	MA
Providence St. Vincent Medical Center 9205 SW Barnes Rd Portland, OR 97225 Other information: Joint Commission ID # 9705 Previous Re-certification Dates: 12/06/2011; 12/10/2013; 01/26/2016; 02/13/2018; 07/24/2021	380004	12/06/2011	**04/12/2023**	OR
University of Rochester/Strong Memorial Hospital 601 Elmwood Avenue Rochester, NY 14642 Other information: Joint Commission ID # 5856 Previous Re-certification Dates: 10/29/2003; 06/17/2008; 07/02/2010; 06/06/2012; 05/13/2014; 07/26/2016; 07/25/2018	330285	10/29/2003	**04/05/2023**	NY
TriStar Centennial Medical Center 2300 Patterson Street Nashville, TN 37203 Other information: Joint Commission ID# 7888 Previous Re-certification Dates: 12/12/2018; 08/19/2021	440161	12/12/2018	**04/20/2023**	TN
Robert Wood Johnson University Hospital	310038	07/22/2010	**04/22/2023**	NJ

One Robert Wood Johnson Place New Brunswick, NJ 08903-2601 Other information: Joint Commission ID# 5969 Previous Re-certification Dates: 07/22/2010; 07/20/2012; 06/17/2014; 07/19/2016; 07/08/2021				
MaineHealth 22 Bramhall Street Portland, ME 04102 Joint Commission ID# 5445 Previous Re-certification Dates: 11/05/2008; 09/27/2016; 10/3/2018; 07/08/2021	200009	11/05/2008	**04/08/2023**	ME
Ohio State University Hospitals 410 West Tenth Avenue, DN 168 Columbus, OH 43210 Joint Commission ID# 7029	360085	11/12/2003	**04/29/2023**	OH
Previous Re-certification Dates: 04/14/2006; 11/18/2008; 10/22/2010; 10/23/2012; 10/03/2014; 10/28/2016; 10/24/2018; 08/04/2021				
Kaiser Foundation Hospital - Sunnyside 10180 SE Sunnyside Road Clackamas, OR 97015-9303 Joint Commission ID# 4858 Previous Re-certification Dates: 09/13/2016; 09/19/2018; 08/25/2021	380091	09/13/2016	**05/03/2023**	OR

Addendum XIII: Lung Volume Reduction Surgery (LVRS)
(April through June 2023)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. For the purposes of this quarterly notice, there are additions and deletions to a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

The following facility is an addition for this quarter.			
Facility Name	**Provider #**	**Certification Date**	**State**
University of Cincinnati Medical Center, LLC 3188 Bellevue Avenue Cincinnati, OH 45219 Other Information: JCAHO Joint Commission ID #6988	360003	03/13/2023	OH
The following facilities were removed this quarter.			
Facility Name	**Provider #**	**Certification Date**	**State**
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA 15212 Other information: JCAHO		04/23/2008	PA
Kaiser Foundation Hospital - Riverside 10800 Magnolia Avenue Riverside, CA 92505 Other information: JCAHO		11/01/2008	CA
Washington University/Barnes Hospital State 1 Barnes Jewish Hospital Plaza Saint Louis, MO 63110 Other information: JCAHO			MO

[FR Doc. 2023–16654 Filed 8–3–23; 8:45 am]
BILLING CODE 4120–01–C

University of Michigan Medical Center State 1500 E. Medical Center Drive Ann Arbor, MI 48109 Other information: JCAHO			MI
Northwestern Memorial Hospital 251 E. Huron Street Chicago, IL 60611 Other information: JCAHO	14-0281	08/10/2013	IL
Memorial Medical Center 701 North First Street Springfield, IL 62781-0001 Other information: JCAHO #7431 LVRS Certification effective date: 7/13/2019	14-0148	05/06/2017	IL

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities
(April through June 2023)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2023)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage.

For questions or additional information, contact David Dolan, MBA (410-786-3365).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3278]

Determination of Regulatory Review Period for Purposes of Patent Extension; DELSTRIGO—New Drug Application 210807

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for DELSTRIGO, new drug application (NDA) 210807, and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 3, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 31, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3278 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; DELSTRIGO—NDA 210807.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, DELSTRIGO—NDA 210807 (doravirine, lamivudine, and tenofovir disoproxil fumarate). DELSTRIGO is indicated as a complete regimen for the treatment of HIV–1 infection in adult patients with no antiretroviral treatment history. Subsequent to this approval, the USPTO received a patent term restoration application for DELSTRIGO—NDA 210807 (U.S. Patent No. 8,486,975) from Merck Canada Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of DELSTRIGO—NDA 210807 represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for DELSTRIGO—NDA 210807 is 2,549 days. Of this time, 2,237 days occurred during the testing phase of the regulatory review period, while 312 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 9, 2011. The applicant claims April 21, 2015, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date of the first IND for the active ingredient, doravirine, was September 9, 2011, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 23, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for DELSTRIGO (NDA 210807) was initially submitted on October 23, 2017.

3. *The date the application was approved:* August 30, 2018. FDA has verified the applicant's claim that NDA 210807 was approved on August 30, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 328 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16606 Filed 8–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3278]

Determination of Regulatory Review Period for Purposes of Patent Extension; PIFELTRO—New Drug Application 210806

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for PIFELTRO, new drug application (NDA) 210806, and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 3, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 31, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3278 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; PIFELTRO—NDA 210806.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, PIFELTRO—NDA 210806 (doravirine) indicated in combination with other antiretroviral agents for the treatment of HIV–1 infection in adult patients with no prior antiretroviral treatment history. Subsequent to this approval, the USPTO received a patent term restoration application for PIFELTRO—NDA 210806 (U.S. Patent No. 8,486,975) from Merck Canada Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of PIFELTRO—NDA 210806 represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for PIFELTRO—NDA 210806 is 2,549 days. Of this time, 2,237 days occurred during the testing phase of the regulatory review period, while 312 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 9, 2011. The applicant claims September 10, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 9, 2011, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 23, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for PIFELTRO—NDA 210806 was submitted on October 23, 2017.

3. *The date the application was approved:* August 30, 2018. FDA has verified the applicant's claim that NDA 210806 was approved on August 30, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension relying on NDA 210806, this applicant seeks 328 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16607 Filed 8–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–5273, FDA–2019–E–5269, and FDA–2019–E–5271]

Determination of Regulatory Review Period for Purposes of Patent Extension; BARRICAID ANULAR CLOSURE DEVICE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BARRICAID ANULAR CLOSURE DEVICE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 3, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 31, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–5273, FDA–2019–E–5269, and FDA–2019–E–5271 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BARRICAID ANULAR CLOSURE DEVICE.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device BARRICAID ANULAR CLOSURE DEVICE. The BARRICAID ANULAR CLOSURE DEVICE is indicated for reducing the incidence of reherniation and reoperation in skeletally mature patients with radiculopathy (with or without back pain) attributed to a posterior or posterolateral herniation, and confirmed by history, physical examination, and imaging studies that demonstrate neural compression using magnetic resonance imaging to treat a large anular defect (between 4 and 6 millimeters (mm) tall and between 6 and 10 mm wide) following a primary discectomy procedure (excision of herniated intervertebral disc) at a single level between L4 and S1. Subsequent to this approval, the USPTO received patent term restoration applications for BARRICAID ANULAR CLOSURE DEVICE (U.S. Patent Nos. 6,425,919; 7,524,333; 9,610,106) from Intrinsic Therapeutics, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 21, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of BARRICAID ANULAR CLOSURE DEVICE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BARRICAID ANULAR CLOSURE DEVICE is 2,980 days. Of this time, 2,163 days occurred during the testing phase of the regulatory review period, while 817 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation on humans is begun (21 CFR 60.22(c)(1)(iii): December 14, 2010.* FDA has verified the applicant's claim that the date the first clinical investigation in human subjects involving the BARRICAID ANULAR CLOSURE DEVICE as part of a clinical investigation filed with FDA to secure premarket approval of the device began December 14, 2010.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* November 14, 2016. The applicant claims November 10, 2016, as the date the premarket approval application (PMA) for BARRICAID ANULAR CLOSURE DEVICE (PMA P160050) was initially submitted. However, FDA records indicate that PMA P160050 was officially submitted on November 14, 2016.

3. *The date the application was approved:* February 8, 2019. FDA has verified the applicant's claim that PMA P160050 was approved on February 8, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 676 days or 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16614 Filed 8–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–1282]

Determination of Regulatory Review Period for Purposes of Patent Extension; VERCISE DEEP BRAIN STIMULATION SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VERCISE DEEP BRAIN STIMULATION SYSTEM (VERCISE DBS SYSTEM) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and

Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 3, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 31, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–1282 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VERCISE DEEP BRAIN STIMULATION SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device VERCISE DEEP BRAIN STIMULATION SYSTEM. VERCISE DBS SYSTEM is indicated for use in bilateral stimulation of the subthalamic nucleus as an adjunctive therapy in reducing some of the symptoms of moderate to advanced levodopa-responsive Parkinson's disease that are not adequately controlled with medication. Subsequent to this approval, the USPTO received a patent term restoration application for VERCISE DBS SYSTEM (U.S. Patent No. 8,321,025) from Boston Scientific Neuromodulation Corp., and the USPTO requested FDA's assistance in

determining this patent's eligibility for patent term restoration. In a letter dated July 14, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of VERCISE DBS SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VERCISE DBS SYSTEM is 393 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, while 393 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* Not Applicable. The applicant claims no investigational device exemption for the regulatory review period.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 22, 2017. FDA has verified the applicant's claim that the premarket approval application (PMA) for VERCISE DBS SYSTEM (PMA P150031 Supplement 002 (S002)) was initially submitted December 22, 2017.

3. *The date the application was approved:* January 18, 2019. FDA has verified the applicant's claim that PMA P150031 S002 was approved on January 18, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 392 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16610 Filed 8–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1434]

Waivers, Exceptions, and Exemptions From the Requirements of Section 582 of the Federal Food, Drug, and Cosmetic Act Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Waivers, Exceptions, and Exemptions from the Requirements of section 582 of the Federal Food, Drug, and Cosmetic Act.'' This guidance describes the process an authorized trading partner or other stakeholder should use to request a waiver, exception, or exemption from the requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) as well as the factors FDA intends to consider when evaluating such requests from an authorized trading partner or other stakeholder, and when determining FDA-initiated exceptions and exemptions. Additionally, this guidance describes the process the FDA intends to follow once every 2 years to review and make determinations on the appropriateness of renewing a previously approved waiver, exception, or exemption, where applicable. This guidance finalizes the draft guidance of the same title issued on May 9, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on August 4, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1434 for ''Waivers, Exceptions, and Exemptions from the Requirements of Section 582 of the Federal Food, Drug, and Cosmetic Act Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at

https://www.regulations.gov or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lysette Deshields, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov;* or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Waivers, Exceptions, and Exemptions from the Requirements of section 582 of the Federal Food, Drug, and Cosmetic Act.'' The Food Drug and Cosmetic Act, as amended by the Drug Supply Chain Security Act (DSCSA), outlines critical steps to enhance drug distribution security. These steps will ultimately allow tracing of certain human finished prescription drugs in an electronic, interoperable manner as they are distributed within the United States. Section 582 of the FD&C Act (21 U.S.C. 360eee–1), as amended by the DSCSA, applies to manufacturers, repackagers, wholesale distributors, and dispensers (collectively referred to as ''trading partners'') who engage in transactions of product, and outlines requirements related to product tracing, verification, product identification, and authorized trading partners.

Section 582(a)(3)(A) of the FD&C Act requires FDA to issue a guidance that: (1) establishes a process by which an authorized manufacturer, repackager, wholesale distributor, or dispenser may request a waiver from any of the requirements set forth in section 582 of the FD&C Act, which the Secretary of HHS (Secretary) may grant if the Secretary determines that such requirements would result in an undue economic hardship or for emergency medical reasons, including a public health emergency declaration pursuant to section 319 of the Public Health Service Act; (2) establishes a process by which the Secretary determines exceptions, and a process through which a manufacturer or repackager may request such an exception, to the requirements relating to product identifiers if a product is packaged in a container too small or otherwise unable to accommodate a label with sufficient space to bear the information required for compliance with section 582 of the FD&C Act; and (3) establishes a process by which the Secretary may determine other products or transactions that shall be exempt from the requirements of section 582 of the FD&C Act.

Additionally, section 582(a)(3)(B) of the FD&C Act requires the FDA to issue guidance that includes a process describing how the FDA intends to review and renew granted waivers, exceptions, and exemptions.

This guidance finalizes the draft guidance entitled ''Waivers, Exceptions, and Exemptions from the Requirements of Section 582 of the Federal Food, Drug, and Cosmetic Act'' issued on May 9, 2018 (83 FR 21297). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft guidance to the final guidance include: (1) recommending that a requestor submit a request for a waiver, exception, or exemption to FDA electronically; (2) recommending additional information a requestor should provide to FDA in a request for waiver, exception, or exemption; (3) recommending that recipients of a waiver, exception, or exemption notify the Agency of any material change in circumstances that formed the basis for granting the initial request for regulatory relief as soon as possible; (4) recommending that recipients of a waiver, exception, or exemption notify affected entities that a product and/or transaction is subject to a waiver, exception, or exemption; (5) describing how an authorized trading partner and other stakeholder may submit a request to FDA to reconsider the scope of a waiver, exception, or exemption that has been granted; (6) describing how an authorized trading partner and other stakeholder may submit a request to FDA to reconsider and re-evaluate a denied waiver, exception, or exemption request; and (7) recommending that recipients of a waiver, exception, or exemption notify affected entities upon termination of a waiver, exception, or exemption. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Waivers, Exceptions, and Exemptions from the Requirements of Section 582 of the Federal Food, Drug, and Cosmetic.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to

previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in ''Waivers, Exceptions, and Exemptions from the Requirements of section 582 of the Federal Food, Drug, and Cosmetic Act'' have been approved under OMB control number 0910–0806.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–16645 Filed 8–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Novel and Exceptional Technology and Research Advisory Committee.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/*).

Name of Committee: Novel and Exceptional Technology and Research Advisory Committee.

Date: August 29, 2023.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: The Novel and Exceptional Technology and Research Advisory Committee meeting will include presentation, discussion, and possible finalization of the Draft Report of the Working Group on Data Science and Emerging Technology and will include discussion of next steps for the Committee.

Place: National Institutes of Health, 6705 Rockledge Drive, Suite 630, Bethesda, MD 20892 (Virtual Meeting Link will be available at *https://osp.od.nih.gov/policies/novel-and-exceptional-technology-and-research-advisory-committee-nextrac#tab4/*).

Contact Person: Jessica Tucker, Ph.D., Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 630, Bethesda, MD 20892, 301–496–9838, *SciencePolicy@od.nih.gov.*

Members of the public may request to make an oral public comment or may submit written public comments. To sign up to make an oral public comment, please submit your name, affiliation, and short description of the oral comment to the Contact Person listed on this notice at least two business days prior to the meeting date. Once all time slots are filled, only written comments will be accepted. Any interested person may file written comments by forwarding the statement to the Contact Person listed on this notice at least two business days prior to the meeting date. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Other than name and contact information, please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your comments. Please note that any comments NIH receives may be posted unredacted to the Office of Science Policy website.

Information is also available on the NIH Office of Science Policy website: *https://osp.od.nih.gov/policies/novel-and-exceptional-technology-and-research-advisory-committee-nextrac#tab4,* where an agenda, link to the webcast meeting, and any additional information for the meeting will be posted when available. Materials for this meeting will be posted prior to the meeting. Please check this website for updates.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: August 1, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–16685 Filed 8–3–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Tribal Listening Session and Tribal Consultation; Notice of Meeting Change

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA).

ACTION: Notice of change to tribal consultation.

SUMMARY: Notice is given that the August 29, 2023, virtual meeting SAMHSA Tribal Consultation that was published in the **Federal Register** on July 11, 2023, (Document Number 2023–14638; pages 44134–4135), will now be a Tribal Listening Session. SAMHSA will host American Indian and Alaska Native (AI/AN) Federally Recognized Tribes for a virtual Tribal listening session on the BEHAVIORAL HEALTH AND SUBSTANCE USE DISORDER RESOURCES FOR NATIVE AMERICANS PROGRAM.

DATES: The virtual SAMHSA Tribal Listening Session will be held on August 29, 2023, from 4:00 p.m.–6:00 p.m. EDT. Registration is required at: *https://www.zoomgov.com/meeting/register/vJItfuitqDIvGJb-7z8G5vUTNjXjFDxOG8U.* Individuals must register to obtain the call-in number, access code, and/or web access link or request special accommodations for those with disabilities.

Instructions to access the Zoom virtual consultation will be provided in the above link following registration.

FOR FURTHER INFORMATION CONTACT: CAPT Karen Hearod, MSW, LCSW, Director, Office of Tribal Affairs and Policy, Substance Abuse and Mental Health Services Administration, Telephone: (202) 868–9931, Email: *otap@samhsa.hhs.gov.*

Dated: July 6, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023–16666 Filed 8–3–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0247]

Certificates of Alternative Compliance for the Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of certificates of alternative compliance.

SUMMARY: The Coast Guard announces that the Eighth Coast Guard District's Prevention Division has issued certificates of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to vessels of special construction or purpose that cannot fully comply with the light, shape, and sound signal provisions of 72 COLREGS without interfering with the vessel's design and construction. We are issuing this notice because its publication is required by statute. This notification of issuance of certificates of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: These Certificates of Alternative Compliance were issued between January 2023 and March 2023.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Lieutenant Commander Jessica Flennoy, District Eight, Prevention Division, U.S. Coast Guard, telephone 504–671–2156, email *Jessica.Flennoy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Eighth Coast Guard District has issued COACs to the following vessels from January 2023 to March 2023:

Year	Vessel name	Details
2023	EVA	This certificate authorized the placement of the vessel's mast light 40′–3¾″ above the main deck and 23′–3″ when the mast is in the lowered position and 1′–2″ aft of amidships; sidelights on the elevated pilothouse, 10′–5¾″ outboard from centerline of the vessel; Restricted in Ability to Maneuver and Not Under Command Lights 1′–6″ off centerline starting at 25′–5⅛″ above the hull and vertically spaced 6′–7″; the stern light placed at the centerline of the vessel on the rear portion of the pilot house no less than nor exceeding 23′–3″ as measured from the main deck; and, as a result of the Restricted in Ability to Maneuver and Not Under Command light placement, the towing masthead lights will not be above and clear of all other lights.
2023	GENERAL ARNOLD	This certificate authorized the placement of the vessel's stern light on the dredge ladder end 25′–0″ off centerline, and the aft anchor light on the dredge ladder A-frame 3′–4″ off centerline with a 19° obstruction from dredge boom crane.
2023	LEIGHTON K	This certificate authorized the placement of the vessel's mast light 40′–3¾″ above the main deck and 23′–3″ when the mast is in the lowered position and 1′–2″ aft of amidships; sidelights on the elevated pilothouse, 10′–5¾″ outboard from centerline of the vessel; Restricted in Ability to Maneuver and Not Under Command Lights 1′–6″ off centerline starting at 25′–5⅛″ above the hull and vertically spaced 6′–7″; the stern light placed at the centerline of the vessel on the rear portion of the pilot house no less than nor exceeding 23′–3″ as measured from the main deck; and, as a result of the Restricted in Ability to Maneuver and Not Under Command light placement, the towing masthead lights will not be above and clear of all other lights.
2023	GINNY H	This certificate authorized the placement of the vessel's sidelights on the elevated pilot house 9′–5″ outboard from the centerline of the vessel; Restricted in Ability to Maneuver and Not Under Command lights 7′–5″ off centerline starting 26′–9¼″ above the hull and vertically spaced 7′; and the stern light at the centerline of the vessel on the rear portion of the pilot house at a height no less than nor exceeding 8′–10½″ as measured form the main deck.
2023	T–ATS 11	This certificate authorized the placement of the vessel's after masthead light on the main mast 32′–10″ aft of the forward masthead light.
2023	BRIZO	This certificate authorized the placement of the vessel's mast light 40′–3¾″ above the main deck and 23′–3″ when the mast is in the lowered position and 1′–2″ aft of amidships; sidelights on the elevated pilothouse, 10′–5¾″ outboard from centerline of the vessel; Restricted in Ability to Maneuver and Not Under Command Lights 1′–6″ off centerline starting at 25′–5⅛″ above the hull and vertically spaced 6′–7″; the stern light placed at the centerline of the vessel on the rear portion of the pilot house no less than nor exceeding 23′–3″ as measured from the main deck; and, as a result of the Restricted in Ability to Maneuver and Not Under Command light placement, the towing masthead lights will not be above and clear of all other lights.

The Chief of Prevention Division, of the Eighth Coast Guard District, U.S. Coast Guard, certifies that the vessels listed above are of special construction or purpose and are unable to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessels. The Chief of Prevention Division further finds and certifies that the listed vessels are in the closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

[1] 33 U.S.C. 1605.
[2] 33 CFR 81.5.
[3] 33 CFR 81.9.
[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.
[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

Dated: July 31, 2023.

A.H. Moore, Jr.,

Captain, U.S. Coast Guard, Chief, Prevention Division, Eighth Coast Guard District.

[FR Doc. 2023–16664 Filed 8–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7068–N–02]

60-Day Notice of Proposed Information Collection; Federal Labor Standards Questionnaire and Compliant Intake Form; OMB Control No.: 2501–0018

AGENCY: Field Policy and Management, Office of Davis Bacon and Labor Standards, 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 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted 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 can be sent to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer A. Dupont, Program Analyst, Field Policy and Management, Department of Housing and Urban Development, 40 Marietta Street, 10th Floor, Atlanta, GA 30303 or the number (678–732–2034) this is not a toll-free number or email at *Jennifer.A.Dupont@hud.gov* or a copy of the proposed forms or other available information. 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: 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 Proposal: Federal Labor Standards Questionnaire and Federal Labor Standards Compliant Intake Form.

OMB Control Number, if applicable: 2501–0018.

Description of the need for the information and proposed use: The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

Agency form numbers, if applicable: HUD FORM 4730, 4730 SP, 4731.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of annual burden hours is 500. Estimated number of respondents is 1,000, the frequency is on occasion, and the burden hour per response is .50 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden	Hourly cost per response	Annual cost
HUD–4730 ..... Federal Labor Standards ..... Questionnaire	400	1	400	.50	200	$47.20	$9,440
HUD–4730SP Cuestionario De Estándares Federales De Trabajo	100	1	100	.50	50	$47.20	$2,360
HUD–4731 Compliant Intact Form	500	1	500	.50	250	$47.20	$11,800
Total	1,000	.....	1,000	.50	500	$47.20	$23,600

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Christopher D. Taylor,

Director, Field Policy and Management.

[FR Doc. 2023–16652 Filed 8–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7068–N–01]

60-Day Notice of Proposed Information; Labor Standards Deposit Account Voucher; OMB Control No.: 2501–0021

AGENCY: Field Policy and Management, Office of Davis-Bacon and Labor Standards, 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 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted 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 can be sent to: Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer A. Dupont, Program Analyst, Field Policy and Management, Department of Housing and Urban Development, 40 Marietta Street, 10th Floor, Atlanta, GA 30303 or the number (678–732–2034) this is not a toll-free number or email at *Jennifer.A.Dupont@hud.gov* or a copy of the proposed forms or other available information. 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: 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 Proposal: Labor Standards Deposit Account Voucher.

OMB Control Number, if applicable: 2501–0021.

Description of the need for the information and proposed use: HUD, State, local and Tribal housing agencies administrating HUD-assisted programs must enforce Federal Labor Standards requirements, including the payment of prevailing wage rates to laborers and mechanics employed on HUD-assisted construction and maintenance work that is covered by these requirements. Enforcement activities include securing funds to ensure the payment of wage restitution that has been or may be found due to laborers and mechanics who were employed on HUD-assisted projects. Also, funds ae collected for the payment to the U.S. Treasury of liquidated damages that were assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA). If the labor standards discrepancies are resolved, HUD refunds associated amounts to the depositor. As underpaid laborers and mechanics are located, HUD sends wage restitution payments to the workers.

Agency form numbers, if applicable: HUD FORM 4734.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD 4734 DBLS Deposit Voucher	15	1	15	.10	1.5	$47.20	$70.80
Total	15	.....	15	.10	1.5	47.20	70.80

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Christopher D. Taylor,

Director, Field Policy and Management.

[FR Doc. 2023–16651 Filed 8–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–10]

60-Day Notice of Proposed Information Collection: Youth Homeless Systems Improvement (YHSI) Program, OMB Control No.: 2506–0219

AGENCY: HUD Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice

is to allow for 60 days of public comment. This notice replaces the notice HUD published on March 20, 2023.

DATES: *Comments Due Date:* October 3, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted 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 can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000 or email at *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 at *Colette.Pollard@hud.gov,* telephone contact number 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: Youth Homeless Systems Improvement (YHSI).

OMB Approval Number: 2506–0219.

Type of Request: Revision.

Form Number: HUD 2880, SF–LLL, SF–424, SF–424B, HUD–424–CBW.

Description of the need for the information and proposed use: Congress appropriated funds to the Department of Housing and Urban Development in FY2022 and in FY2023 to competitively award funds to selected communities to develop projects that implement systems infrastructure to better address youth homelessness. The YHSI projects will focus on systems change to create and build capacity for Youth Action Boards; collect and use data from different systems to improve the youth homeless response system; develop strong leaders within a community; and improve the coordination, communication, operation, and administration of homeless assistance projects, including prevention and diversion strategies. This information collection revision is to competitively award YHSI funds to communities and monitor the progress of the funded project. This revision is to include two additional forms in the approved PRA for this program—the HUD–2880, Applicant/Recipient Disclosure/Update Report, and the 424–CBW Grant Application Detailed Budget Worksheet.

Respondents: Not-for-profit institutions; State, Local or Tribal Governments.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 190.

Frequency of Response: Biannual.

Average Hours per Response: 27.

Total Estimated Burdens: 2,670.

Submission documents Information collection	Number of respondents	Responses frequency (average)	Total annual responses	Burden hours per response	Total hours	Hourly rate	Burden cost per instrument
Component 1. Project Selection:							
YHSI Project Selection Narratives	100	1	100	22	2200	$53.67	$118,074.00
SF–424—Application for Federal Assistance	100	1	100	0	0	53.67	0.00
SF–424B Assurances for Non-Construction Programs	100	1	100	0	0	53.67	0.00
HUD–2880, Applicant/Recipient Disclosure/Update Report	100	1	100	0	0	53.67	0.00
HUD–424–CBW, Grant Application Detailed Budget Worksheet	100	1	100	0	0	53.67	0.00
OMB–SF–LLL—Disclosure of Lobbying Activities (where applicable)	100	1	100	0	0	53.67	0.00
Nonprofit Certification	50	1	50	0	0	53.67	0.00
Organizations Code of Conduct	100	1	100	0	0	53.67	0.00
Youth Action Board Letter of Support	100	1	100	1	100	53.67	5,367.00
Letter of Support—partner agency	100	1	100	1	100	53.67	5,367.00
Subtotal	100		100	24	2,400		128,808.00
Component 2. Milestone Reporting:							
Narrative update on project progress	40	2	80	2	160	53.67	8,587.20
Updated milestone chart	10	1	10	1	10	53.67	536.70
Subtotal	50		90	3	270		9,123.90
Total Application Collection	150		190	27	2,670		137,931.90

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.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023–16642 Filed 8–3–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–N055; FXES11140200000–234–FF02ENEH00]

Salt River Project Roosevelt Habitat Conservation Plan Amendment and Draft Environmental Assessment; Maricopa and Gila Counties, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, as the lead Federal agency, in conjunction with the U.S. Army Corps of Engineers, as a cooperating agency, announce the availability of a draft environmental assessment (EA) for the proposed Salt River Project Roosevelt Habitat Conservation Plan (RHCP) Amendment which includes a proposed planned deviation to the Corps' Water Control Manual (WCM) in Gila and Maricopa Counties, Arizona. Salt River Project (applicant) submitted the RHCP amendment, also available for public review, in support of an application for an amended incidental take permit (permit) under the Endangered Species Act. Prepared in accordance with the requirements of the National Environmental Policy Act, the draft EA evaluates the impacts of, and alternatives to, amending the existing permit for the operation of the Modified Roosevelt Dam and Lake. If approved, the requested permit amendment would authorize incidental take of the northern Mexican gartersnake and expand the permit area for existing authorized incidental take for the yellow-billed cuckoo, southwestern willow flycatcher, and bald eagle. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received on or before September 5, 2023.

ADDRESSES:

Obtaining documents: You may obtain copies of the RHCP amendment and draft EA on the internet at *https://www.fws.gov/office/arizona-ecological-services.*

Submitting comments: You may submit written comments by email to *incomingazcorr@fws.gov.* Please note which document(s) your comment references. For more information, see Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, Arizona Ecological Services Office; U.S. Fish and Wildlife Service; telephone (602) 242–0210. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), as the lead Federal agency, in conjunction with the U.S. Army Corps of Engineers (Corps), as a cooperating agency, announce the availability of a draft environmental assessment (EA) for the proposed Salt River Project Roosevelt Habitat Conservation Plan (RHCP) Amendment in Gila and Maricopa Counties, Arizona. Salt River Project (SRP; applicant) submitted the proposed RHCP amendment in support of an application for an amended incidental take permit (permit) under section 10(a)(1)(B) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The draft EA evaluates the impacts of, and alternatives to, amending the existing permit for the operation of the Modified Roosevelt Dam and Lake, and addresses both the Service and Corps' responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The proposed RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. The RHCP amendment addresses effects from SRP's Modified Roosevelt Dam conservation storage actions to newly listed species, and adds SRP's flood control operations, which includes a proposed planned deviation to the Corps' Water Control Manual (WCM). The planned deviation to the Corps' WCM, guiding Roosevelt Lake's flood control space (FCS) operations, is a Federal action, as is the Service's approval of an amended permit. The planned deviation, if approved, could extend water's occurrence in the FCS for 100 days (120 days total) in 3 out of 5 consecutive years. SRP's current permit is for 50 years, expiring in 2053, and the amendment does not change the permit duration. If the amendment is approved, the permit would have a remaining duration of 30 years.

If the Service approves the amended RHCP and the Corps approves the planned deviation, the requested permit amendment would authorize incidental take of the northern Mexican gartersnake (*Thamnophis eques megalops;* gartersnake) and expand the permit area for existing authorized incidental take for the federally listed threatened yellow-billed cuckoo (*Coccyzus americanus;* cuckoo), endangered southwestern willow flycatcher (*Empidonax traillii extimus;* flycatcher), and unlisted bald eagle (*Haliaeetus leucocephalus*).

SRP and the Service evaluated and improved the incidental take exceedance language for the bald eagle for conservation storage and additional flood control activities, addressing the bald eagle's dynamic distribution and abundance. SRP is amending their existing RHCP under ESA for the bald eagle in case the Service lists the bald eagle as threatened or endangered in the future. We also included the bald eagle to address compliance during the remaining life of the permit under the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668–668d, 54 Stat. 250, as amended) and its governing regulations at 50 CFR 22.80.

Authorized incidental take of the covered species would result from Modified Roosevelt Dam's conservation storage and flood control activities, including the proposed deviation to the Corps' WCM.

Background

Section 9 of the ESA and its implementing regulations at 50 CFR part 17.21 prohibit the ''take'' of fish or wildlife species listed as endangered. Additionally, per 50 CFR part 17.31, most of the provisions of 50 CFR part 17.21 for endangered species, including prohibition of ''take'', apply to species listed as threatened, provided the species was added to the List of Endangered and Threatened Wildlife on or prior to September 26, 2019. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1532(19)).

However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. Valid ESA permits under 10(a)(1)(B) constitute a valid permit under the Eagle Act, if the activity is compatible with bald eagle preservation. ESA defines ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits of endangered and threatened species are in 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Actions

Service's Proposed Action

The Service's proposed action involves the issuance of an amended 10(a)(1)(B) permit to SRP in association with SRP's RHCP Amendment in Maricopa and Gila Counties, Arizona. The RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. SRP's permit is for 50 years, expiring in 2053, and the amendment does not change the permit duration.

In 2002, SRP developed the original RHCP to address effects to the flycatcher, cuckoo, Yuma Ridgway's rail (*Rallus obsoletus yumanensis*), and bald eagle resulting from SRP's conservation storage operations at Modified Roosevelt Dam and Lake. The 2002 RHCP and 2003 permit area address Roosevelt Lake's conservation space (CS), which extends to the reservoir's water surface at elevation 2,151 feet (ft). In February 2003, the Service signed its RHCP record of decision on the environmental impact statement under NEPA, completed a section 7 ESA biological opinion on the issuance of the permit, and issued a permit to SRP.

The proposed RHCP amendment addresses effects from Modified Roosevelt Dam's conservation storage actions to species (gartersnake) listed since completion of the original 2002 RHCP.

SRP is adding flood control operations to the RHCP and its effects to covered species (gartersnake, flycatcher, cuckoo, and bald eagle). Flood control operations include normal flood control operations and a proposed ''3 in 5-year planned deviation'' to the Corps' WCM.

SRP's RHCP amendment includes and addresses the effects to listed species from the proposed WCM deviation. The proposed planned deviation to the Corps' WCM, which guides Roosevelt Lake's FCS operations is a Federal action, which we fully analyze under NEPA in the draft EA, along with ESA compliance.

As part of the RHCP amendment's proposed action, SRP would implement a gartersnake conservation program for impacts associated with CS, normal FCS activities, and the planned deviation, to achieve a level of conservation benefit that fully offsets the impacts of the anticipated incidental take. SRP's conservation program is integral to meeting the amended RHCP's standard to mitigate to the maximum extent practicable. SRP's conservation program requires actions for the remaining 30-year permit duration. SRP would implement the following gartersnake conservation measures associated with conservation and normal flood control activities: (1) suppression of nonnative predatory fish by electrofishing in two separate sections of lower Tonto Creek downstream of the Town of Gisela; (2) stocking of native fishes in two separate sections of lower Tonto Creek downstream of the Town of Gisela and the FCS; (3) possible stocking of lowland leopard frogs (*Lithobates yavapaiensis*) in the Gisela section of lower Tonto Creek and the FCS; and (4) potential funding of a lowland leopard frog breeding facility. To offset impacts of gartersnake take from the planned deviation, SRP would stock native fish in the FCS. SRP would monitor and adaptively manage gartersnake conservation measures to achieve effective and efficient conservation.

The proposed RHCP amendment would expand the permit area for cuckoo, flycatcher, and bald eagle to include the FCS. For all three birds, existing RHCP conservation measures are comprehensive enough to fully mitigate effects anticipated for ongoing conservation storage and the additional flood control operations proposed in the RHCP amendment. Therefore, SRP's current existing 2002 permit surrogate and exceedance measures are robust enough to address additional minor effects to the cuckoo and flycatcher from flood control activities.

In the proposed RHCP amendment, SRP and the Service improved the surrogate and exceedance metrics for the bald eagle for ongoing conservation and additional flood control activities to address the bald eagle's dynamic distribution and abundance. Since completion of the original RHCP in 2002, the Service removed the bald eagle from the list of threatened and endangered species. SRP is amending their existing RHCP under ESA for the bald eagle should we list the bald eagle as threatened or endangered in the future. Valid section 10(a)(1)(B) permits under the ESA constitute a valid permit under the Eagle Act, if the activity is compatible with bald eagle preservation. The draft EA includes our analysis under the Eagle Act of the RHCP amendment and conservation actions. Similar to the flycatcher and cuckoo, SRP's existing conservation measures are robust enough to fully mitigate additional minor effects to bald eagles.

SRP's amended RHCP permit, which includes the effects of the Corps' proposed planned deviation, will require ESA section 7 compliance.

Corps' Proposed Action

The Corps is the Federal participant for combined non-Federal (section 10) and Federal (section 7) ESA compliance under section 10(a)(1)(B). The Corps' proposed action is the review of a planned deviation from the WCM, as requested by SRP. SRP addresses the effects to listed species from the proposed planned deviation in the proposed RHCP amendment. SRP's proposed deviation request would extend the maximum acceptable release period for water held within the first five (5) ft of the FCS (elevations 2,151 to 2,156 ft) from 20 days to 120 days. The planned deviation could occur in three years out of a five-consecutive year period and begin immediately, should the Corps approve of the deviation.

The U.S. Government owns Modified Roosevelt Dam, and a 1917 contract between the Secretary of the Interior, SRP, and the Bureau of Reclamation (Reclamation) delegates to SRP the responsibility for the care, operation, and maintenance of Modified Roosevelt Dam.

In 1996, Reclamation, in coordination with SRP, structurally modified Roosevelt Dam to include (1) additional water conservation space (up to elevation 2,151 ft); (2) flood control space (2,151 to 2,175 ft in elevation) to help manage flood releases to reduce downstream flood damage; (3) flood surcharge space to protect the dam from overtopping (Safety of Dams); and (4) new outlet works and spillway.

In 1997, the Corps issued the Water Control Manual for Modified Roosevelt Dam. The Corps, Reclamation, and SRP entered into a water control agreement, determining that SRP would comply with the WCM's flood control operating criteria.

Modified Roosevelt Dam's WCM operational objective is to minimize downstream flood damage along the Salt and Gila Rivers. The WCM identifies operational releases within the FCS to draw down Roosevelt Reservoir within 20 days of initial inundation while

working to maintain combined flows at the Salt and Verde River confluence below 180,000 cubic ft per second.

Modified Roosevelt Dam's WCM identifies when it may be necessary to temporarily deviate from the established flood control plan. Planned deviations are one of three categories identified in the WCM. Regulations and agreements establish the process and requirements for approval of a planned WCM deviation.

National Environmental Policy Act Compliance

Issuance of the RHCP amendment permit is a Federal action that triggers the need for compliance with NEPA. Additionally, as noted above, the proposed RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. In accordance with the requirements of NEPA, we advise the public that:

1. We have prepared a draft EA to evaluate SRP's RHCP amendment, which addresses Modified Roosevelt Dam's effects from conservation storage actions on newly listed species and adds effects to covered species from flood control operations, including the Corps' evaluation of the planned deviation to the WCM, and potential permit issuance. We are accepting comments on the RHCP amendment and draft EA.

2. The applicant, Service, and Corps have developed the RHCP amendment, which describes the measures the applicant has volunteered to take to meet the issuance criteria for a permit associated with the RHCP amendment. The issuance criteria are found at 50 CFR 17.22(b)(2)(i) and 50 CFR 17.32(b)(2).

3. The applicant would implement the RHCP amendment, including its conservation program, and the amended permit would remain effective until the expiration of the RHCP in 2053.

4. As described in the RHCP amendment, anticipated incidental take of the gartersnake (in the CS, FCS, and lower Tonto Creek), flycatcher, cuckoo, and bald eagle (in the FCS) could result from otherwise lawful activities covered by the RHCP amendment.

Alternatives

As part of this process, we are considering two additional alternatives to the proposed action, the No Action and No Planned Deviation alternatives. Under the No Action Alternative, the Service would not issue the amended permit, and SRP would not implement the RHCP amendment. Under the No Planned Deviation Alternative, the Corps would not approve the planned deviation to the WCM, and SRP would implement the RHCP amendment with the addition of normal flood control activities.

Next Steps

We will evaluate the RHCP amendment permit application, amended RHCP, draft EA, and comments we receive to determine whether the RHCP amendment application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the RHCP amendment and issue the amended permit under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. The Service will handle requests for copies of comments in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the Service may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The Service will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–16663 Filed 8–3–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23BA000AD0100; OMB Control Number 1028–0103]

Agency Information Collection Activities; USA National Phenology Network—The Nature's Notebook Plant and Animal Observing Program

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 3, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference Office of Management and Budget (OMB) Control Number 1028–0103 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Melanie J. Steinkamp by email at *msteinkamp@usgs.gov,* or by telephone at 703–261–3128.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following questions: is the collection necessary to the proper functions of the USGS? Will this information be processed and used in a timely manner? Is the estimate of burden accurate? How might the USGS enhance the quality, utility, and clarity of the information to be collected? How might the USGS minimize the burden of this collection on the respondents, including through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USA National Phenology Network (NPN) is a program sponsored by the USGS that uses standardized forms for tracking plant- and animal activity as part of a project called Nature's Notebook. The Nature's Notebook forms are used to record phenology (*e.g.,* timing of leafing or flowering of plants and reproduction or migration of animals) as part of a nationwide effort to understand and predict how plants and animals respond to environmental variation and changes in weather and climate. Contemporary data collected through Nature's Notebook are quality-checked, described, and made publicly available and are used to inform decision-making in a variety of contexts including agriculture, drought monitoring, and wildfire-risk assessment. Phenological information is also critical for the management of wildlife, invasive species, and agricultural pests, as well as for understanding and managing risks to human health and welfare, including allergies, asthma, and vector-borne diseases. Participants may contribute phenology information to Nature's Notebook through a browser-based web application or via mobile applications for iPhone and Android operating systems which meet Government Paperwork Elimination Act (GPEA) and Privacy Act requirements. The web-application interface consists of several components: user registration, a searchable list of 1,756 observable plant and animal species, and a ''profile'' that contains information about each species including its description and the appropriate monitoring protocols. The application also consists of a series of interfaces for registering an observer, a site, and plants and animals found at a site, and a data-entry page that mimics downloadable datasheets that can be taken into the field.

Title of Collection: USA National Phenology Network—The Nature's Notebook Plant and Animal Observing Program.

OMB Control Number: 1028–0103.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Members of the public registered with Nature's Notebook, state cooperative extension employees, and Tribal members.

Total Estimated Number of Annual Respondents: 6,640.

Total Estimated Number of Annual Responses: 4,094,800.

Estimated Completion Time per Response: When joining the program, responders spend 13 minutes each to register and read guidelines, and 210 minutes to complete the Observer Certification Course. After that, responders may spend about two minutes on each observation and submission of a phenophase status record.

Total Estimated Number of Annual Burden Hours: 141,418.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion; depends on the seasonal activity of plants and animals.

Total Estimated Annual Non-hour Burden Cost: $11,484

Table: Annual Responses and Burden Hours: 4,102,436 responses, 141,418 burden hours.

Response type	Annual responses (projected)	Completion time per response (minutes)	Annual burden (hours)
Registrations	6,640	13 minutes (3 minutes to register + 10 minutes to read guidelines)	1,439
Certification Course*	996	210 minutes (to complete the Observer Certification Course)	3,486
Observation records	4,094,800	2 minutes (includes observation and reporting time)	136,493
Total	4,102,436		141,418

* Note that the Certification Course is optional, and we estimate a completion rate of 15% during the clearance period.

TABLE—ANNUAL NON-HOUR BURDEN COSTS

	Cost per unit	Estimated number of respondents expected to use	Non-hour burden cost
Clipboard	$2.23	1,328	$2,961
Pencils	0.10	1,328	133
Flags	0.05	1,328	66
Markers	0.10	1,328	133
Stakes	0.30	1,328	398
Tags	0.30	1,328	398
Popsicle Sticks	0.30	1,328	398
Average Marking Material Cost	0.19		
Cost Per Response	2.52	Total Non-Hour Burden Cost	4,489

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA (44 U.S.C. 3501, *et seq.*).

Melanie J. Steinkamp,

Program Coordinator, USGS Species Management Research Program.

[FR Doc. 2023–16617 Filed 8–3–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[234D0102DM, DS61200000, DLSN00000.000000, DX61201]

Draft Prospectus for the First National Nature Assessment

AGENCY: Office of Policy Analysis, Interior.

ACTION: Notice, request for public comments.

SUMMARY: With this notice, the U.S. Global Change Research Program (USGCRP) seeks public comment on the proposed themes and framework of the First National Nature Assessment. Based on input received from this notice, USGCRP will begin the next phases of assessment development.

DATES: Comments must be submitted by 11:59 p.m. on September 18, 2023.

ADDRESSES: Comments from the public will be accepted electronically via *https://www.globalchange.gov/notices.* Instructions for submitting comments are available on the website. Submitters may enter text or upload files in response to this notice.

FOR FURTHER INFORMATION CONTACT: Chris Avery, (202) 419–3474, *cavery@usgcrp.gov,* U.S. Global Change Research Program.

SUPPLEMENTARY INFORMATION: The U.S. Global Change Research Program (USGCRP) was created by Congress in 1990 to ''assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.'' USGCRP comprises 14 Federal agencies that work together to carry out its legislative mandate. USGCRP is conducting the First National Nature Assessment (NNA1) to assess changes in nature as an aspect of global change. With this notice, the United States Department of the Interior, on behalf of the USGCRP, seeks public comment on a prospectus for NNA1.

The scope of NNA1 is to assess the status, observed trends, and future projections of America's lands, waters, wildlife, biodiversity, and ecosystems and the benefits they provide, including connections to the economy, public health, equity, climate mitigation and adaptation, and national security.

In developing NNA1, USGCRP will follow the principles of a use-inspired, knowledge-informed assessment, in which the design is driven both by the potential uses of the final products and by science and other forms of knowledge. USGCRP recognizes the importance of lived experiences and acknowledges Indigenous Knowledge as an important form of evidence. Across all phases of NNA1, USGCRP aims to be inclusive, represent diverse perspectives, and create products that are accessible to the widest possible audience. To achieve these aims, USGCRP will engage the public and Tribal Nations multiple times throughout the development process, using diverse means to increase accessibility and inclusion.

I. Development of the First National Nature Assessment Through a Proposed Report and Portfolio of Associated Products

Striving for a use-inspired and knowledge-informed assessment, USGCRP initiated NNA1 with requests for input. This included engagements with federal agencies, the public, and Tribal and Indigenous communities. Input was sought through a Request for Information (87 FR 65622) on what specific questions the assessment should answer, what products should be created, what engagement processes should be used, and what knowledge sources should be drawn from, among other topics. USGCRP held multiple public engagement sessions and a formal Tribal Consultation. Over 3,000 comments were received online and through the engagement and Consultation sessions.

The Federal Steering Committee overseeing the development of NNA1 considered this public and Tribal input when developing the proposed elements of the assessment described below. For example, input showed that different communities have different questions relevant to the scope of NNA1 and would like to use information from the assessment in different ways. To be responsive to that input, USGCRP intends to develop a portfolio of assessment products of which an NNA1 report will be a core component. Additional products could include special issues of peer-reviewed journals; technical input reports; and community-created videos portraying diverse perspectives of nature, observed changes to nature, consequences of those changes, and the importance of nature.

II. The First National Nature Assessment: A Use-Inspired, Knowledge-Driven Report

The NNA1 will assess the state of knowledge regarding the status, observed trends, and future projections of nature in the United States and the consequences of those changes including shifts in the benefits that nature provides. NNA1 will consider nature in U.S. states, marine areas (U.S. Exclusive Economic Zone), territories, Native or Indigenous lands and waters, and other affiliated areas (as appropriate), as well as its significant interactions with global drivers.

The core product of NNA1 will be a use-inspired, knowledge-driven report that addresses a diverse set of questions received via public and Tribal input. USGCRP received many questions, spanning a range of themes, that potential users posed. This draft prospectus prioritizes a subset of these questions for consideration in this initial assessment. The questions included in the report will be addressed in a manner that meets specific Federal guidelines for information quality, information tracking, and technical development required of a Highly Influential Scientific Assessment. Findings will be made accessible through a range of user-specific outputs as described below. Consistent with Federal law, the report will support disability access and inclusion.

III. Overarching Themes of the First National Nature Assessment

The NNA1 report is currently planned to be organized around key thematic interests identified through federal agency, public, and Tribal engagement efforts. Those themes are (in alphabetical order):

- Conservation and Natural Resource Management
- Economic Interests
- Human Health and Well-Being
- Safety and Security

There are not discrete boundaries among these themes, and the proposed report would be structured and conducted to recognize and explore interconnections and tradeoffs among them, as possible. The themes and related focal questions are described in greater detail below. Federal agency, public, and Tribal input identified two cross-cutting areas that are woven throughout the other proposed themes for the NNA1 report:

- Climate Change

• Equity

To help reinforce the principle of being use-inspired, the proposed assessment would include presentation of themes through the lens of different user groups. In doing so, the technical results will be put into contexts and products that are relevant for diverse audiences.

A call for author nominations will be posted in a subsequent **Federal Register** notice. Authors will be tasked with assessing the state of knowledge, considering relevant aspects of historical trends, drivers of change, current status, and future projections, and the implications of those changes. Teams may assess technical information or scenarios on policy options to reverse declining trends in nature or the benefits that nature provides. Author teams will also seek to evaluate relevant regional variation in geography, climate, biodiversity, and culture, as well as other varying conditions that might be relevant to a scientific assessment.

In addition to a report, USGCRP will aim to develop other science and communication products that are responsive to user interests expressed through public, Tribal, and agency input. Outputs may include, but are not limited to, data dashboards, maps, graphics, indicators, user-specific summaries, and other communication materials. Consistent with Federal law and best scientific practices, data used in the assessment will be publicly available to the maximum extent practicable. The assessment will present a collection of resources to help ensure users can build on the results and develop tools or resources further tailored to their needs.

Conservation and Natural Resource Management

Public, Tribal, and agency input highlighted the importance of sustainable conservation and management of biodiversity, natural resources, and ecosystems to ensure their long-term preservation and protection for their own sake and for the benefit of present and future generations. USGCRP proposes to address a subset of focal questions related to these interests, such as:

• What are the existing status, trends, and drivers of change affecting species and ecosystems in the U.S., and what are important areas for representative biodiversity across U.S. lands and waters?

• How have access to nature and to associated benefits changed, and for whom?

• How have culturally significant species and ecosystems changed, and what are future options for sustaining them?

• How would future investments in conservation or restoration affect nature, equitable access to nature's benefits, and climate mitigation and adaptation?

Economic Interests

Public, Tribal, and agency input raised interest in economic activities, infrastructure, and employment that are directly or indirectly related to nature. Within this theme, the report would explore how changes in nature affect economic benefits, risks, and opportunities. USGCRP proposes to address a subset of focal questions related to these interests, such as:

• How many jobs are dependent on nature, and how have changes in nature affected jobs and livelihoods, and for whom?

• What aspects of the U.S. economy are connected to the status and trends of nature, and what future options for advancing the economy could provide net benefits to nature and the climate?

• Where could future infrastructure and economic development advance with the most benefit and least harm to nature and nature's benefits?

Human Health and Well-Being

Public, Tribal, and agency input emphasized the connections between changes in nature and human health and well-being, including links to physical health, mental health, and social health and well-being. USGCRP proposes to address a subset of focal questions related to these interests, such as:

• How have changes in nature affected physical, mental, and public health, as well as the equity of health risks and benefits?

• What are emerging health effects from changes in nature?

• What are future nature-based options to reduce health risks and enhance benefits for all people?

Safety and Security

Public, Tribal, and agency input highlighted issues related to ways in which changes in nature impact aspects of domestic safety and security. Topics of interest included changes in nature, such as increased frequency and intensity of natural hazards, desertification, changes in populations of pests and disease, loss of arable land, and other changes in nature that affect food and water security, and that directly or indirectly influence public safety and patterns of human behavior and movements. USGCRP proposes to address a subset of questions related to these interests, such as:

• What losses from natural and environmental hazards (*e.g.,* loss of life, loss of livelihoods and economic productivity, damage to homes or infrastructure, loss of educational opportunities, damage to or loss of natural and cultural resources) have been averted by nature (*e.g.,* protected areas, green and blue infrastructure, restored areas) over time, and for whom? Where and how much can nature-based solutions equitably reduce future risk from natural and environmental hazards?

• How have trends and spatial patterns in nature affected food and water security, and for whom? What are opportunities for nature-based solutions to avert emerging food and water security risks?

• Where might changes in nature and climate cause people within the United States to migrate from their current locations, and where might they go? What nature- or natural resource-related risks and opportunities are they likely to face when they relocate?

Climate

Public, Tribal, and agency input emphasized the strong interactions between changes in nature, nature's benefits, and the climate. Each of the four themes described above interacts with the climate. USGCRP proposes to synthesize and analyze climate-related opportunities and impacts across the four NNA1 themes by considering the relevant role of climate as a driver when assessing past trends in nature, including projected climate changes in answering questions about the future of nature, and answering the specific questions about interactions between nature and climate embedded in the themes above.

Equity

Public, Tribal and agency input highlighted the importance of environmental justice, inclusive decision-making, and equal access to nature and nature's benefits. The four NNA1 themes each include questions that address aspects of equity and the fair and just distribution of nature's benefits. USGCRP proposes to synthesize the impacts of changes in nature to equity and assess how changes in nature across the NNA1 themes impact the well-being and opportunities for all members of society.

In developing this report, USGCRP proposes to reflect and follow several recommendations received through the engagement process. The Federal Steering Committee developing NNA1 recognizes the importance and value of co-production, acknowledges the need

to balance a co-production intent with the current institutional and resource constraints, strives to apply the concept of bridging knowledge systems—maintaining the integrity of different knowledge systems while weaving them together—and aims to create equitable space for all knowledge systems and knowledge holders. In doing so, USGCRP will respect the rights, values, and knowledge held by Indigenous and local communities.

IV. Development of Associated Products

In addition to a use-inspired, knowledge-informed NNA1 report, input from the public, Tribes, and agencies emphasized the need for an array of products associated with NNA1. Public and Tribal input emphasized the diversity of perspectives that people hold on nature and the impact of nature on their lives. The comments requested that USGCRP reflect that diversity, and as much as possible, do so in the voices of people themselves. In response to this input, USGCRP will explore the feasibility of video-based products related to the scope of NNA1. Video-based products would allow people from various perspectives to share their stories and reactions to questions such as: why is nature important to me, how is nature changing, and why does this matter?

USGCRP will also explore development of special issues of peer-reviewed journals and publication of technical reports on specific topics, with the intent that these efforts address additional questions received through the engagement process, close research gaps, strengthen individual aspects of the available knowledge base, and potentially serve as inputs to NNA1. For example, one such journal special issue recommended through Tribal Consultation is an Indigenous-led volume that explores perspectives of Indigenous Knowledge holders and scholars relevant to the scope of NNA1. A technical report with a focus on nature literacy relevant to the scope of NNA1 has also been recommended.

We seek public input on all aspects of the proposed NNA1.

Responses: Response to this Request for Comment is voluntary. Respondents need not comment on all topics. Responses may be used by the U.S. Government for program planning on a non-attribution basis. The United States Department of Interior therefore requests that no business proprietary information or copyrighted information be submitted in response to this Request for Comment. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

Eric Werwa,

Deputy Assistant Secretary—Policy and Environmental Management, Office of Policy, Management, and Budget.

[FR Doc. 2023–16794 Filed 8–3–23; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500171447]

Notice of Availability of the Draft Resource Management Plan and Supplemental Environmental Impact Statement for the Colorado River Valley Field Office and Grand Junction Field Office Resource Management Plans, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLMPA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Supplemental Environmental Impact Statement (EIS) for the Colorado River Valley Field Office (CRVFO) and Grand Junction Field Office (GJFO), and by this notice is providing information announcing the opening of the comment period on the Draft RMP/Supplemental EIS and is announcing the comment period on the BLM's proposed areas of critical environmental concern (ACECs).

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP/Supplemental EIS beginning on the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Draft RMP/Supplemental EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMP/Final Supplemental EIS, please ensure that the BLM receives your comments prior to the close of the 90-day public comment period or 15 days after the last public meeting, whichever is later.

In addition, this notice also announces the opening of a 60-day comment period for ACECs. The BLM must receive your ACEC-related comments by October 3, 2023.

ADDRESSES: The Draft RMP/Supplemental EIS is available for review on the BLM ePlanning project Website at: *https://go.usa.gov/xtrgf.*

Written comments related to the supplemental EIS for the CRVFO and GJFO RMPs/EISs may be submitted by any of the following methods:

- *Website: https://go.usa.gov/xtrgf*
- *Mail:* BLM Upper Colorado River District, Attn: Supplemental EIS, 2518 H Road, Grand Junction, CO 81506

Documents pertinent to this proposal may be examined online at *https://go.usa.gov/xtrgf* and at the Grand Junction and Colorado River Valley Field Offices.

FOR FURTHER INFORMATION CONTACT: Bruce Krickbaum, Project Manager, telephone 970–240–5399; address BLM Upper Colorado River District, 2518 H Road, Grand Junction, CO 81506; email *ucrd-seis@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 for contacting Mr. Krickbaum. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Colorado State Director has prepared a Draft RMP/Supplemental EIS for the two RMPs/EISs, provides information announcing the opening of the comment period on the Draft RMP/Supplemental EIS, and announces the comment period on the BLM's proposed ACECs. The planning area is located in Garfield, Mesa, Eagle, Pitkin, Routt, Rio Blanco, and Montrose counties, Colorado, and encompasses approximately 1.56 million acres of public land and 1.92 million acres of Federal mineral estate.

CRVFO and GJFO management is identified in their respective 2015 RMPs. Apart from fluid mineral leasing decisions, all existing management as described in the CRVFO and GJFO approved RMPs remains in effect.

Purpose and Need for the Planning Effort

The purpose of the supplemental EIS is to supplement the EISs completed in 2014 for the CRVFO RMP and 2015 for the GJFO RMP by considering one or more additional alternatives with respect to the lands that are allocated as open or closed to oil and gas leasing in the planning decision areas, and to provide additional analysis of greenhouse gas emissions associated

with the fluid mineral management alternatives considered in the final EISs and the supplemental EIS.

The need for this supplemental EIS is to address the issues identified by the court in litigation involving the Colorado River Valley RMP (*Wilderness Workshop* v. *BLM,* 16–cv–01822), as described in settlement agreements in that case and a related case (*Wilderness Workshop* v. *BLM,* 18–cv–00987), and to revisit the Grand Junction RMP, as described in the BLM's motion for voluntary remand in litigation involving that RMP (*Center for Biological Diversity* v. *BLM,* 19–cv–02869). The need is also to consider new information, including relevant information provided through tribal consultation.

Alternatives Including the Preferred Alternative

The BLM has analyzed two additional alternatives in detail. The three action alternatives (B through D) and the no action alternative (A) from the 2014 CRVFO and the 2015 GJFO Final EISs remain within the range of alternatives considered. Alternative E would close the areas with no-known, low, and medium potential for fluid mineral leasing to future fluid mineral leasing. Alternative E would also close areas that would be allocated as closed to fluid mineral leasing in alternative C of the 2014 CRVFO and 2015 GJFO Final EISs. Alternative E would designate the potential ACECs that were analyzed as closed to leasing in alternative C of the 2014 CRVFO and 2015 GJFO Final EISs. Alternative F would close the same areas as alternative E to future fluid mineral leasing, as well as additional areas identified by the public during scoping. Alternative F would designate all potential ACECs analyzed in alternative C of the 2014 CRVFO and 2015 GJFO Final EISs and would expand one existing ACEC. Alternative F would designate one FLPMA Section 202 Wilderness Study Area. The BLM did not identify any additional alternatives for detailed analysis.

The State Director has identified alternative E as the preferred alternative. Alternative E was found to best meet the State Director's planning guidance and, therefore, selected as the preferred alternative because it best meets the purpose and need.

ACECs

Consistent with land use planning regulations at 43 CFR 1610.7–2(b), the BLM is announcing the opening of a 60-day comment period on the ACECs proposed for designation in the preferred alternative. Comments may be submitted using any of the methods listed in the **ADDRESSES** section earlier.

The proposed ACEC included in the preferred alternative for CRVFO is:

- Greater Sage-grouse Habitat, 24,600 acres, to protect priority habitat for the greater sage-grouse. Close to fluid mineral leasing, right-of-way avoidance, visual resource management (VRM) Class II, prohibit net increase in motorized/mechanized routes.

The proposed ACECs included in the preferred alternative for GFJO are:

- Atwell Gulch, 6,100 acres (an additional 3,200 acres above current designation), to protect rare plants, cultural resources, scenic values, and wildlife habitat. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, right-of-way exclusion, travel closed to motorized and mechanized travel (except for Sunnyside Rd), VRM Class II.
- Badger Wash, 2,200 acres, to protect rare plants and use as a hydrologic study area. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, 1,800 acres right-of-way exclusion, 400 acres right-of-way avoidance, VRM Class II.
- Glade Park-Pinyon Mesa, 27,200 acres, to protect occupied Gunnison Sage-grouse habitat. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, right-of-way avoidance, travel limited to designated routes, VRM Class II.
- John Brown Canyon, 1,400 acres, to preserve old growth pinyon-juniper woodlands. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, travel limited to designated routes, VRM Class II.
- Mt. Garfield, 5,700 acres (an additional 3,300 acres above current designation), to protect its scenic values. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, travel limited to designated routes, right-of-way exclusion, VRM Class I.
- Plateau Creek, 200 acres, to protect special status fish species. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, right-of-way avoidance, travel limited to designated routes, VRM Class II.
- Prairie Canyon, 6,900 acres, to protect rare plants and wildlife habitat. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, 2,800 acres right-of-way exclusion, 2,600 acres right-of-way avoidance, travel limited to designated routes, VRM Class II.
- South Shale Ridge, 28,200 (an additional 400 acres above current designation), to protect rare plants, wildlife habitat, and scenic values. Close to fluid mineral leasing, close to mineral material disposal and non-energy solid leasable mineral exploration and development, right-of-way exclusion, travel limited to designated routes, VRM Class II.

The preferred alternative would not propose the following potential ACECs in CRVFO for designation: Abrams Creek, Dotsero Crater, Glenwood Springs Debris Flow Hazard Zones, Grand Hogback, Hardscrabble-East Eagle, Lyons Gulch, McCoy Fan Delta, Mount Logan Foothills, Sheep Creek Uplands, and The Crown Ridge.

The preferred alternative would not propose the following potential ACECs in GJFO for designation: Colorado River Riparian, Coon Creek, Gunnison River Riparian, Hawxhurst Creek, Indian Creek, Nine-mile Hill Boulders, Pyramid Rock Expansion, and Reeder Mesa.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMP. The Proposed RMP/Final Supplemental EIS is anticipated to be available for public protest in the spring of 2024 with a supplemental approved RMP and Record of Decision in the summer of 2024.

The BLM will hold two public meetings. The specific dates and locations of these meetings will be announced least 15 days in advance through local media, newspapers, and the BLM website at *https://go.usa.gov/xtrgf.*

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.7–2)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–16598 Filed 8–3–23; 8:45 am]

BILLING CODE 4331–16–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1293]

Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Vehicles, Associated Control Software, and Component Parts Thereof; Notice of Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that respondents HC Robotics (a.k.a. Huicang Information Technology Co., Ltd.) and Invata, LLC (d/b/a Invata Intralogistics) (collectively, ''Respondents'') have violated section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling within the United States after importation certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof that infringe one or more claims of U.S. Patent Nos. 8,622,194 and 10,576,505. The Commission has determined that the appropriate remedies are a limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') against each of Respondents. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the excluded articles imported during the period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2022, based on a complaint filed by OPEX Corporation (''OPEX'') of Moorestown, New Jersey. 87 FR 4290–91 (Jan. 27, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,104,601 (''the '601 patent''), 8,276,740 (''the '740 patent''), 8,622,194 (''the '194 patent''), and 10,576,505 (''the '505 patent''). *Id.* at 4291. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named two respondents: (1) HC Robotics (a.k.a. Huicang Information Technology Co., Ltd.) of Hangzhou City, Zheijang Province, China; and (2) Invata, LLC (d/b/a Invata Intralogistics) of Conshohocken, Pennsylvania. *Id.* The Office of Unfair Import Investigations is not named as a party. *Id.*

On September 13, 2022, the Commission terminated the investigation as to the OmniSort Generation 1 products based on a consent order. Order No. 10 (Aug. 12, 2022), *unreviewed by* Comm'n Notice (Sept. 13, 2022). On October 11, 2022, the Commission terminated the investigation as to (i) the '601 patent, (ii) the '740 patent, (iii) asserted claims 2–4, 6, 10, 12–17, 19, and 20 of the '194 patent, and (iv) asserted claims 14, 17, and 21 of the '505 patent based on OPEX's partial withdrawal of the complaint. Order No. 12 (Sept. 23, 2022), *unreviewed by* Comm'n Notice (Oct. 11, 2022). On December 19, 2022, the Commission determined that the technical prong of the domestic industry requirement is satisfied in this investigation as to the remaining asserted patents—*i.e.,* the '194 and '505 patents. *See* Order No. 17 (Nov. 23, 2022), *unreviewed by* Comm'n Notice (Dec. 19, 2022).

On March 31, 2023, the chief administrative law judge issued a final initial determination (''ID'') on violation, which included a recommended determination (''RD'') on remedy and bonding. The ID finds violations of section 337 with respect to asserted claims 1 and 5 of the '194 patent and asserted claims 1–5, 7–9, 11–13, 15–16, and 18–20 of the '505 patent. Specifically, the ID finds that: (i) OPEX has standing to assert both the '194 and '505 patents; (ii) the asserted claims listed above are directly infringed by Respondents; (iii) Respondents both induced and contributed to the infringement of each of the asserted claims listed above; (iv) no asserted claim is invalid; and (v) OPEX has satisfied the domestic industry requirement as to both patents. The RD recommends that, should the Commission determine that violations of section 337 occurred, the Commission should: (i) issue an LEO against the Respondents' infringing products; (ii) issue CDOs against each of Respondents; and (iii) set a 100 percent bond for importations of infringing products during the period of Presidential review.

On June 1, 2023, the Commission determined to review in part the final ID with respect to the ID's finding that OPEX has satisfied the economic prong of the DI requirement. 88 FR 37271–73 (June 7, 2023). The Commission also determined to correct typographical/clerical errors on pages 8, 35, and 38 of the ID. *Id.* The Commission further determined not to review the remaining findings in the ID. *Id.* The Commission's notice requested written submissions on remedy, the public interest, and bonding. *See id.* The Commission did not request briefing on any issue under review. *Id.*

The Commission did not receive submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's **Federal Register** notice. *See* 88 FR 23689 (Apr. 18, 2023).

On June 15, 2023, OPEX and Respondents each filed initial briefs on remedy, the public interest, and bonding. On June 22, 2023, OPEX and Respondents each filed reply briefs.

The Commission, having reviewed the record in this investigation, including the final ID, the parties' petitions and

responses thereto, and the parties' briefs on remedy, the public interest, and bonding, has determined that Respondents have violated section 337 by importing, selling for importation, or selling within the United States after importation certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof that infringe one or more claims of claims 1 and 5 of the '194 patent and claims 1–5, 7–9, 11–13, 15–16, and 18–20 of the '505 patent.

The Commission has determined that the appropriate remedy is: (i) an LEO prohibiting the importation of certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof that infringe one or more claims of claims 1 and 5 of the '194 patent and claims 1–5, 7–9, 11–13, 15–16, and 18–20 of the '505 patent; and (ii) CDOs against each of Respondents. The Commission has also determined that the public interest factors do not preclude issuance of the remedial orders. The Commission has further determined to set a bond in the amount of 100 percent of the entered value of the excluded articles imported during the period of Presidential review (19 U.S.C. 1337(j)).

The Commission issues its opinion herewith setting forth its determinations on certain issues. This investigation is hereby terminated.

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission vote for this determination took place on July 31, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 31, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–16635 Filed 8–3–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Senior Community Service Employment Program (SCSEP) Programmatic and Performance Requirement

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled, ''Senior Community Service Employment Program (SCSEP).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by October 3, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Toni Wilson-King by telephone at 202–693–2922, TTY 1–800–877–8339, (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *SCSEPTransition@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, Division of National Programs, Tools and Technical Assistance, Senior Community Service Employment Program, 200 Constitution Avenue NW, Washington, DC; by email: *SCSEPTransition@dol.gov;* or by Fax 202–693–3015.

FOR FURTHER INFORMATION CONTACT: Toni Wilson-King by telephone at 202–693–2922 (this is not a toll-free number) or by email at *SCSEPTransition@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The purposes of this Information Collection Request are to fulfill the Older Americans Act (Reauthorized by the Supporting Older Americans Act of 2020, Public Law 116–131 (March 25, 2020)), revise SCSEP's Customer Satisfaction Survey collection instruments, ETA 9124A—Participant Survey, ETA 9124B—Host Agency Survey, and ETA 9124C—Employer Survey), and revise the method of administration for the Employer Survey. These changes are required to make the surveys more efficient and less burdensome for respondents, as well as to make them more relevant to the current SCSEP environment and standard business practices (sections 513(b)(1)(E); 42 U.S.C. 3056k(b)(1)(E) and 20 CFR 641.700 and 710).

The SCSEP, authorized by title V of the Older Americans Act (OAA), is the only Federally sponsored employment and training program targeted specifically to low-income, older individuals who want to enter or reenter the workforce. The SCSEP performance measures, as specified in the SCSEP 2018 Final Rule and section 513 of the OAA (42 U.S.C. 3056k, as amended by Pub. L. 114–144) are as follows:

(a) Hours (in the aggregate) of community service employment.

(b) The percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project.

(c) The percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.

(d) The median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project.

(e) Indicators of effectiveness in serving employers, host agencies, and project participants; and

(f) The number of eligible individuals served, including the number of participating individuals described in subsection (a)(3)(B)(ii) or (b)(2) of section 518.

This information collection measures effectiveness in serving employers, host agencies, and project participants, and is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding

any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0040.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Senior Community Service Employment Program (SCSEP).

Forms: ETA 9124A; ETA 9124B; ETA 9124C1 and 9124C2.

OMB Control Number: 1205–0040.

Affected Public: Individuals and households, State, local and Tribal governments, and the private sector (businesses or other for-profits, and not-for-profit institutions).

Estimated Number of Respondents: 18,832.

Frequency: Annually.

Total Estimated Annual Responses: 18,832.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 2,787 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–16667 Filed 8–3–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0142]

Proposed Extension of Information Collection; Sealing of Abandoned Areas

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Sealing of Abandoned Areas.

DATES: All comments must be received on or before October 3, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2023–0033.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Part 75 of title 30 of Code of Federal Regulation includes requirements of sealing abandoned areas in underground coal mines such as the design and construction of new seals and the examination, maintenance, and repair of all seals.

30 CFR 75.335—Seal Strengths, Design Applications, and Installation

30 CFR 75.335(b) sets forth procedures for the approval of seal design applications that are submitted by seal manufacturers or mine operators to MSHA's Office of Technical Support, Pittsburgh Safety and Health Technology Center.

30 CFR 75.355(b)(1)(ii) requires that the seal design applications to be submitted for MSHA approval must be certified by a professional engineer to ensure that the design of the seal is in accordance with current, prudent engineering practices and is applicable to conditions in an underground coal mine.

30 CFR 75.335(c) requires the submission and certification of information for seal installation. The mine operator must:

(1) Retain the seal design approval and installation information for as long as the seal is needed to serve the purpose for which it was built.

(2) Designate a professional engineer to conduct or have oversight of seal installation and certify that the provisions in the approved seal design

specified in this section have been addressed and are applicable to conditions at the mine. A copy of the certification must be submitted to the District Manager with the information listed in (3) and a copy of the certification must be retained for as long as the seal is needed to serve the purpose for which it was built.

(3) Provide the following information for approval in the ventilation plan—

i. The MSHA Technical Support Approval Number;

ii. A summary of the installation procedures;

iii. The mine map of the area to be sealed and proposed seal locations that include the deepest points of penetration prior to sealing. The mine map must be certified by a professional engineer or a professional land surveyor.

iv. Specific mine site information, including—

A. Type of seal;

B. Safety precautions taken prior to seal achieving design strength;

C. Methods to address site-specific conditions that may affect the strength and applicability of the seal including set-back distances;

D. Site preparation;

E. Sequence of seal installations;

F. Projected date of completion of each set of seals;

G. Supplemental roof support inby and outby each seal;

H. Water flow estimation and dimensions of the water drainage system through the seals;

I. Methods to ventilate the outby face of seals once completed;

J. Methods and materials used to maintain each type of seal;

K. Methods to address shafts and boreholes in the sealed area;

L. Assessment of potential for overpressures greater than 120 psi in sealed area;

M. Additional sampling locations; and

N. Additional information required by the District Manager.

30 CFR 75.336—Sampling and Monitoring Requirements

30 CFR 75.336(a)(2) requires the mine operator to evaluate the atmosphere in the sealed area to determine whether sampling through the sampling pipes in seals provides appropriate sampling locations of the sealed area. The mine operator will make an evaluation for each area that has seals. When the results of the evaluations indicate the need for additional sampling locations, the mine operator must provide the additional locations and have them approved in the ventilation plan.

30 CFR 75.336(c) requires that when a sample is taken from the sealed atmosphere with seals of less than 120 psi and the sample indicates that (1) the oxygen concentration is 10 percent or greater and (2) methane is between 4.5 percent and 17 percent, the mine operator must immediately take an additional sample and then immediately notify the District Manager. When the additional sample indicates that the oxygen concentration is 10 percent or greater and methane is between 4.5 percent and 17 percent, persons must be withdrawn from the affected area identified by the operator and approved by the District Manager in the ventilation plan.

30 CFR 75.336(c) also requires that before miners reenter the mine, the mine operator must have a ventilation plan revision approved by the District Manager specifying the actions to be taken.

30 CFR 75.336(e) requires a certified person to record each sampling result, including the location of the sampling points and the oxygen and methane concentrations. Also, any hazardous conditions found must be corrected and recorded in accordance with existing 30 CFR 75.363. The mine operator must retain sampling records at the mine for at least one year from the date of the sampling.

30 CFR 75.337—Construction and Repair of Seals

30 CFR 75.337(c)(1)–(c)(5) requires a certified person to perform several tasks during seal construction and repair and to certify that the tasks were done in accordance with the approved ventilation plan at the completion of their shift. In addition, a mine foreman or equivalent mine official must countersign the record by the end of their next regularly scheduled working shift. The record must be kept at the mine for one year.

30 CFR 75.337(d) requires a senior mine management official, such as a mine manager or superintendent, to certify that the construction, installation, and materials used were in accordance with the approved ventilation plan. The mine operator must retain the certification for as long as the seal is needed to serve the purpose for which it was built.

30 CFR 75.337(e) requires the mine operator to notify MSHA of certain activities concerning the construction of seals.

30 CFR 75.337(e)(1) requires the mine operator to notify the District Manager between 2 and 14 days prior to commencement of seal construction.

30 CFR 75.337(e)(2) requires the mine operator to notify the District Manager, in writing, within 5 days of completion of a set of seals and provide a copy of the certifications required in 30 CFR 75.337(d).

30 CFR 75.337(e)(3) requires the mine operator to submit a copy of the quality control test results for seal material properties specified by 30 CFR 75.335 within 30 days of completion of such tests.

30 CFR 75.337(f) requires the mine operator to request the District Manager to approve a different location in the ventilation plan to permit welding, cutting, and soldering within 150 ft. of a seal.

30 CFR 75.337(g)(3) requires the mine operator to label sampling pipes to indicate the location of the sampling point when the mine operator installs more than one sampling pipe through a seal.

30 CFR 75.338—Training

30 CFR 75.338(a) requires mine operators to certify that persons conducting sampling were trained in the use of appropriate sampling equipment, techniques, the location of sampling points, the frequency of sampling, the size and condition of sealed areas, and the use of continuous monitoring systems, if applicable, before they conduct sampling, and annually thereafter. The mine operator must certify the date of training provided to certified persons and retain each certification for two years.

30 CFR 75.338(b) requires mine operators to certify that miners constructing or repairing seals, designated certified persons, and senior mine management officials were trained prior to constructing or repairing a seal and annually thereafter. The mine operator must certify the date of training provided each miner, certified person, and senior mine management official and retain each certification for two years.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Sealing of Abandoned Areas. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Sealing of Abandoned Areas. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0142.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 166.

Frequency: On occasion.

Number of Annual Responses: 44,626.

Annual Burden Hours: 4,570 hours.

Annual Respondent or Recordkeeper Cost: $799,282.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-Ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–16668 Filed 8–3–23; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0012]

Federal Advisory Council on Occupational Safety and Health (FACOSH), Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on the federal advisory council on Occupational Safety and Health (FACOSH).

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health (OSHA) invites interested parties to submit nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH).

DATES: Nominations for FACOSH must be submitted (postmarked, sent, transmitted, or received) by September 22, 2023.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA–2023–0012 at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2023–0012). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General information: Ms. Mikki Holmes, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2122; email *ofap@dol.gov.*

Copies of this ***Federal Register*** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of OSHA invites interested parties to submit nominations for membership on FACOSH.

I. Background

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 13511). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency.

II. FACOSH Membership

FACOSH is comprised of 16 members, who the Secretary appoints to staggered terms not to exceed three (3) years. The Assistant Secretary, who chairs FACOSH, is seeking nominations to fill five (5) positions on FACOSH that become vacant on January 1, 2024. The Secretary will appoint the new members to three (3) year terms. The number of members the Secretary will appoint to three-year terms beginning January 1, 2024, includes:

• Four management representatives; and

• One labor representative.

FACOSH members serve at the pleasure of the Secretary unless the member is no longer qualified to serve, resigns, or is removed by the Secretary. The Secretary may appoint FACOSH members to successive terms. FACOSH meets at least two (2) times per year. The Department of Labor is committed

to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested person or organization may nominate one (1) or more qualified persons for membership on FACOSH. Interested persons also are invited and encouraged to submit statements in support of particular nominees.

III. Nomination Requirements

Nominations must include the following information:

1. The nominee's contact information and current occupation or position;
2. Nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations and committees;
3. Category of membership (management, labor) the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that addresses the nominee's suitability for the nominated membership category;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the Federal workforce; and
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings and has no apparent conflicts of interest that would preclude membership on FACOSH.

IV. Member Selection

The Secretary will appoint FACOSH members based upon criteria including, but not limited to, the nominee's level of responsibility for occupational safety and health matters involving the Federal workforce, experience and competence in occupational safety and health, and willingness and ability to participate in FACOSH meetings regularly and fully. Federal agency management nominees who serve as their agency's Designated Agency Safety and Health Official (DASHO) and labor nominees who are responsible for Federal employee occupational safety and health matters within their respective organizations are preferred as management and labor members, respectively. The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new FACOSH members in the **Federal Register**.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 13511, Secretary of Labor's Order 8–2020 (85 FR 58393, 9/18/2020), 29 CFR part 1960 (Basic Program Elements for Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102–3.

Signed at Washington, DC, on July 28, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–16641 Filed 8–3–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0010]

Ballard Marine Construction Bay Park Conveyance Tunnel Project; Application for Permanent Variance and Interim Order; Grant of Interim Order; Request for Comments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Ballard Marine Construction for a permanent variance and interim order from provisions of OSHA standards that regulate work in compressed air environments, presents the agency's preliminary finding on Ballard's application, and announces the granting of an interim order. OSHA invites the public to submit comments on the variance application to assist the agency in determining whether to grant the applicant a permanent variance based on the conditions specified in this application.

DATES: Submit comments, information, documents in response to this notice, and request for a hearing on or before September 5, 2023. The interim order described in this notice will become effective on August 4, 2023, and shall remain in effect until the completion of the Bay Park Tunnel Conveyance Project in Nassau County, New York or the interim order is modified or revoked.

ADDRESSES:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2023–0010). 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 September 5, 2023 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; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.*

Copies of this ***Federal Register*** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.*

Hearing Requests: According to 29 CFR 1905.15, hearing requests must include: (1) a concise statement of facts detailing how the permanent variance would affect the requesting party; (2) a specification of any statement or representation in the variance application that the commenter denies, and a concise summary of the evidence offered in support of each denial; and (3) any views or arguments on any issue of fact or law presented in the variance application.

SUPPLEMENTARY INFORMATION:

I. Notice of Application

On March 25, 2022, Ballard Marine Construction (Ballard or the applicant), submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655, and 29 CFR 1905.11 (variances and other relief under Section 6(d)) an application for a permanent variance from several provisions of the OSHA standard that regulates work in compressed air, 1926.803 of 1926 Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air, and an interim order allowing it to proceed while OSHA considers the request for a permanent variance (OSHA–2023–0010–0001). This notice addresses Ballard's application for a permanent variance and interim order for construction of the Bay Park Conveyance Tunnel Project in Nassau County, New York only and is not applicable to future Ballard tunneling projects.

Specifically, this notice addresses Ballard's application for a permanent variance and interim order from the provisions of the standard that: (1) require the use of the decompression values specified in decompression tables in Appendix A of subpart S (29 CFR 1926.803(f)(1)); and (2) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and (xvii), respectively).

OSHA has previously approved nearly identical provisions when granting several other very similar variances, as discussed in more detail in Section II. OSHA preliminarily concludes that the proposed variance is appropriate, grants an interim order temporarily allowing the proposed activity, and seeks comment on the proposed variance.

A. Background

The applicant is a contractor that works on complex tunnel projects using innovations in tunnel-excavation methods. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balanced micro-tunnel boring machine (TBM). Using shielded mechanical excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, TBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies and isolate that pressure to the forward section (the excavation working chamber) of the TBM.

Ballard asserts that it bores tunnels using TBM at levels below the water table through soft soils consisting of clay, silt and sand. TBMs are capable of maintaining pressure at the tunnel face and stabilizing existing geological conditions through the controlled use of a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. The forward-most portion of the TBM is the working chamber, and this chamber is the only pressurized segment of the TBM. Within the shield, the working chamber consists of two sections: the forward working chamber and the staging chamber. The forward working chamber is immediately behind the cutter head and tunnel face. The staging chamber is behind the forward working chamber and between the man-lock door and the entry door to the forward working chamber.

The TBM has twin man-locks located between the pressurized working chamber and the non-pressurized portion of the machine. Each man-lock has two compartments. This configuration allows workers to access the man-locks for compression and decompression, and medical personnel to access the man-locks if required in an emergency.

Ballard's Hyperbaric Operations Manual (HOM) for the Bay Park Conveyance Tunnel Project (OSHA–2003–0010–0004) indicates that the maximum pressure to which it is likely to expose workers during project interventions for the three tunnel drives is 29 pounds per square inch gauge (p.s.i.g). The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face, which for this project Ballard estimates will be up to a pressure not exceeding 29 p.s.i.g., which does not exceed the maximum pressure specified by the OSHA standard at 29 CFR 1926.803(e)(5).[1] Ballard is not seeking a variance from this provision of the compressed-air standard.

Ballard employs specially trained personnel for the construction of the tunnel. To keep the machinery working effectively, Ballard asserts that these workers must periodically enter the excavation working chamber of the TBM to perform hyperbaric interventions during which workers would be exposed to air pressures up to 29 p.s.i.g, These interventions consist of conducting inspections or maintenance work on the cutter-head structure and cutting tools of the TBM, such as changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head. These interventions are the only time that workers are exposed to compressed air. Interventions in the excavation working chamber (the pressurized portion of the TBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention.

During interventions, workers enter the working chamber through one of the twin man-locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The man-locks and the excavation working chamber are designed to accommodate three people, which is the maximum crew size allowed under the proposed variance (Ballard only plans to employ a crew of two people for these activities). When the required decompression times are greater than work times, the twin man-locks allow for crew rotation. During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man-lock at its disposal.

Ballard asserts that these innovations in tunnel excavation have greatly reduced worker exposure to hazards of pressurized air work because they have eliminated the need to pressurize the

[1] The decompression tables in Appendix A of subpart S express the working pressures as pounds per square inch gauge (p.s.i.g.). Therefore, throughout this notice, OSHA expresses the p.s.i. value specified by 29 CFR 1926.803(e)(5) as p.s.i.g., consistent with the terminology in Appendix A, Table 1 of subpart S.

entire tunnel for the project and thereby reduce the number of workers exposed, as well as the total duration of exposure, to hyperbaric pressure during tunnel construction. These advances in technology substantially modified the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the OSHA compressed-air standard for construction at 29 CFR 1926.803.

In addition to the reduced exposures resulting from the innovations in tunnel-excavation methods, Ballard asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. These procedures, however, would deviate from the decompression process that OSHA requires for construction in 29 CFR 1926.803(f)(1) and the decompression tables in Appendix A of 29 CFR part 1926, subpart S. Nevertheless, according to Ballard, their use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard.

Ballard therefore believes its workers will be at least as safe under its proposed alternatives as they would be under OSHA's standard because of the reduction in number of workers and duration of hyperbaric exposures, better application of hyperbaric medicine, and the development of a project-specific HOM that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric or compressed-air workers (CAWs).

Based on an initial review of Ballard's application for a permanent variance and interim order for the construction of the Bay Park Conveyance Tunnel Project in Nassau County, New York, OSHA has preliminarily determined that Ballard has proposed an alternative that would provide a workplace at least as safe and healthful as that provided by the standard.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations (29 CFR part 1905), the applicant has certified that it notified its workers [2] of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed its workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

A. OSHA History of Approval of Nearly Identical Variance Requests

OSHA previously approved several nearly identical variances involving the same types of tunneling equipment used for similar projects. OSHA notes that it granted several subaqueous tunnel construction permanent variances from the same provisions of OSHA's compressed-air standard (29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application: (1) Impregilo, Healy, Parsons, Joint Venture (IHP JV) for the completion of the Anacostia River Tunnel in Washington, DC (80 FR 50652 (August 20, 2015)); (2) Traylor JV for the completion of the Blue Plains Tunnel in Washington, DC (80 FR 16440, March 27, 2015)); (3) Tully/OHL USA Joint Venture for the completion of the New York Economic Development Corporation's New York Siphon Tunnel project (79 FR 29809, May 23, 2014)); (4) Salini-Impregilo/Healy Joint Venture for the completion of the Northeast Boundary Tunnel in Washington, DC (85 FR 27767, May 11, 2020); (5) Traylor-Shea Joint Venture for the completion of the Alexandria RiverRenew Tunnel Project in Alexandria, Virginia and Washington, DC (87 FR 54536, September 6, 2022); and (6) McNally/Kiewit Joint Venture for the completion of the Shoreline Storage Tunnel Project in Cleveland, Ohio (87 FR 58379, September 25, 2022) and (7) Traylor-Sundt Joint Venture for the Integrated Pipeline Tunnel Project in Dallas Texas, (88 FR 26600, May 1, 2023). OSHA also granted an interim order to Ballard Marine Construction for the Suffolk County Outfall Tunnel Project in West Babylon, New York (86 FR 5253, January 19, 2021). The proposed alternate conditions in this notice are nearly identical to the alternate conditions of the previous permanent variances and interim orders.[3] OSHA is not aware of any injuries or other safety issues that arose from work performed under these conditions in accordance with the previous variances and interim orders.

B. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression according to the decompression tables in Appendix A of 29 CFR part 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules (the 1992 French Decompression Tables), which rely on staged decompression, and to supplement breathing air used during decompression with air or oxygen (as appropriate).[4] The applicant asserts decompression protocols using the 1992 French Decompression Tables for air or oxygen as specified by the Bay Park Conveyance Tunnel Project HOM are safer for tunnel workers than the decompression protocols specified in Appendix A of 29 CFR part 1926, subpart S. Accordingly, the applicant would commit to following the decompression procedures described in its HOM, which would require it to follow the 1992 French Decompression Tables to decompress compressed-air workers (CAWs) after they exit the hyperbaric conditions in the excavation working chamber.

Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen. Ballard asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) maintaining appropriate levels of external pressure to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of nitrogen elimination; (4) improving the quality of breathing during decompression stops to diminish worker fatigue and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the project-specific HOM requires a physician certified in

[2] See the definition of ''Affected employee or worker'' in section VI. D.

[3] Most of the other subaqueous tunnel construction variances allowed further deviation from OSHA standards by permitting employee exposures above 50 p.s.i.g. based on the composition of the soil and the amount of water above the tunnel for various sections of those projects. The current proposed variance includes substantively the same safeguards as the variances that OSHA granted previously, even though employees will only be exposed to pressures up to 29 p.s.i.g.

[4] In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

hyperbaric medicine, to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced man-lock attendant is also required to be present during hyperbaric exposures and decompression. This man-lock attendant is to operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor, who is trained in hyperbaric operations, procedures, and safety, directly oversees all hyperbaric interventions and ensures that staff follow the procedures delineated in the HOM or by the attending physician.

C. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

The applicant is applying for a permanent variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is committed to conducting the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

Breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in decompression illness (DCI), commonly referred to as ''the bends.'' This description of the etiology of DCI is consistent with current scientific theory and research on the issue.

The 1992 French Decompression Tables proposed for use by the applicant provide for stops during worker decompression (*i.e.,* staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the use of automatically regulated continuous decompression.[5] In addition, the applicant asserts that staged decompression administered in accordance with its HOM is at least as effective as an automatic controller in regulating the decompression process because the HOM includes an intervention supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) who directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops.

D. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

Space limitations in the TBM do not allow for the installation and use of an additional special decompression lock or chamber. The applicant proposes that it be permitted to rely on the man-locks and staging chamber in lieu of adding a separate, special decompression chamber. Because only a few workers out of the entire crew are exposed to hyperbaric pressure, the man-locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate all of the exposed workers during decompression. The applicant uses the existing man-locks, each of which adequately accommodates a three-member crew for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man-lock (during decompression stops) or exit the man-lock and move into the staging chamber where additional space is available. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

III. Agency Preliminary Determinations

After reviewing the proposed alternatives OSHA has preliminarily determined that the applicant's proposed alternatives on the whole, subject to the conditions in the request and imposed by this interim order, provide measures that are as safe and healthful as those required by the cited OSHA standard addressed in section II of this document.

In addition, OSHA has preliminarily determined that each of the following alternatives are at least as effective as the specified OSHA requirements:

A. 29 CFR 1926.803(f)(1)

Ballard has proposed to implement equally effective alternative measures to the requirement in 29 CFR 1926.803(f)(1) for compliance with OSHA's decompression tables. The project-specific HOM specifies the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use (the 1992 French Decompression Tables). Depending on the maximum working pressure and exposure times during the interventions, these tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.,* staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant,

[5] See, *e.g.,* Eric Kindwall, *Compressed Air Tunneling and Caisson Work Decompression Procedures: Development, Problems, and Solutions,* 24(4) Undersea and Hyperbaric Medicine 337, 337–45 (1997). This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard. Dr. Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, ''Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1h, at least half the time is spent at pressures less than 2 p.s.i.g. . . ., which provides less and less meaningful bubble suppression . . . .'' In addition, Dr. Kindwall addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that ''[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control.''

experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

Prior to granting the several previous permanent variances to IHP JV, Traylor JV, Tully JV, Salini-Impregilo Joint Venture, Traylor-Shea JV and McNally/Kiewit JV, Traylor-Sundt JV, and Ballard (Interim Order, January 19, 2021), OSHA conducted a review of the scientific literature and concluded that the alternative decompression method (*i.e.,* the 1992 French Decompression Tables) Ballard proposed would be at least as safe as the decompression tables specified by OSHA when applied by trained medical personnel under the conditions that would be imposed by the proposed variance.

Some of the literature indicates that the alternative decompression method may be safer, concluding that decompression performed in accordance with these tables resulted in a lower occurrence of DCI than decompression conducted in accordance with the decompression tables specified by the standard. For example, H. L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996).[6] This project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 DCI cases out of 7,220 decompression events and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08% compared to a previous incidence rate of 0.14%. The DCI incidence in the study by H. L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in Appendix A.

OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables.[7]

OSHA's experience with the previous several variances, which all incorporated nearly identical decompression plans and did not result in safety issues, also provides evidence that the alternative procedure as a whole is at least as effective for this type of tunneling project as compliance with OSHA's decompression tables. The experience of State Plans[8] that either granted variances (Nevada, Oregon and Washington)[9] or promulgated a standard (California)[10] for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, provide additional evidence of the effectiveness of this alternative procedure.

B. 29 CFR 1926.803(g)(1)(iii)

Ballard developed, and proposed to implement, an equally effective alternative to 29 CFR 1926.803(g)(1)(iii), which requires the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The applicant's alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine, to oversee all hyperbaric operations.

In reaching this preliminary conclusion, OSHA again notes the experience of previous, nearly identical approved tunneling variances, the experiences of State Plans, and a review of the literature and other information noted earlier.

C. 29 CFR 1926.803(g)(1)(xvii)

Ballard developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by 29 CFR 1926.803(g)(1)(xvii). The TBM's man-lock and working chamber appear to satisfy all of the conditions of the special decompression chamber, including that they provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes. Therefore, again noting OSHA's previous experience with nearly identical variances including the same alternative, OSHA preliminarily determined that the TBM's man-lock and working chamber function as effectively as the special decompression chamber required by the standard.

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the agency preliminarily finds that when the employer complies with the conditions of the proposed modified variance, the working conditions of the employer's workers would be at least as safe and healthful as if the employer complied with the working conditions specified by paragraphs (e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803.

IV. Grant of Interim Order, Proposal for Permanent Variance, and Request for Comment

OSHA hereby announces the preliminary decision to grant an interim order allowing Ballard's CAWs to perform interventions in hyperbaric conditions not exceeding 29 p.s.i.g. during the Bay Park Conveyance Tunnel Project, subject to the conditions that follow in this document. This interim order will remain in effect until completion of the Bay Park Conveyance Tunnel Project or until the agency modifies or revokes the interim order or makes a decision on Ballard's application for a permanent variance. During the period starting with the publication of this notice until completion of the Bay Park Conveyance Tunnel Project, or until the agency modifies or revokes the interim order or makes a decision on its application for a permanent variance, the applicant is required to comply fully with the conditions of the interim order as an alternative to complying with the following requirements of 29 CFR 1926.803 (''the standard'') that:

1. Require the use of decompression values specified by the decompression tables in Appendix A of the compressed-air standard (29 CFR 1926.803(f)(1));

2. Require the use of automated operational controls (29 CFR 1926.803(g)(1)(iii)); and

[6] Anderson HL (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. Undersea and Hyperbaric Medicine, 29(3),pp. 172–188.

[7] J.C. Le Péchon, P. Barre, J.P. Baud, F. Ollivier, *Compressed Air Work—French Tables 1992—Operational Results,* JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS, pp. 1–5 (September 1996) (see Ex. OSHA–2012–0036–0005).

[8] Under Section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as ''State Plans.'' Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. See 29 U.S.C. 667.

[9] These state variances are available in the docket for the 2015 Traylor JV variance: Exs. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0005 (Oregon), and OSHA–2012–0035–0004 (Washington).

[10] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

3. Require the use of a special decompression chamber (29 CFR 1926.803(g)(1)(xvii)).

In order to avail itself of the interim order, Ballard must: (1) comply with the conditions listed in the interim order for the period starting with the grant of the interim order and ending with Ballard's completion of the Bay Park Conveyance Tunnel Project (or until the agency modifies or revokes the interim order or makes a decision on its application for a permanent variance); (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the proposed conditions, including the affected employees of other employers, using the same means it used to inform these employees of its application for a permanent variance.

OSHA is also proposing that the same requirements (see above section III, parts A through C) would apply to a permanent variance if OSHA ultimately issues one for this project. OSHA requests comment on those conditions as well as OSHA's preliminary determination that the specified alternatives and conditions would provide a workplace as safe and healthful as those required by the standard from which a variance is sought. After reviewing comments, OSHA will publish in the **Federal Register** the agency's final decision approving or rejecting the request for a permanent variance.

V. Description of the Specified Conditions of the Interim Order and the Application for a Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii) and provides additional detail regarding the proposed conditions that form the basis of Ballard's application for an Interim Order and for a Permanent Variance. The conditions are listed in Section VI. For brevity, the discussion that follows refers only to the permanent variance, but the same conditions apply to the Interim Order.

Proposed Condition A: Scope

The scope of the proposed permanent variance would limit coverage to the work situations specified. Clearly defining the scope of the proposed permanent variance provides Ballard, Ballard's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the proposed permanent variance would apply. To the extent that Ballard exceeds the defined scope of this variance, it would be required to comply with OSHA's standards.

Pursuant to 29 CFR 1905.11, an employer (or class or group of employers)[11] may request a permanent variance for a specific workplace or workplaces. If OSHA approves a permanent variance, it would apply only to the specific employer(s) that submitted the application and only to the specific workplace or workplaces designated as part of the project. In this instance, if OSHA were to grant a permanent variance, it would apply to only the applicant, Ballard Marine Construction, and only to the Bay Park Conveyance Tunnel Project. As a result, it is important to understand that if OSHA were to grant Ballard a Permanent Variance, it would not apply to any other employers, or to projects the applicant may undertake in the future.

Proposed Condition B: Duration

The interim order is only intended as a temporary measure pending OSHA's decision on the permanent variance, so this condition specifies the duration of the Order. If OSHA approves a permanent variance, it would specify the duration of the permanent variance as the remainder of the Bay Area Conveyance Tunnel Project.

Proposed Condition C: List of Abbreviations

Proposed condition C defines a number of abbreviations used in the proposed permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the proposed permanent variance.

Proposed Condition D: Definitions

The proposed condition defines a series of terms, mostly technical terms, used in the proposed permanent variance to standardize and clarify their meaning. OSHA believes that defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the proposed permanent variance.

[11] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a Variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

Proposed Condition E: Safety and Health Practices

This proposed condition requires the applicant to develop and submit to OSHA an HOM specific to the Bay Area Conveyance Tunnel Project at least six months before using the TBM for tunneling operations. The applicant must also submit, at least six months before using the TBM, proof that the TBM's hyperbaric chambers have been designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2019 (or the most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*). These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for the project.

The submission of the HOM to OSHA, which Ballard has already completed, enables OSHA to determine whether the safety and health instructions and measures Ballard specifies are appropriate to the field conditions of the tunnel (including expected geological conditions), conform to the conditions of the variance, and adequately protect the safety and health of the CAWs. It also facilitates OSHA's ability to ensure that the applicant is complying with these instructions and measures. The requirement for proof of compliance with ASME PVHO–1.2019 is intended to ensure that the equipment is structurally sound and capable of performing to protect the safety of the employees exposed to hyperbaric pressure.

Additionally, the proposed condition includes a series of related hazard prevention and control requirements and methods (*e.g.,* decompression tables, job hazard analyses (JHA), operations and inspections checklists, incident investigation, and recording and notification to OSHA of recordable hyperbaric injuries and illnesses) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Proposed Condition F: Communication

This proposed condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The proposed condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected

workers and support personnel during hyperbaric operations. Availability of such reliable means of communications would enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during TBM operations.

Proposed Condition G: Worker Qualification and Training

This proposed condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The proposed condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work is intended to ensure that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Paragraph (2)(e) of this proposed condition requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if the workers believe they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Proposed Condition H: Inspections, Tests, and Accident Prevention

Proposed Condition H requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems, and associated work areas. This condition would help to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition would also enhance worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (3) of this proposed condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the TBM, and maintain these documents at the jobsite for the duration of the job. This requirement would provide the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Proposed Condition I: Compression and Decompression

This proposed condition would require the applicant to consult with the designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW and then implement the procedures recommended by the medical consultant. This proposed provision would ensure that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during TBM operations. Accordingly, CAWs requiring acclimation would have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition would prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the TBM.

Proposed Condition J: Recordkeeping

Under OSHA's existing recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, the employer must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA's Form 301 Injury and Illness Incident Report and OSHA's Form 300 Log of Work-Related Injuries and Illnesses. The applicant did not seek a variance from this standard, and therefore Ballard must comply fully with those requirements.

Examples of important information to include on the OSHA's Form 301 Injury and Illness Incident Report (along with the corresponding question on the form) are:

Q14

- the task performed;
- the composition of the gas mixture (*e.g.,* air or oxygen);
- an estimate of the CAW's workload;
- the maximum working pressure;
- temperature in the work and decompression environments; and
- unusual occurrences, if any, during the task or decompression.

Q15

- time of symptom onset; and
- duration between decompression and onset of symptoms.

Q16

- type and duration of symptoms; and
- a medical summary of the illness or injury.

Q17

- duration of the hyperbaric intervention;
- possible contributing factors; and
- the number of prior interventions completed by the injured or ill CAW; and the pressure to which the CAW was exposed during those interventions.[12]

Proposed Condition J would add additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant would be required to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under this provision, in concert with the information provided under proposed Condition K (using OSHA's Form 301 Injury and Illness Incident Report to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8–.12), would enable the applicant and OSHA to assess the effectiveness of the Permanent Variance in preventing DCI and other hyperbaric-related effects.

Proposed Condition K: Notifications

Under the proposed condition, the applicant is required, within specified periods of time, to: (1) notify OSHA of any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during TBM operations; (2) provide OSHA a copy of the hyperbaric exposures incident investigation report (using OSHA's Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA's Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the

[12] See 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses *(http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631;* recordkeeping forms and instructions *(http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf)*; and OSHA Recordkeeping Handbook *(http://www.osha.gov/recordkeeping/handbook/index.html)*.

certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Long Island New York OSHA Area Office (LIAO) within 15 working days should the applicant need to revise the HOM to accommodate changes in its compressed-air operations that affect Ballard's ability to comply with the conditions of the proposed Permanent Variance; and (6) provide OTPCA and the LIAO, at the end of the project, with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA's Form 301 Injury and Illness Incident Report) is more restrictive than the existing recordkeeping requirement of completing OSHA's Form 301 Injury and Illness Incident Report within 7 calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related hyperbaric (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, its employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and, based on this assessment, whether to revise or revoke the conditions of the proposed permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this proposed condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the proposed permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the proposed permanent variance, and expedite the agency's administration and enforcement of the permanent variance. Stipulating that an applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by proposed permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the proposed permanent variance.

VI. Specific Conditions of the Interim Order and the Proposed Permanent Variance

The following conditions apply to the interim order OSHA is granting to Ballard for the Bay Area Conveyance Tunnel Project. These conditions specify the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii). In addition, these conditions are specific to the alternative means of compliance with the requirements of paragraphs 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii) that OSHA is proposing for Ballard's permanent variance. To simplify the presentation of the conditions, OSHA generally refers only to the conditions of the proposed permanent variance, but the same conditions apply to the interim order except where otherwise noted.[13]

The conditions would apply with respect to all employees of Ballard exposed to hyperbaric conditions. These conditions are outlined in this Section:

A. Scope

The interim order applies, and the permanent variance would apply, only when Ballard stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform an intervention (*i.e.,* inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

The interim order and proposed permanent variance apply only to work:

1. That occurs in conjunction with construction of the Bay Area Conveyance Tunnel Project, a tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of an TBM;

2. In the TBM's forward section (the excavation working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber; and

3. Performed in compliance with all applicable provisions of 29 CFR part 1926 except for the requirements specified by 29 CFR 1926.803(f)(1), (g)(1)(iii), and (g)(1)(xvii).

B. Duration

The interim order granted to Ballard will remain in effect until OSHA modifies or revokes this interim order or grants Ballard's request for a permanent variance in accordance with 29 CFR 1905.13. The proposed permanent variance, if granted, would remain in effect until the completion of Ballard's Bay Area Conveyance Tunnel Project.

C. List of Abbreviations

Abbreviations used throughout this proposed permanent variance would include the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. DCI—Decompression illness
4. DMT—Diver medical technician
5. TBM—Earth pressure balanced micro-tunnel boring machine
6. HOM—Hyperbaric operations manual
7. JHA—Job hazard analysis
8. LIAO—Long Island Area Office
9. OSHA—Occupational Safety and Health Administration
10. OTPCA—Office of Technical Programs and Coordination Activities

D. Definitions

The following definitions would apply to this proposed permanent variance. These definitions would supplement the definitions in Ballard's project-specific HOM.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this proposed modified permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Atmospheric pressure*—the pressure of air at sea level, generally 14.7 pounds per square inch absolute (p.s.i.a)., 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures not exceeding 29 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing

[13] In these conditions, OSHA is using the future conditional form of the verb (*e.g.,* ''would''), which pertains to the application for a Permanent Variance (designated as ''Permanent Variance'') but the conditions are mandatory for purposes of the Interim Order.

and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.[14]

5. *Decompression illness*—an illness (also called decompression sickness or ''the bends'') caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include, but are not limited to: joint pain (also known as the ''bends'' for agonizing pain or the ''niggles'' for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).[15]

Note: Health effects associated with hyperbaric intervention, but not considered symptoms of DCI, can include: barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses, and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O_2) at elevated partial pressures).

6. *Diver Medical Technician*—Member of the dive team who is experienced in first aid.

7. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate a tunnel.

8. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.[16]

9. *Hyperbaric*—at a higher pressure than atmospheric pressure.

10. *Hyperbaric intervention*—a term that describes the process of stopping the TBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

11. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by Ballard for working in compressed air during the Bay Area Conveyance Tunnel Project.

12. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

13. *Man-lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into, or out of, a working chamber.

14. *Medical Advisor*—medical professional experienced in the physical requirements of compressed air work and the treatment of decompression illness.

15. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

16. *p.s.i.a.*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

17. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g. At sea level the gauge pressure is 0 psig.

18. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.[17]

19. *Working chamber*—an enclosed space in the TBM in which CAWs perform interventions, and which is accessible only through a man-lock.

E. Safety and Health Practices

1. Ballard would have to adhere to the project-specific HOM submitted to OSHA as part of the application (see OSHA–2023–0010–0004). The HOM provides the minimum requirements regarding protections from expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. Ballard would have to demonstrate that the TBM on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO–1.2019 (or most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*) for the TBM's hyperbaric chambers.

3. Ballard would have to implement the safety and health instructions included in the manufacturer's operations manuals for the TBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

4. Ballard would have to ensure that there are no exposures to pressures greater than 29 p.s.i.g.

5. Ballard would have to ensure that air or oxygen is the only breathing gas in the working chamber.

6. Ballard would have to follow the 1992 French Decompression Tables for air or oxygen decompression as specified in the HOM; specifically, the extracted portions of the 1992 French Decompression tables titled, ''French Regulation Air Standard Tables.''

7. Ballard would have to equip man-locks used by employees with an air or oxygen delivery system, as specified by the HOM, for the project. Ballard would be required not to store in the tunnel any oxygen or other compressed gases used in conjunction with hyperbaric work.

8. Workers performing hot work under hyperbaric conditions would have to use flame-retardant personal protective equipment and clothing.

9. In hyperbaric work areas, Ballard would have to maintain an adequate fire-suppression system approved for hyperbaric work areas.

10. Ballard would have to develop and implement one or more JHA(s) for work in the hyperbaric work areas, and review, periodically and as necessary (*e.g.,* after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs would have to include all the job functions that the risk assessment[18] indicates are essential to prevent injury or illness.

11. Ballard would have to develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by the proposed Permanent Variance and this Interim Order (including all procedures required by the HOM approved by OSHA for the project, which this proposed Permanent Variance would

[14] Adapted from 29 CFR 1926.32(f).

[15] See Appendix 10 of ''A Guide to the Work in Compressed-Air Regulations 1996,'' published by the United Kingdom Health and Safety Executive available from NIOSH at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf.*

[16] Also see 29 CFR 1926.1202 for examples of hot work.

[17] Adapted from 29 CFR 1926.32(m).

[18] See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

incorporate by reference). The checklists would have to include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

12. Ballard would have to ensure that the safety and health provisions of this project-specific HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.

F. Communication

Ballard would have to:

1. Prior to beginning a shift, implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

2. Provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) Use an independent power supply for powered communication systems, and these systems would have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Test communication systems at the start of each shift and as necessary thereafter during each shift to ensure proper operation.

G. Worker Qualifications and Training

Ballard would have to:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction on hyperbaric conditions, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, and document this instruction. The instruction would need to include:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.,* barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression;

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

(f) Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G)(2) of this proposed condition periodically and as necessary (*e.g.,* after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and OSHA's nearest affected Area Office before the training takes place.

H. Inspections, Tests, and Accident Prevention

1. Ballard would have to initiate and maintain a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2), including:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the TBM.

2. Remove from service any equipment that constitutes a safety hazard until it corrects the hazardous condition and has the correction approved by a qualified person.

3. Ballard would have to maintain records of all tests and inspections of the TBM, as well as associated corrective actions and repairs, at the job site for the duration of the job.

I. Compression and Decompression

Ballard would have to consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

J. Recordkeeping

In addition to completing OSHA's Form 301 Injury and Illness Incident Report and OSHA's Form 300 Log of Work-Related Injuries and Illnesses, Ballard would have to maintain records of:

1. The date, times (*e.g.,* time compression started, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The names of all supervisors and DMTs involved for each intervention.

3. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

4. The total number of interventions and the amount of hyperbaric work time at each pressure.

5. The results of the post-intervention physical assessment of each CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity, or other health effects associated with work in compressed air for each hyperbaric intervention.

K. Notifications

1. To assist OSHA in administering the conditions specified herein, Ballard would have to:

(a) Notify the OTPCA and the OSHA Area Office in Long Island, New York of any recordable injury, illness or fatality (by submitting the completed OSHA Form 301 Injuries and Illness Incident Report) resulting from exposure of an employee to hyperbaric conditions, including those that do not require recompression treatment (*e.g.,* nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification would have to be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident-investigation report would have to include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification to the OSHA Area Office in Long Island, New York within 15 working days of the incident that Ballard informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the OSHA Area Office in Long Island, New York within 15 working days and in writing, of any change in the compressed-air operations that affects Ballard's ability

to comply with the proposed conditions specified herein.

(d) Upon completion of the Integrated Pipeline Tunnel Project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the OSHA Area Office in Long Island, New York.

Note: The evaluation report would have to contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA Form 301 Injuries and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, and relevant medical diagnoses, and treating physicians' opinions); and (4) root causes of any hyperbaric incidents, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the proposed conditions specified herein, inform the OTPCA and the LIAO as soon as possible, but no later than seven (7) days, after it has knowledge that it will:

(i) Cease doing business;

(ii) Change the location and address of the main office for managing the tunneling operations specified herein; or

(iii) Transfer the operations specified herein to a successor company.

(f) Notify all affected employees of this proposed modified permanent variance by the same means required to inform them of its application for a modified permanent variance.

2. OSHA would have to approve the transfer of the proposed modified permanent variance to a successor company through a new application for a modified variance.

VII. 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. The agency is issuing this notice pursuant to 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.14(b).

Signed at Washington, DC, on July 27, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–16669 Filed 8–3–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at *ACVETEO@dol.gov.* Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee.* This notice also describes the functions of the ACVETEO. Notice of this meeting is required under the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Wednesday, August 23, 2023 beginning at 9 a.m. and ending at approximately 12 p.m. (EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under the Meeting Updates tab. *https://www.dol.gov/agencies/vets/about/advisorycommittee.*

Notice of Intent to Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, August 18, 2023, via email to Mr. Gregory Green at *ACVETEO@dol.gov,* subject line ''August 2023 ACVETEO Meeting.'' Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, August 18, 2023, by contacting Mr. Gregory Green at *ACVETEO@dol.gov.*

Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under title 38, U.S. Code, section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. 10. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans' Employment and Training Service

9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official

9:15 a.m. Service Delivery, Underserved Population and Innovative Veteran Training and Employment Subcommittee breakout rooms

11:45 p.m. Public Forum, Gregory Green, Designated Federal Official

12:00 p.m. Adjourn

Signed in Washington, DC, this 27th day of July 2023.

James D. Rodriquez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2023–16670 Filed 8–3–23; 8:45 am]

BILLING CODE 4510–79–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0139]

Use of GovDelivery Subscription Services for Non-Power Production and Utilization Facilities Correspondence

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this

document to inform the public that, as of April 13, 2023, publicly available non-power production and utilization facilities (NPUFs) correspondence originating from the NRC Office of Nuclear Reactor Regulation (NRR), Division of Advanced Reactors and Non-Power Production and Utilization Facilities (DANU) will be transmitted by a digital communications platform, GovDelivery, as an electronic mail distribution system, to addressees and subscribers. This change does not affect the ability of any members of the public to obtain official agency records in the NRC's Agencywide Documents Access and Management System (ADAMS).

DATES: August 4, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0139 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–2023–0139. 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.
- *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.*
- *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.

FOR FURTHER INFORMATION CONTACT: Paulette Torres, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5656; email: *Paulette.Torres@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The electronic mail distribution process for NRC public documents was first utilized by NRR for operating power reactor correspondence. The electronic mail distribution process distributes publicly available documents generated by the NRC/NRR/DANU staff to individuals who are subscribed to GovDelivery. GovDelivery does not provide notice of documents generated by external parties, or NRC documents that contain proprietary, security-related, safeguards, or other information that is withheld from public disclosure.

The NRC/NRR/DANU staff implemented the electronic mail distribution via GovDelivery for NPUFs on April 13, 2023. Individuals may subscribe to receive applicable NPUF correspondence by following these steps: (1) Go to the NRC's public website at *www.nrc.gov;* (2) click on ''Email Updates'' in the upper right-hand corner; (3) scroll down to the ''GovDelivery Subscription Services'' section; (4) click on the ''GovDelivery'' link; (5) enter the requested email address and click ''Submit''; (6) follow the prompts to confirm the email address and add an optional password; (7) check the box to consent to the NRC's data privacy policy for using its public website and click ''Submit''; (8) once completed, a list of ''Subscription Topics'' will be displayed; choose ''Non-Power Production and Utilization Facilities (NPUFs),'' check/uncheck the box(es) for specific topics, and click ''Submit'' to subscribe.

Once subscribed, subscribers will receive an email confirmation from the NRC with instructions for managing their NRC GovDelivery subscription, including how to change their email address and how to unsubscribe. Subscribers are responsible for ensuring that NRC GovDelivery is updated with their current email address.

Dated: August 1, 2023.

For the Nuclear Regulatory Commission.

Duane A. Hardesty,

Acting Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16703 Filed 8–3–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0020]

Information Collection: IAEA Design Information Questionnaire Forms

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''IAEA Design Information Questionnaire Forms.''

DATES: Submit comments by September 5, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0020 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–2023–0020.
- *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:* 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.

• NRC's *Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''IAEA Design Information Questionnaire Forms.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 31, 2023 (88 FR 19332).

1. *The title of the information collection:* IAEA Design Information Questionnaire Forms.

2. *OMB approval number:* 3150–0056.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Licensees of facilities on the U.S. eligible list who have been notified in writing by the NRC to submit the form.

7. *The estimated number of annual responses:* 2.

8. *The estimated number of annual respondents:* 2.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 360.

10. *Abstract:* In order for the U.S. to fulfill its responsibilities as a participant in the U.S./International Atomic Energy Agency (IAEA) Safeguards Agreement, the NRC must collect information from licensees about their installations and provide it to the IAEA, if requested by the IAEA. Licensees of facilities that appear on the U.S. eligible list and have been notified in writing by the NRC are required to complete and submit a Design Information Questionnaire to provide information concerning their installation for use by the IAEA.

III. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS Accession No.
Supporting Statement	ML23191A530
Research and Power Reactors DIQ Form	ML23054A445
Conversion and/or Fuel Fabrication Plants DIQ Form	ML23054A446
Reprocessing Plants DIQ Form	ML23054A447
Isotopic Enrichment Plants DIQ Form	ML23054A448
Geological Repositories DIQ Form	ML23054A449
Spent Fuel Encapsulation Plants DIQ Form	ML23054A450
Research and Development Facilities DIQ Form	ML23054A451
Critical (Sub-Critical) Facilities DIQ Form	ML23054A452
Separate Storage Installations DIQ Form	ML23054A453

Dated: August 1, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–16702 Filed 8–3–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–050; NRC–2023–0027]

NuScale Power, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard design approval application; acceptance for docketing; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has accepted for docketing an application for standard design approval (SDA) of the US460 Small Modular Reactor (SMR) design submitted by NuScale Power, LLC (NuScale). The NRC is requesting comment on the SDA application in accordance with NRC regulations.

DATES: Submit comments by October 3, 2023. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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–2023–0027. 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.

• *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: Getachew Tesfaye, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8013, email: *Getachew.Tesfaye@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0027 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action using any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0027.

• *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–2023–0027 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

By letter dated November 21, 2022 (ADAMS Accession No. ML22325A349), NuScale informed the NRC of its intent to submit an SDA application in stages, along with supporting technical reports, by December 31, 2022. By letter dated November 23, 2022, NuScale submitted the first part of its application (non-public, withheld pursuant to 10 CFR 2.390) for a standard design approval of the NuScale US460 SMR design, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and part 52, subpart E, of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' Subsequently, NuScale submitted the remaining portions of its application in stages, between November 29, 2022, and December 31, 2022. The SDA application is available in ADAMS under Package Accession No. ML22339A066.

The NuScale US460 SMR is a pressurized-water reactor. The design is based on the Multi-Application Small Light Water Reactor developed at Oregon State University in the early 2000's. The NuScale US460 SMR is a natural circulation light-water reactor with the reactor core and helical coil steam generator located in a common reactor vessel in a cylindrical steel containment. The NuScale power module is partly immersed in water in a safety related pool. The reactor pool is located below grade and is designed to hold up to six power modules. Each NuScale SMR has a rated thermal output of 250 megawatts thermal and an electrical output of 77 megawatts electric (MWe); accordingly, a plant containing six modules would have a total capacity of 462 MWe.

As described in the November 21, 2022, letter, the application contains the final safety analysis report (FSAR) chapters and parts thereof. Supporting technical reports are cited throughout the application, some of which are attached to the corresponding FSAR chapter; other technical reports cited in the application are available as standalone documents in ADAMS, if publicly available. Following these submittals, NuScale submitted additional supporting licensing topical reports (LTRs), which were required to be submitted before the SDA application could be accepted for review. By January 8, 2023, NuScale submitted these LTRs to the NRC. A notice of receipt and availability of this portion of the application was published in the **Federal Register** on March 17, 2023, (88 FR 16463).

On March 17, 2023 (ADAMS Accession No. ML23058A160), the NRC staff notified NuScale that its staged SDA application, the last submittal of which was provided on December 31, 2022 (ADAMS Package Accession No. ML22339A066), will be considered tendered but not docketed until the Request for Supplemental Information (RSI) enclosed in the March 17 letter is submitted and the SDA application is found to be acceptable for detailed technical review by the staff. On July 14, 2023 (ADAMS Accession No. ML23195A092), NuScale submitted the response to the staff's RSI. Additionally, on July 17, 2023 (ADAMS Accession No. ML23198A244), NuScale submitted Licensing Topical Report (LTR) TR–131981, ''Methodology for the Determination of the Onset of Density Wave Oscillations (DWO),'' Revision 1, that incorporated changes resulting from NuScale's RSI response.

The NRC staff has determined that the SDA application, as supplemented, is acceptable for docketing under Docket No. 52–050. The NRC staff provided NuScale notice of the staff's determination that its application was acceptable for docketing by letter dated July 31, 2023 (ADAMS Accession No. ML23198A163).

III. Opportunity to Comment

In accordance with 10 CFR 2.110(b), the NRC staff is inviting public comments on the SDA application within 60 days of publication of this notice, for consideration by the NRC staff and Advisory Committee on Reactor Safeguards in their review of the application. Comments should be submitted as described in the **ADDRESSES** section of this document. The NRC staff will perform a detailed technical review of the SDA application and will document its safety findings in a safety evaluation report.

Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Dated: August 1, 2023.

For the Nuclear Regulatory Commission.

Getachew Tesfaye,

Senior Project Manager, New Reactor Licensing Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16679 Filed 8–3–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 99902069; NRC–2023–0138]

Kairos Power, LLC; Receipt of Construction Permit Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of receipt and availability of an application for construction permits for a two-unit reactor facility from Kairos Power, LLC. The application for the construction permits was received on July 14, 2023.

DATES: August 4, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0138 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–2023–0138. 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 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 1–800–397–209, 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3229; email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On July 14, 2023, Kairos Power LLC (Kairos) filed, pursuant to section 104c of the Atomic Energy Act, as amended, part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application for two construction permits for a two-unit test reactor facility located in Oak Ridge, Tennessee. The two-unit facility is to be identified as Hermes 2, and both units are based on a high-temperature fluoride salt-cooled design that utilizes solid tri-structural isotropic fuel.

The application is available in ADAMS under Package Accession No. ML23195A121. Along with other documents, the ADAMS package includes the transmittal letter (ADAMS Accession No. ML23195A122), the preliminary safety analysis report (ADAMS Accession No. ML23195A124), and the environmental report (ADAMS Accession No. ML23195A125). The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 50.33, technical information submitted pursuant to 10 CFR 50.34, and the environmental report submitted pursuant to 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, subsequent **Federal Register** notices will be issued that address the acceptability of the tendered construction permit application for docketing and provisions for participation of the public in the permitting process.

Dated: July 31, 2023.

For the Nuclear Regulatory Commission.

Michael D. Orenak,

Project Manager, Advanced Reactor Licensing Branch 1, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–16605 Filed 8–3–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98028; File No. SR–MEMX–2023–14]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Manner in Which the Exchange Will Designate Certain Options Members To Participate in its Mandatory Disaster Recovery Testing for Calendar Year 2023

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the manner in which the Exchange will designate certain Options Members to participate in mandatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

disaster recovery testing, pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In preparation for the launch of the Exchange's options market (''MEMX Options''),[3] the Exchange proposes to amend MEMX Rule 2.4, Mandatory Participation in Testing of Backup Systems, to specify how the Exchange will designate certain Options Members [4] to participate in mandatory disaster recovery pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2023. Regulation SCI requires MEMX, as an SCI entity, to maintain business continuity and disaster recovery plans that provide for resilient and geographically diverse backup and recovery capabilities that are reasonably designed to achieve two-hour resumption of critical SCI systems and next business day resumption of other SCI systems following a wide-scale disruption.[5]

Regulation SCI and MEMX Rule 2.4 also require MEMX to designate certain Members [6] to participate in business continuity and disaster recovery testing in a manner specified by MEMX and at a frequency of not less than once every 12 months.[7] Such testing is part of an industry-wide test, which is next scheduled for October 14, 2023.

MEMX Rule 2.4 governs mandatory participation in testing of the Exchange's backup systems, and states that the Exchange will designate Members that account for a specified percentage of executed volume on MEMX as required to connect to the Exchange's backup systems and participate in functional and performance testing of such system.[8] MEMX Options, which is scheduled to launch in September 2023, is not expecting to have sufficient trading data on which to base its Options Member designation prior to the October 14, 2023 test. Thus, as currently written, Rule 2.4 would not permit the Exchange to designate any Options Members to participate in the industry-wide test for 2023 because no Options Members will have sufficient trading volume on MEMX Options upon which a designation can be based.

To address the unique circumstances for disaster recovery testing in 2023, the year in which MEMX Options will become operational, the Exchange proposes to amend paragraph (c). Proposed paragraph (c) would provide that for calendar year 2023 with respect to MEMX Options, notwithstanding paragraph (b) which assigns the Exchange responsibility of ''identifying Members that account for a meaningful percentage of the Exchange's overall volume,'' the Exchange will instead designate at least three Options Members who have a meaningful percentage of trading volumes in options on other options exchanges. This would allow the Exchange to identify Options Members for industry-wide disaster recovery testing in the absence of metrics that will be used in ordinary course to designate such firms.

MEMX believes that designating at least three Options Members who are likely already to be participating in the industry-wide test by virtue of their trading activities on MEMX and other exchanges is likely to reduce the burdens associated with being designated for disaster recovery testing by MEMX Options in absence of significant trading volumes on the Exchange. Moreover, to reduce the burdens on designated Options Members, the Exchange proposes, where possible, to designate firms that have already established connections to its backup systems. This is intended to address the ''notice'' requirements in the existing Rule 2.4.[9] The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.

MEMX intends to notify Options Members of their designation for disaster recovery testing no later than October 1, 2023. With respect to industry-wide disaster recovery testing in 2024 and beyond, the Exchange will issue one or more regulatory circulars establishing the standards to be used for determining which Options Members contribute a meaningful percentage of the Exchange's overall volume and thus are required to participate in functional and performance testing. Such standards will be informed by the Exchange's actual market and trading data, in accordance with MEMX Rule 2.4(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative 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.

MEMX believes that, in the absence of sufficient trading data on MEMX Options, its proposed methodology of designating Options Members who have meaningful levels of trading activity on other exchanges and who have established connectivity to the Exchange's backup systems is consistent with the protection of investors and the public interest. The Exchange further

[3] On August 8, 2022, the Commission approved SR–MEMX–2022–10, which proposed rules for the trading of options on the Exchange. *See* Securities Exchange Act Release No. 95445 (August 9, 2022), 87 FR 49884 (August 12, 2022) (SR–MEMX–2022–010). The Exchange plans to launch MEMX Options in September of 2023.

[4] As of July 18, 2023, 15 firms have filed paperwork with the Exchange making them eligible for MEMX Options membership.

[5] Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014).

[6] The term ''Member'' refers to any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a member of the Exchange as that term is defined in section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to section 15 of the Act, and which has been approved by the Exchange. *See* MEMX Rule 1.5(p). The term ''Options Member'' means a firm, or organization that is registered with the Exchange pursuant to Chapter 17 of the Exchange's Rules for purposes of participating in options trading on MEMX Options as an ''Options Order Entry Firm'' or ''Options Market Maker''. *See* MEMX Rule 16.1.

[7] MEMX Rule 2.4(a) and (b).

[8] *Id.*

[9] Pursuant to Rule 2.4(b), the Exchange will provide at least six months prior notice to a Member that is designated for mandatory testing. *See* MEMX Rule 2.4(b).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

believes that the proposed rule change will ensure that the Options Members necessary to ensure the maintenance of fair and orderly markets in the event of the activation of the Exchange's disaster recovery plans have been designated consistent with MEMX Rule 2.4 and Rule 1004 of Regulation SCI. Specifically, the proposal will address the unique circumstances of industry-wide testing taking place within a short time of MEMX Options commencing operations. The Exchange believes that the proposed rule change balances the objectives of having Options Members participate in industry-wide disaster recovery testing, including MEMX Options' backup systems, and the burdens on such Options Members who, at the time of designation, will not have traded on MEMX Options.

As set forth in the SCI Adopting Release, ''SROs have the authority, and legal responsibility, under section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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.'' [12] The Exchange believes that this proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change promotes fair competition among brokers and dealers and exchanges by ensuring the Exchange can designate Options Members to participate in mandatory disaster recovery testing pursuant to Regulation SCI for calendar year 2023. The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans, thereby promoting intermarket competition between exchanges in furtherance of the principles of section 11(a)(1) of the Act.[13] The Exchange notes that MEMX and the Long-Term Stock Exchange, Inc. (''LTSE'') adopted similar rules for 2020 in advance of launches that year.[14]

With respect to intramarket competition, the proposed rule change seeks to reduce the burdens on Members by only designating Options Members who are likely already participating in the industry-wide test by virtue of their trading activities on other exchanges. Under the proposed rule change, the Exchange will designate firms that have already established connections to the Exchange's backup systems. Consequently, MEMX does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–MEMX–2023–14 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–MEMX–2023–14. 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–MEMX–2023–14 and should be submitted on or before August 25, 2023.

[12] *See supra* note 7 at 72350.

[13] 15 U.S.C. 78k–1(a)(1).

[14] *See* Securities Exchange Act Release No. 89899 (September 16, 2020), 85 FR 59580 (September 22, 2020) (SR–MEMX–2020–07), and Release No. 89216 (July 2, 2020), 85 FR 41259 (July 9, 2020) (SR–LTSE–2020–10).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Dated: July 31, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16622 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–638, OMB Control No. 3235–0690]

Submission for OMB Review; Comment Request; Extension: Form SF–3

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form SF–3 (17 CFR 239.45) is a short form registration statement used for non-shelf issuers of asset-backed securities to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form SF–3 takes approximately 1,380 hours per response and is filed by approximately 71 issuers annually. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information in the asset-backed securities market. We estimate that 25% of the 1,380.50 hours per response (345.12 hours) is prepared by the issuer for a total annual reporting burden of 24,504 hours (345.12 hours per response × 71 responses).

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 control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 5, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 1, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16675 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98029; File No. SR–FINRA–2023–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rules 1015, 9261, 9341, 9524, 9830 and Funding Portal Rule 900 (Code of Procedure) To Permit Hearings Under Those Rules To Be Conducted by Video Conference

I. Introduction

On April 26, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rules 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900 to allow for video conference hearings before the Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') under specified conditions. The proposed rule change was published for comment in the **Federal Register** on May 4, 2023.[3] On June 7, 2023, FINRA consented to extend until August 2, 2023, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

FINRA Rules 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900 pertain to the procedures for various types of proceedings conducted by OHO and the NAC.[5] As summarized in the Notice, OHO conducts hearings in disciplinary proceedings[6] and hearings for temporary and permanent cease and desist orders (''TCDOs'' and ''PCDOs'').[7] When orders in disciplinary proceedings are appealed, the NAC holds hearings on oral argument.[8] The NAC also conducts hearings in membership proceedings,[9] eligibility proceedings,[10] and Funding Portal eligibility proceedings.[11] Under these

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 97403 (May 4, 2023), 88 FR 28645 (May 4, 2023) (File No. SR–FINRA–2023–008) (''Notice''). The Commission did not receive any comments in connection with the Notice.

[4] *See* Letter from Ilana Reid, Associate General Counsel, FINRA (June 7, 2023) *available at https://www.finra.org/sites/default/files/2023-06/sr-finra-2023-008-extension-no-1.pdf.*

[5] *See* Notice at 28646.

[6] *See* Notice at 28646. FINRA stated that the FINRA Rule 9200 Series sets forth the procedures for disciplinary proceedings initiated by the Department of Enforcement against any FINRA member or associated person for alleged violation of any rule, regulation, or statutory provision that FINRA has jurisdiction to enforce, including the federal securities laws and the regulations thereunder. *See* Notice at n.8. *See also* FINRA Rule 9261.

[7] *See* Notice at 28646. FINRA stated that the FINRA Rule 9800 Series sets forth the procedures for TCDO and PCDO proceedings. These provide a mechanism for FINRA to take necessary remedial action against a member or associated person where there is a significant risk that the alleged misconduct could cause continuing harm to the investing public, if not addressed expeditiously. *See* Notice at n.9. *See also* FINRA Rule 9830.

[8] *See* Notice at 28646. FINRA stated that the FINRA Rule 9300 Series sets forth the procedures for review of disciplinary proceedings by the NAC. *See* Notice at n.10. *See also* FINRA Rule 9341.

[9] *See* Notice at 28646. FINRA stated that the FINRA Rule 1000 Series governs, among other things, the process for: (i) applying for FINRA membership; (ii) FINRA members to seek approval of a change in ownership, control or business operations; and (iii) an applicant to request that the NAC review a FINRA decision rendered under the Rule 1000 Series. *See* Notice at n.11. *See also* FINRA Rule 1015.

[10] *See* Notice at 28646. FINRA stated that the FINRA Rule 9520 Series sets forth the procedures for eligibility proceedings and review of those proceedings by the NAC and FINRA Board. *See* Notice at n.12. *See also* FINRA Rule 9524. ''Eligibility proceedings,'' refer to the process where FINRA may allow a person subject to statutory disqualification to enter or remain in the securities industry. *See e.g., https://www.finra.org/rules-guidance/guidance/eligibility-requirements* (providing general information about these proceedings).

[11] *See* Notice at 28646. Paragraph (b) of Funding Portal Rule 900 was established as a streamlined version of the FINRA Rule 9520 Series, discussed *supra* note 10, and sets forth the procedures for

Continued

rules (''original rules''), such hearings were generally conducted in person.[12]

Beginning in March of 2020, FINRA administratively postponed these in-person hearings because of the COVID–19 global health crisis.[13] FINRA later adopted temporary amendments to the original rules (''temporary amendments'') [14] that allowed OHO and the NAC to order, without a motion, hearings to proceed by video conference based on public health risks related to COVID–19.[15]

These temporary amendments were extended multiple times due to the continuing public health risks and logistical challenges related to the ongoing COVID–19 pandemic.[16] The temporary amendments expired on April 30, 2023.[17]

According to FINRA, as a result of the temporary amendments, OHO and the NAC successfully held numerous hearings by video conference.[18] FINRA conducted the video conference hearings using Zoom, a system which was vetted by FINRA's information technology staff.[19] FINRA stated that this use of video conference technology has been an effective and efficient alternative to in-person hearings.[20]

B. Proposed Rule Change

FINRA's proposed rule change would make the temporary amendments regarding video conference hearings permanent, with some modifications, to allow for the use of video conference for reasons beyond COVID–19. The proposed rule change would extend OHO and the NAC's authority to order hearings by video conference to other similar situations in which proceeding in person may endanger the health or safety of the participant or alternatively would be impracticable (*i.e.,* an uncommon situation or extraordinary circumstance such as a natural disaster or terrorist attack that caused travel to be cancelled for an extended period of time).[21] FINRA stated that this expanded authority is intended to empower OHO and the NAC to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.[22]

Additionally, FINRA explained that the proposed rule change would differ from the temporary amendments in several other ways.[23] First, according to FINRA, under the proposed rule change, OHO and the NAC would also have authority to order hearings to occur by video conference based on a motion.[24] Second, under the proposed rule change, FINRA chose to provide more flexibility for using video conference for oral arguments in appeals from disciplinary proceedings than for evidentiary hearings due to the differences between those types of hearings.[25] Consequently, according to FINRA, the motion requirements and the standard that the adjudicator would follow when exercising authority under the proposed rule change would differ somewhat depending on the type of hearing involved.[26] These differences are described further below.[27]

As set forth in the Notice, under the proposed rule change, OHO and the NAC would have discretion to determine whether the circumstances for a video hearing were met.[28] However, FINRA noted that in-person hearings would remain the default method for conducting hearings.[29] FINRA stated it will also use the same protocols for conducting video conference hearings as employed under the temporary amendments, including using a high quality, secure, user-friendly video conferencing service and providing thorough instructions, training, and technical support to all hearing participants.[30]

Evidentiary Hearings Before OHO and the NAC

As set forth in the Notice, for evidentiary hearings, the proposed rule change would give OHO and the NAC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the NAC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, as described above.[31] OHO and the NAC would have such authority to order that the hearing occur by videoconference on their own (*i.e., sua sponte*).[32]

In addition, FINRA explained that under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause.[33] FINRA stated that due to

funding portal eligibility proceedings. *See* Notice at n.13. *See also* FINRA Funding Portal Rule 900.

[12] *See* Notice at 28646. FINRA noted that telephonic testimony and hearings are already explicitly permitted in expedited proceedings. *See* FINRA Rule 9559(d)(5) (expedited proceedings ''shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown''). *See* Notice at n.14.

[13] *See* Notice at 28645.

[14] The temporary amendments were intended to address the expanding backlog of cases from the over six-month long postponement of hearings. *See id.* FINRA did not temporarily amend Paragraph (b) of Funding Portal Rule 900. Instead, FINRA included Paragraph (b) of Funding Portal Rule 900 in the proposed rule change so that the procedures for funding portal eligibility proceedings are aligned with eligibility proceedings under the FINRA Rule 9520 Series. *See* Notice at 28646. *See also supra* note 11.

[15] *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–015) and Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–027).

[16] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–019); Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–031); Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–004); Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–018); Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–029); and Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2023–001).

[17] *See* Securities Exchange Act Release No. 96746 (January 25, 2023), 88 FR 6346 (January 31, 2023) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2023–001).

[18] According to FINRA, as of March 31, 2023, OHO has conducted 18 disciplinary hearings by video conference (decisions have been issued in all but one of these cases). Also, as of March 31, 2023, the NAC has conducted 19 oral arguments by video conference in connection with appeals of FINRA disciplinary proceedings pursuant to FINRA Rule 9341(d), as temporarily amended. Furthermore, the NAC has conducted via video conference a one-day evidentiary hearing in a membership application proceeding pursuant to FINRA Rule 1015, as temporarily amended. The NAC also has conducted via video conference three evidentiary hearings in eligibility matters pursuant to FINRA Rule 9524, as temporarily amended. *See* Notice at n.6.

[19] *See* Notice at n.7.

[20] *See* Notice at 28646.

[21] *See id.*

[22] *See* Notice at 28647.

[23] *See* Notice at 28646.

[24] *See id.*

[25] *See id.* For ease of reference, to be consistent with the language FINRA used in its filing, ''evidentiary hearings'' refers to hearings conducted before OHO under FINRA Rules 9261 and 9830, and the NAC under FINRA Rules 1015, 9524, and Funding Portal Rule 900. ''Oral argument'' refers to hearings conducted before the NAC in appeals from disciplinary proceedings under Rule 9341. *See* Notice at n.17 and *see supra* notes 6–11 and accompanying text.

[26] *See* Notice at 28646.

[27] *See infra* notes 44–47 and accompanying text.

[28] *See* Notice at 28646.

[29] *See id.*

[30] *See id.*

[31] *See id. See also, supra* note 21 and accompanying text.

[32] *See* Notice at 28647. FINRA stated that OHO and the NAC would have such authority over the objection of a party, which was also the case under the temporary amendments. *See* also Notice at n.18. *See also* SR–FINRA–2020–027, *supra* note 15.

[33] *See* Notice at 28647.

the nature of evidentiary hearings, which often occur over multiple days and generally include numerous documents in evidence and witness testimony, the proposed rule change would require any motions for a hearing by video conference to be joined by all parties, and even joint motions may be denied if the adjudicator determines that good cause has not been shown.[34]

According to FINRA, whether acting on their own or based on a joint motion of the parties, OHO and the NAC would have reasonable discretion to exercise their authority to determine whether a hearing should occur by video conference under the proposed rule change.[35] FINRA further explained that in deciding whether to schedule a hearing by video conference, OHO and the NAC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[36] Additionally, as noted above, OHO and the NAC may consider whether a situation is uncommon or there are extraordinary circumstances.[37]

Oral Argument Before the NAC

The proposed rule change would give the NAC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable.[38] According to FINRA, the NAC would have such authority on its own.[39]

Further, under the proposed rule change, the NAC would have authority—on its own or on consideration of a motion by any party—to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.* reasons not limited to public health, safety or impracticability).[40] According to FINRA, under such circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party.[41] FINRA explained that whether a party has shown material disadvantage would depend on the facts and circumstances.[42] According to FINRA, considerations may include, for example and without limitation, case complexity, the issues on appeal, and whether the respondent is *pro se* and desires to appear in person.[43]

According to FINRA, under the proposed rule change, the NAC would have greater flexibility to allow oral argument to occur by video conference than the NAC or OHO would have to permit an evidentiary hearing to occur via video conference.[44] Specifically, FINRA stated that the proposed rule change as to NAC oral argument differs from the proposed rule change for evidentiary hearings in three respects: (1) it would give the NAC *sua sponte* authority to order oral argument hearings to occur by video conference for reasons other than public health, safety, or impracticability; (2) it would allow for motions by a single party rather than requiring joint motions; and (3) under either of those circumstances, it would permit a party to oppose on grounds that proceeding by video conference would materially disadvantage that party.[45] As noted above, the third difference serves as an additional safeguard given that the NAC has greater flexibility, compared to evidentiary hearings held by the NAC or OHO, to allow oral argument to occur by video conference.[46] These proposed differences are, according to FINRA, due to the nature of oral argument hearings, which are typically shorter than evidentiary hearings in duration (generally two hours or less), contain no presentation of new documentary evidence or witness testimony, and are often conducted by counsel.[47]

According to FINRA, whether acting on its own or based on a motion of a party, the NAC would have reasonable discretion to exercise its authority to determine whether oral argument should occur by video conference under the proposed rule change.[48] In deciding whether to order an oral argument hearing by video conference, the NAC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.[49]

C. Effective Date

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published by FINRA.

III. Discussion and Commission Findings

After careful review of the proposed rule change, and considering that the Commission did not receive any comments that relate to the proposed rule change,[50] the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[51] Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,[52] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As discussed in greater detail in the Notice and outlined in Section II above, FINRA Rules 1015, 9261, 9341, 9524 and 9830 and Funding Portal Rule 900 pertain to the procedures for various types of proceedings conducted by OHO and the NAC. The proposed rule change would make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons beyond COVID–19, as described above.[53] The proposed

[34] *See id.* FINRA noted that its current practice is to allow witnesses in an otherwise in-person hearing to appear by video conference. According to FINRA, in evidentiary hearings, a party may file a motion to offer witness testimony by telephone or video conference. Further, even prior to the COVID–19 pandemic, adjudicators have allowed telephone participation by witnesses who are unable or unwilling to appear in person, such as customers over whom FINRA does not have jurisdiction and therefore cannot compel testimony under FINRA Rule 8210. *See* Notice at n.19.

[35] *See* Notice at 28647.

[36] *See id.*

[37] *See supra* note 21 and accompanying text.

[38] *See* Notice at 28647.

[39] *See id.*

[40] *See id.*

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] *See id.*

[50] The Commission received two comments related to the initial temporary amendments, as well as an additional comment related to one of the extensions. FINRA responded to these commenters. Comments are available at *https://www.sec.gov/comments/sr-finra-2020-027/srfinra2020027.htm* and *https://www.sec.gov/comments/sr-finra-2021-019/srfinra2021019.htm*. However, none of these comments were submitted in connection with the current proposed rule.

[51] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78o–3(b)(6).

[53] *See supra* notes 21–49 and accompanying text.

rule change would allow certain proceedings by video conference if the NAC or OHO determine that proceeding in person may endanger the health or safety of the participants or would be impracticable.[54] Additionally, the proposed rule change would allow certain proceedings by video conference where both parties prefer doing so and show good cause, or where neither party would be materially disadvantaged.[55] For approximately two and half years, while the temporary amendments were in effect, OHO and the NAC successfully conducted numerous disciplinary and evidentiary hearings by video conference.[56]

The proposed rule change would provide greater flexibility and efficiency for FINRA's disciplinary and eligibility proceedings and other review processes which serve a critical role in providing investor protection and maintaining fair and orderly markets, while maintaining appropriate safeguards. The proposed rule change would enable OHO and the NAC to respond to unanticipated events such as health emergencies, natural disasters or terrorist attacks more quickly to avoid backlogs or unnecessary delays.[57] Currently, as set forth in the Notice, FINRA does not have permanent rules that allow for video conference hearings before OHO and the NAC, even when both parties prefer proceeding by video conference, or doing so would not materially disadvantage any party, or when video conference is the only practicable method.[58] However, the successful implementation of video conference hearings during the COVID–19 global health crisis demonstrated that technology can be an effective and efficient alternative to in-person hearings.[59] The backlog of cases that arose as a result of the postponement of hearings during the COVID–19 pandemic before the temporary amendments were enacted illustrate the need for greater flexibility to empower OHO and the NAC to react more expeditiously.[60] The proposed rule change would modernize existing procedures and allow parties who jointly prefer video conference to potentially save travel costs and time.[61]

Additionally, the use of video conferences would be limited and controlled. Notably, in-person hearings would still be the default method for conducting hearings.[62] Furthermore, the proposed rule includes procedural safeguards to ensure fairness, such as the requirement for evidentiary hearings that any motions be joined by all parties and show good cause and, for oral argument, the ability of any party to oppose an order or motion to proceed by video conference on grounds that doing so would materially disadvantage that party.[63]

For these reasons, the Commission finds the proposed rule change is consistent with the protection of investors and in the public interest.

IV. Conclusion

It is therefore ordered pursuant to section 19(b)(2) of the Exchange Act[64] that the proposed rule change (SR–FINRA–2023–008) be, and hereby is, approved.

Dated: July 31, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16623 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–610, OMB Control No. 3235–0707]

Submission for OMB Review; Comment Request; Extension: Form SF–1

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form SF–1 (17 CFR 239.44) is the registration statement for non-shelf issuers of assets-backed securities register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information in the asset-backed securities market. Form SF–1 takes approximately 1,381.33 hours per response and is filed by approximately 6 respondents. We estimate that 25% of the 1,381.33 hours per response (345.33 hours) is prepared by the registrant for a total annual reporting burden of 2,072 hours (345.33 hours per response × 6 responses).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by September 5, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: August 1, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16676 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m. Wednesday, August 9, 2023 and 2:00 p.m. on Thursday, August 10, 2023.

PLACE: These meetings will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: These meetings will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of these meetings change, an

[54] *See supra* notes 21–22, 31, 38 and accompanying text.

[55] *See supra* notes 33–34, 40–43 and accompanying text.

[56] *See supra* note 18 and accompanying text.

[57] *See* Notice at 28647.

[58] *See* Notice at 28648.

[59] *See* Notice at n.6; *see also supra* note 18 and accompanying text.

[60] *See* Notice at 28647.

[61] *See* Notice at 28649.

[62] *See supra* note 29 and accompanying text.

[63] *See* Notice at 28647–28648.

[64] 15 U.S.C. 78s(b)(2).

announcement of the change, along with the new time, date, and/or place of the meetings will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meetings will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: August 2, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–16867 Filed 8–2–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98025; File No. SR–CBOE–2023–035]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

July 31, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.[3]

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of $3,000 per Market-Maker trading permit, per month.[4] The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.[5] The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from $3,000 per Market-Maker Floor Trading Permit to $5,000 per Market-Maker Floor Trading Permit.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID–19 pandemic.[6] Among other changes, Footnote 24 provided that the monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee was to be increased to $5,000 per Trading Permit from $3,000 per Trading Permit. As the Exchange now proposes to maintain the $5,000 rate on a permanent basis (*i.e.,* regardless of whether the Exchange is operating in a modified state due to COVID–19 pandemic), the Exchange proposes to eliminate the reference to the SPX/SPXW Floor Market-Maker Tier Appointment Fee in Footnote 24.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR–CBOE–2022–026). On June 10, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–029. On August 5, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–042. On September 26, 2022, the Exchange withdrew that filing and submitted SR–CBOE–2022–050 to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee. On November 23, 2022, the Exchange advised of its intent to withdraw that filing and submitted SR–CBOE–2022–060. On January 20, 2023, the Exchange withdrew SR–CBOE–2022–060 and submitted SR–CBOE–2023–008. On March 21, 2023, the Exchange withdrew SR–CBOE–2023–008 and submitted SR–CBOE–2023–016. On May 19, 2023, the Exchange withdrew SR–CBOE–2023–016 and submitted SR–CBOE–2023–028. On July 18, 2023, the Exchange withdrew that filing and submitted this proposal. Notably, no comment letters were received in connection with any of the foregoing rule filings.

[4] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[5] The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. *See* Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

[6] *See* Securities Exchange Act Release No. 89189 (June 30, 2020), 85 FR 40344 (July 6, 2020) (SR–CBOE–2020–058).

[7] The Exchange notes that since its transition to a new trading floor facility on June 6, 2022, it has not been operating in a modified manner. As such Footnote 24 (*i.e.,* the modified fee changes it describes) does not currently apply.

''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Fee Guidance''), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.[11] As described in further detail below, the Exchange believes substitutable products[12] are in fact available to market participants, including in the Over-the-Counter (OTC) markets. Indeed, there are currently 16 registered options exchanges that trade options, with a 17th options exchange expected to launch in 2023. Based on publicly available information, no single options exchange has more than 15% of the market share as of January 19, 2023.[13] Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers, including exclusively listed products as discussed further below. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years (*i.e.,* Nasdaq MRX, LLC, MIAX Pearl, LLC, and MIAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (*i.e.,* MEMX LLC).

The Exchange believes that competition in the marketplace constrains the ability of exchanges to charge supracompetitive fees for access to its products exclusive to that market (''proprietary products''). Notably, just as there is no regulatory requirement to become a member of any one options exchange, there is also no regulatory requirement for any market participant to participate on the Exchange in any particular capacity, including as a Market Maker, nor trade any particular product. Additionally, there is no requirement that any Exchange create or indefinitely maintain any particular product.[14] The Exchange also highlights that market participants may trade an exchange's proprietary products through a third-party without directly or indirectly connecting to the exchange. Further, market participants, including Market-Makers, may trade the Exchange's products, including proprietary products, on or off the Exchange's trading floor (*i.e.,* all products are available both electronically and via open outcry on the Exchange's trading floor). Particularly, market participants are not obligated to trade on the Exchange's trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange's trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Indeed, the Exchange notes that only one Market-Maker TPH trades SPX exclusively on the floor. The Exchange notes that nothing precludes such TPH from also deciding to trade SPX electronically. Rather, what products a market participant chooses to trade, and the manner in which they choose to do so, is ultimately determined by factors relevant and specific to each market participant, including its business model and associated costs.

Additionally, market participants may trade any options product, including proprietary products, in the unregulated Over-the-Counter (OTC)[15] markets for which there is no requirement for fees related to those markets to be public. Given the benefits offered by trading options on a listed exchange, such as increased market transparency and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor, the Exchange generally seeks to incentivize market participants to trade options on an exchange, which further constrains fees that an Exchange may assess. Market participants may also access other exchanges to trade other similar or competing proprietary or multi-listed products. Alternative products to the Exchange's proprietary products may include other options products, including options on ETFs or options futures, as well as particular ETFs or futures. Particularly, exclusively listed SPX options (*i.e.,* a proprietary product) may compete with the following products traded on other markets: multiply-listed SPY options (options on the ETF that replicates performance of the S&P 500), E-mini S&P 500 Options (options on futures), and E-Mini S&P 500 futures (futures on index). Indeed, as a practical matter, investors utilize SPX and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index: the S&P 500.

Notably, the Commission itself has affirmed that notwithstanding the exclusive nature of SPX options, alternatives to this product exist in the marketplace. For example, in approving a PM-settled S&P 500 cash settled contract (''SPXPM'') on its affiliate

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] *See* Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019. The Fee Guidance also recognized that ''products need to be substantially similar but not identical to be substitutable.''

[12] A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. *See https://www.investopedia.com/terms/s/substitute.asp.*

[13] *See* Cboe Global Markets U.S. Options Market Volume Summary (March 17, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[14] If an option class is open for trading on another national securities exchange, the Exchange may delist such option class immediately. For proprietary products, the Exchange may determine to not open for trading any additional series in that option class; may restrict series with open interest to closing transactions, provided that, opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and opening transactions by TPH organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with Rule 6.74(b) or (d) may be permitted; and may delist the option class when all series within that class have expired. *See* Cboe Rule 4.4, Interpretations and Policies .11.

[15] Derivatives that are functionally identical to the Exchange's exclusively-listed options, including SPX, can be traded on the OTC market.

exchange Cboe C2 Exchange, Inc. (which product was later transferred to the Exchange), the Commission stated that it ''recognizes the potential impact on competition resulting from the inability of other options exchanges to list and trade SPXPM. In acting on this proposal, however, the Commission has balanced the potentially negative competitive effects with the countervailing positive competitive effects of C2's proposal. The Commission believes that the availability of SPXPM on the C2 exchange will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the S&P 500 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, we note that it is possible for other exchanges to develop or license the use of a new or different index to compete with the S&P 500 index and seek Commission approval to list and trade options on such index.'' [16]

The economic equivalence of SPX and SPY options was further acknowledged and cited as a basis for the elimination of position limits for SPY options across the industry not long after the Commission's findings above in 2011.[17] Moreover, other exchanges have acknowledged that SPY options are considered to be an economic equivalent to SPX options.[18]

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.[19] Similar to, and consistent with, its findings in approving SPXPM, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[20] Accordingly, although the Exchange may have proprietary products not offered by other competitors, not unlike unique business models, a competitor could create similar products to an existing proprietary product if demand were adequate. As an illustration of this point, MIAX created its exclusive product SPIKES specifically to compete against VIX options, another product exclusive to the Exchange.[21]

The Commission has also acknowledged competition with respect to OTC products. For example, in its proposal to eliminate position and exercise limits for broad-based index options, the Exchange had noted that ''[i]nvestors who trade listed options on the [Exchange] are placed at a serious disadvantage in comparison to the OTC market where index options and other types of index based derivatives (*e.g.,* forwards and swaps) are not subject to position and exercise limits. Member firms continue to express concern to the Exchange that position limits on [Exchange] products are an impediment to their business and that they have no choice but to move their business to the OTC market where position limits are not an issue.'' [22] In approving the Exchange's proposal to eliminate position and exercise limits for certain broad-based index options, including SPX, on a two-year pilot basis, the Commission stated that ''the index options and other types of index-based derivatives (*e.g.,* forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the SPX . . . options on a two-year pilot basis will better allow [the Exchange] to compete with the OTC market.'' [23]

The Exchange is not aware of any changes in the market that make the Commission's foregoing findings and assertions relating to competition for SPX and exclusively listed products generally any less true today. In fact, competitive forces within the market have resulted in an expansion of products. For example, in recent years, the exchange-traded fund (''ETF'') industry has experienced significant growth and diversification. ETFs that hold options have become increasingly popular. There are several examples of ETFs that hold SPX options and others that hold SPY options, as both types of options may offer investors different benefits. Accordingly, if a market participant views the Exchange's proprietary products, including SPX and SPXW, as more or less attractive than the competition they can and do switch between substantially similar products. Despite having economic differences, substitute products have significant similarities and may have characteristics that cause investors to find those products to beneficial to SPX options (*e.g.,* strike availability, settlement, liquidity, tax reasons, product size). As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

The Exchange also believes the proposed fee is reasonable as the Exchange believes it remains commensurate with the value of operating as a Market-Maker on the Exchange's trading floor in the SPX pit, which has the largest physical presence on the Exchange's trading floor. For example, the Exchange recently transitioned from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers. The build out of a new modern trading floor reflects the Exchange's commitment to open outcry trading and focus on providing the best possible trading experience for its customers, including Market-Makers. For example, the new trading floor

[16] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008). The Exchanges notes SPXPM was later transferred to the Exchange, where it currently remains listed. *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120).

[17] *See, e.g.,* Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR–BOX–2012–013). *See also* Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (SR–Phlx–2012–122).

[18] NYSE Euronext, on behalf of its subsidiary options exchanges, NYSE Arca Inc. and NYSE Amex LLC, commented on a Nasdaq OMX PHLX LLC (''PHLX'') proposal to increase the position limits for SPY options, noting ''. . .when a contract that is considered by many to be economically equivalent to SPY options—namely SPX options . . .'' See (*http://www.sec.gov/comments/sr-phlx-2011-58/phlx201158-1.pdf*).

[19] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[20] *Id.*

[21] MIAX has described SPIKES options as ''designed specifically to compete head-to-head against Cboe's proprietary VIX® product.'' *See* MIAX Press Release, *SPIKES Options Launched on MIAX,* February 21, 2019, *available at https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_02212019.pdf.*

[22] *See* Securities Exchange Act Release No. 40158 (July 1, 1998), 63 FR 37153 (July 9, 1998) (SR–CBOE–1998–23).

[23] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR–CBOE–1998–23). The pilot program that was originally allowed for the elimination of position and exercise limits of SPX was approved on a permanent basis in 2001. *See* Securities Exchange Act Release No. 44994 (November 2, 2001), 66 FR 55722 (October 26, 2001) (SR–CBOE–2001–22).

provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology that enables floor participants to plug in and use their devices with greater ease and flexibility. The new trading floor provided by the Exchange also provides floor Market-Makers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, which resulted in minimal disruption to TPH floor participants, many of whom have office space nearby, including in the same facility in which the trading floor is located. The Exchange believes the new location, which was also home to the Exchange's original trading floor in the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts several banks, trading firms and even trading floors (*i.e.,* trading floors for the Chicago Mercantile Exchange and BOX Options Market). The Exchange also believes the relocation to the new trading floor resulted in a streamlined and simplified trading floor and facility fee structure, as further described in the Exchange's proposal to amend certain facility fees in connection with the new trading floor.[24] The Exchange also notes that is has not sought to pass through a number of costs incurred in connection with the new trading floor, including design, construction and other on-going maintenance costs. The Exchange also intends to offer free coffee and beverages on the new trading floor. Moreover, the Exchange has not modified many of its facilities fees in several years. The Exchange therefore believes the proposed increase in the Tier Appointment Fee is also reasonable because it further enables the Exchange to recoup fees associated with the costs of operating a modern and cutting-edge trading floor and offset and keep pace with increasing technology costs.

The Exchange further believes the proposal to increase the fee is reasonable as the Exchange has provided further value to Market-Makers by expanding the suite of SPX products available to Market-Makers on the trading floor since 2010 when the SPX (and SPXW) Floor Market-Maker Tier Appointment fee was first adopted. For example, in 2013, the Exchange began listing SPXPM.[25] In 2016, the Exchange began listing SPX Weekly options with Monday and Wednesday expirations.[26] Most recently in 2022, the Exchange added SPX Weekly options with Tuesday and Thursday expirations.[27] The introduction of these products means SPX options now have an available expiration every trading day of the week, thereby providing Floor Market-Makers with additional opportunities to trade SPX and greater trading flexibility as compared to 2010. Moreover, average daily volume (ADV) in SPX has increased nearly 30%. In particular, Market-Maker open outcry ADV in SPX has increased nearly 15% since 2010. Therefore, increasing the price to trade SPX on the trading floor is consistent with the simple law of supply and demand—demand to trade SPX options has increased (as evidenced by the ADV increase), and therefore the Exchange is proposing to increase the price to trade these options. Further, increased ADV, and specifically increased Market-Maker open ourcry in SPX provides increased trading opportunities for SPX Market-Makers which the Exchange believes is commensurate with the value of the proposed increase of the Tier Appointment Fee. Additionally, the notional ADV in SPX has increased over 380% on the trading floor since July 2010 when the fee was first adopted. Consistent with basic economic principles, if the value of a good increases, it is reasonable for the price of that good to also increase. In this case, the percentage the Exchange is proposing to increase the tier appointment fee is significantly lower than percentage that the notional ADV in SPX has increased. Moreover, given the significant increase of the notional value of one SPX option contract, compared to the SPX Tier Appointment Fee, it is actually cheaper to trade SPX options on the trading floor currently than it was in 2010 when the fee was first adopted. For example, on December 31, 2010, the S&P 500 Index closed at 1,257.64, making the notional value of one SPX contract $125,764 on that date. On March 20, 2023, the S&P 500 Index closed at 3,951.57, making the notional value of one SPX contract $395,157 on that date. The notional value of one SPX option contract increased over 200% from December 31, 2010, to March 20, 2023, which far exceeds the percentage increase of the proposed fee change. That said however, based on the cost of the SPX Floor Market Maker Tier Appointment fee of $3,000 in 2010 and $5,000 in 2023, it is still cheaper per SPX contract despite the higher fee ($0.0239 ($3,000/$125,764) v. $0.0127 ($5,000/$393,157)).

To demonstrate the value the Exchange believes Marker-Makers find transacting with SPX on the trading floor (notwithstanding the proposed fee change), Market-Maker presence on the new trading floor in SPX and SPXW has actually increased. Particularly, as of December 30, 2022, there are 12 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022 (which was the month prior to the proposed fee change being implemented on a permanent basis and transition to the new trading floor).[28] Further, in June 2022, the month in which the proposed fee change took effect on the new trading floor on a permanent basis, there were 5 additional Market-Makers trading SPX and SPXW on the trading Floor as compared to May 2022. Further, as of December 30, 2022, there are 4 additional Market-Makers trading SPX and SPXW on the trading floor as compared to March 2020, which was the last month the Exchange assessed $3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee. The Exchange believes the increasing SPX and SPXW Market-Maker presence on the trading floor since the last time the Exchange assessed $3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee (*i.e.,* March 2020) and since the time the current proposal was submitted (*i.e.,* June 2020) speaks not only to the value Market-Makers find in participating as a Market-Maker in SPX and SPXW on the (new and improved) trading floor, but also to the reasonableness of the fee. Moreover, as established above, if a Market-Maker viewed trading SPX and SPXW as less attractive than competitive products, including those described above, they

[24] *See* Securities Exchange Act Release No. 96001 (October 6, 2022), 87 FR 62129 (October 13, 2022) (SR–CBOE–2022–049).

[25] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120).

[26] *See* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR–CBOE–2015–106). *See also* Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643(August 16, 2016) (SR–CBOE–2016–146).

[27] *See* Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE–2022–005).

[28] As noted above, the Exchange has been assessing $5,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee since June 2020 as the Exchange was operating in a modified state until its transition to the new trading floor in June 2022, at which time the Exchange submitted this proposal to make such increase permanent.

can switch between such similar products and choose not to remain as a Market-Maker trading SPX and SPX on the trading floor. As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

Moreover, as noted above, market participants are not obligated to trade on the Exchange's trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange's trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In particular, as of January 2023, SPX and SPXW open outcry volume accounted for approximately 26% of total SPX and SPXW volume (*i.e.,* approximately 74% is traded electronically). Accordingly, Market-Makers may continue to choose to trade SPX and SPXW electronically should they deem fees associated with trading on the trading floor as unreasonable, further demonstrating that the Exchange is constrained from imposing unreasonable and supracompetitive fees. The Exchange notes this applies to all SPX Market-Makers, even a Market-Maker who may currently not participate electronically and only trades SPX in open outcry. Should any Market-Maker find the costs for executing SPX in open outcry unreasonable based on its business model and needs, such Market-Maker could instead elect to execute SPX solely electronically (or choose to trade other competing products). Accordingly, the Exchange believes that SPX Floor Market-Makers that continue to participate in open outcry trading find value in doing so.

The Exchange finally believes its proposal to increase the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable because the proposed amount is not significantly higher than was previously assessed (and is the same amount that has been assessed under Footnote 24 for the last two years). Additionally, the Exchange believes its proposal to increase the fee is reasonable as the fee amount has not been increased since it was adopted over 12 years ago in July 2010.[29] Particularly, since its adoption 13 years ago, there has been notable inflation. Indeed, the dollar has had an average inflation rate of 2.6% per year between 2010 and today, producing a cumulative price increase of approximately 40% inflation since 2010, when the SPX and SPXW Floor Market-Maker Tier Appointment was first adopted.[30] Additionally, for nearly ten years, Market-Makers were only subject to the original rate that was adopted in 2010 (*i.e.,* $3,000) notwithstanding an average inflation rate of 2.6% per year. The Exchange acknowledges its proposed fee exceeds 40%. However, the Exchange believes such increase is reasonable given many Market-Makers for nearly 10 years did not have to pay increased fees notwithstanding yearly inflation. For example, by not increasing the fee each year to correspond to the average per year inflation rate of 2.6%, Market-Makers trading SPX on the trading floor since 2011 through 2020 (when then Exchange originally increased the fee due to the COVID–19 pandemic) have saved nearly $10,000. Moreover, the Exchange historically does not increase fees every year, notwithstanding inflation. The Exchange therefore believes that proposing a fee in excess of the cumulative 40% inflation rate is still reasonable, especially when considered in conjunction with all of the additional and further rationale discussed above. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a yearly or cumulative inflation rate is unreasonable.

The proposed change is also equitable and not unfairly discriminatory as it applies to all Market-Makers that trade SPX on the trading floor uniformly. The Exchange believes it's reasonable equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee, as Floor Market-Makers are not subject to other costs that electronic Market-Makers are subject to. For example, while all Floor Market-Makers automatically have an appointment to trade open outcry in all classes traded on the Exchange and at no additional cost per appointment, electronic Market-Makers must select an appointment in a class (such as SPX) to make markets electronically and such appointments are subject to fees under the Market-Maker Electronic Appointments Sliding Scale.[31]

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. Moreover, Congress's intent in enacting the 1975 Amendments to the Act was to enable competition—rather than government order—to determine prices. The principal purpose of the amendments was to facilitate the creation of a national market system for the trading of securities. Congress intended that this ''national market system evolve through the interplay of *competitive forces* as unnecessary regulatory restrictions are removed.'' [32] Other provisions of the Act confirm that intent. For example, the Act provides that an exchange must design its rules ''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.'' [33] Likewise, the Act grants the Commission authority to amend or repeal ''[t]he rules of [an] exchange [that] impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.'' [34] In short, the promotion of free and open competition was a core congressional objective in creating the national market system.[35] Indeed, the Commission has historically interpreted that mandate to promote competitive forces to determine prices whenever compatible with a national market system. Accordingly, the Exchange believes it has met its burden to demonstrate that its proposed fee change is reasonable and consistent with the immediate filing process chosen by Congress, which created a system whereby market forces determine access fees in the vast majority of cases, subject to oversight only in particular cases of abuse or market failure. Lastly, and importantly, the Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[29] *See* Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR–CBOE–2010–060).

[30] *See https://www.officialdata.org/us/inflation/2010?amount=1.*

[31] *See* Cboe Options Rules 5.50(a) and (e). *See also* Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale.

[32] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.) (emphasis added).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(8).

[35] *See also* 15 U.S.C. 78k–l(a)(1)(C)(ii) (purposes of Exchange Act include to promote ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets''); Order, 73 FR at 74781 (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'').

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all Floor Market-Makers that trade SPX (and/or SPXW). As noted above, the Exchange believes it's reasonable to increase the SPX/SPWX Tier Appointment Fee for only Floor Market-Makers only as opposed to electronic Market-Makers, because electronic Market-Makers are subject to costs Floor Market-Makers are not, such as the fees under Market-Maker EAP Appointments Sliding Scale.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a fee relating to a product exclusively listed on the Exchange. Additionally, the Exchange operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which, as described above, list products that compete with SPX options) and direct their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share of executed volume of options trades.[36] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, as discussed above, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[38] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [39] and paragraph (f) of Rule 19b–4 [40] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2023–035. 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–CBOE–2023–035 and should be submitted on or before August 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16621 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

[36] *See* Cboe Global Markets, U.S. Options Market Volume Summary by Month (January 19, 2023), available at *http://markets.cboe.com/us/options/market_share/.*

[37] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[38] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f).

[41] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On July 31, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. AGLEEL, Ahmed (a.k.a. AQLYL, Ahmad), Addu City, Maldives; DOB 30 Jan 1980; POB Gurahaage, Feydhoo, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A298637 (Maldives) (individual) [SDGT] (Linked To: AL QA'IDA).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–QA'IDA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. SHIYAM, Ali (a.k.a. ''VB AYYA''), Maldives; DOB 25 Oct 1987; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport F0303172 (Maldives) expires 08 Feb 2020; National ID No. A039352 (Maldives) (individual) [SDGT] (Linked To: AL QA'IDA).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–QA'IDA, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. INAS, Moosa (a.k.a. ENAS, Moosa), Kalhaidhoo, Maldives; Male, Maldives; DOB 11 Dec 1985; POB Kalhaidhoo, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A134920 (Maldives); Identification Number A096123 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. MANIK, Abdulla Ali, Maldives; DOB 15 Apr 1972; alt. DOB 15 Mar 1972; POB Haa Alif Molhadhoo, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A114374 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. MUBEEN, Ahmed, Male, Maldives; DOB 30 Dec 1976; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0451333 (Maldives) expires 29 Apr 2018; National ID No. A048375 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

6. SHAMIL, Hussain (a.k.a. SHAAMIL, Hussain), Male, Maldives; DOB 11 May 1984; POB Guraidhoo, Kaafu Atoll, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0491049 (Maldives); National ID No. A096689 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

7. AFRAAH, Ahmed (a.k.a. AFRAAH, Hamed; a.k.a. AFRAAHU, Ahmed; a.k.a. AFRAAN, Ahmed; a.k.a. AFRAH, Ahmed), Rasgetheemu, Raa Atoll, Maldives; Male, Maldives; DOB 17 Aug 1985; POB Rasgetheemu, Raa Atoll, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LA10E3813 (Maldives); National ID No. A147299 (Maldives); alt. National ID No. A052467 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

8. AHMED, Ameen, Male, Maldives; DOB 28 Apr 1987; POB Gaafu Dhaalu Atoll, Rathafandhoo, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0470542 (Maldives) expires 04 Dec 2018; National ID No. A147231 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

9. RAZZAQ, Mohamed Maathiu Abdul, Villimale, Maldives; Alihaa, Male, Maldives; DOB 08 Sep 1994; POB Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A222883 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

10. SHAFIU, Ali, Afghanistan; DOB 07 Sep 1988; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Digital Currency Address—USDT TVacWx7F5wgMgn49L5frDf9KLgdYy8nPHL; Passport E0491095 (Maldives) expires 16 Jun 2019; National ID No. A325164 (Maldives) (individual) [SDGT] (Linked To: ISIL KHORASAN).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISIL KHORASAN, a person whose property and interests in property are blocked pursuant to E.O. 13224.

11. SHAHEED, Yoosuf, Herethere, Lonuziyaaraiy Magu, Male, Maldives; DOB 12 Sep 1983; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0466103 (Maldives) expires 10 Nov 2018; National ID No. A079207 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

12. SHAREEF, Abdulla (a.k.a. ABDULLA, Shareef), Felividhuvaruge, Thimarafushi, Maldives; DOB 11 Jun 1986; POB Thimarafushi, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A141872 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

13. RAUF, Ahmed Alif (a.k.a. RAUF, Ahmed Aalif), Male, Maldives; DOB 21 Nov 1986; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0513822 (Maldives) expires 08 Dec 2019; National ID No. A332352 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

14. RAUF, Mohamed Inthif, Maldives; Sri Lanka; DOB 09 Sep 1988; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0457534 (Maldives) expires 21 Jul 2018; alt. Passport LA16E9883 (Maldives); National ID No. A336855 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

15. RAUF, Ibrahim Aleef, Male, Maldives; DOB 30 Nov 1989; POB Male, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0476424 (Maldives) expires 27 Jan 2019; National ID No. A121995 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

16. DIDI, Faris Mohamed, Addu City, Maldives; DOB 09 Dec 1984; POB Hithadhoo, Addu City, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LA14E6390 (Maldives) expires 12 Jun 2022; National ID No. A153987 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

17. NASEEM, Jinaau (a.k.a. NASEEN, Jinau; a.k.a. NASYM, Hasen), Hithadhoo, Addu City, Maldives; Raaspareege, Male, Maldives; DOB 08 Aug 1994; POB Hithadhoo, Addu City, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LA29E1351 (Maldives) expires 07 Jul 2027; alt. Passport LA15E1477 (Maldives); National ID No. A384648 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

18. NAUSHAD SHAREEF, Mohamed, Addu City, Maldives; DOB 16 Dec 1994; POB Hithadhoo, Addu City, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport E0496057 (Maldives) expires 25 Aug 2019; National ID No. A304105 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

19. NIHADH, Ali (a.k.a. NIHAD, Ali), Addu City, Maldives; DOB 10 Jun 1989; POB Hithadhoo, Addu City, Maldives; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LA14E6467 (Maldives); National ID No. A309494 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

20. THASLEEM, Mohamed, Hulhumale, Male 20041, Maldives; DOB 23 Oct 1987; nationality Maldives; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. A121492 (Maldives) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ISLAMIC STATE OF IRAQ AND THE LEVANT, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entities

1. DESIGNER GARAGE (a.k.a. FOTHI GARAGE), Gurahaage, Feydhoo 19040, Maldives; Link Road, Addu City 19040, Maldives; website fothigarage.business.site/; Secondary sanctions risk: section 1(b) of

Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Nov 2017; Organization Type: Wholesale of food, beverages and tobacco; alt. Organization Type: Retail sale of textiles in specialized stores; Business Number BN03382018 (Maldives); alt. Business Number BN38732022 (Maldives); Business Registration Number BP38892022 (Maldives) issued 29 Sep 2022; Registration Number SP–2375/2017 (Maldives); Permit Number IG0195S42018 (Maldives) issued 06 Feb 2018 [SDGT] (Linked To: AGLEEL, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AGLEEL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. ERIYADHU INVESTMENTS PVT LTD, Chaandhanee Magu, Machchangolhi, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number C–0725/2009 (Maldives) [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. FURAHA CONSTRUCTION PVT LTD, Garden Villa, Feydhoo 19040, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Mar 2015; Registration Number C–0282/2015 (Maldives) [SDGT] (Linked To: AGLEEL, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AGLEEL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. GOLDEN WARRIORS INVESTMENT PVT LTD (a.k.a. ''GW INVESTMENT''), Vaaly Villa, Majeedhee Magu, Henveiru, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Dec 2014; Organization Type: Wholesale of solid, liquid and gaseous fuels and related products; Registration Number C–1063/2014 (Maldives); Permit Number IG–0069/T10/2015 (Maldives) issued 15 Jan 2015 [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. JAZEERA PROPERTIES PVT LTD, Finuvaijeheyge, Samandhu Goalhi, Henveiru, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Nov 2018; Registration Number C–0976/2018 (Maldives) [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. SHINE. X INVESTMENTS PVT LTD, Malareethige, Galolhu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number C–0543/2014 (Maldives); Permit Number IG–0913/T10/2014 (Maldives) issued 03 Jul 2014 [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. SOUTHERN STALLIONS PVT LTD, Gurahaage, Orchid Magu, Feydhoo 19040, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 Mar 2020; Organization Type: Sports and recreation education; Business Number BN09492020 (Maldives); Registration Number C–0255/2020 (Maldives) [SDGT] (Linked To: AGLEEL, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AGLEEL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. SYSKON PVT LTD, Chaandhanee Magu, Maafannu, Male 20189, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Sep 2017; Registration Number C–0901/2017 (Maldives) [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. VAALY BROTHERS PVT LTD, Vaaly Villa, Majeedhee Magu, Henveiru, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Aug 2007; Organization Type: Non-specialized wholesale trade; Registration Number C–0694/2007 (Maldives); Permit Number IG–0214/T10/2017 (Maldives) issued 16 Feb 2017; alt. Permit Number T10/F/92/0289 (Maldives) issued 01 Jan 1992 [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. VISIONS MALDIVES PVT LTD, Ever Glory, Keneree Magu, Machchangolhi, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number C–0132/1992 (Maldives) [SDGT] (Linked To: SHIYAM, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHIYAM, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. 3ZED INVESTMENT (a.k.a. ''3ZED''; a.k.a. MIBAZAARUMV), Ma. Rimlas, Nikagas, Hingun, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Mar 2022; Organization Type: Packaging activities; Business Number BN15322023 (Maldives); Registration Number SP–0816/2022 (Maldives) [SDGT] (Linked To: MUBEEN, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED MUBEEN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. AL ATHMAAR, Moonlight Valley, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 May 2017; Registration Number P–0057/2017 (Maldives) [SDGT] (Linked To: SHAMIL, Hussain; Linked To: SHAFIU, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, HUSSAIN SHAMIL and ALI SHAFIU, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. LAROSA, Five Rose, Bahaarumagu 0808, Guraidhoo, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Non-specialized wholesale trade; Registration Number SP–0624/2018 (Maldives); Permit Number IG0724T102018 (Maldives) issued 22 May 2018 [SDGT] (Linked To: SHAMIL, Hussain).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, HUSSAIN SHAMIL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. CODE A PARTNERSHIP, Kulhidhoshu Magu, Male 20288, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 31 Oct 2016; Registration Number P–0156/2016 (Maldives) [SDGT] (Linked To: AMEEN, Mohamad; Linked To: AFRAAH, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMAD AMEEN and AHMED AFRAAH, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. DHAWI PVT LTD, Herethere, Lonuziyaaraiy Magu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Oct 2018; Organization Type: Other transportation support activities; Registration Number C–0826/2018 (Maldives) [SDGT] (Linked To: AFRAAH, Ahmed; Linked To: SHAHEED, Yoosuf).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AFRAAH and YOOSUF SHAHEED, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. FRUIT PLUS MALDIVES PVT LTD (a.k.a. ''FRUIT PLUS''), Double Eight, Buruzu Magu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 30 Jan 2018; Organization Type: Wholesale of food, beverages and tobacco; Registration Number C–0115/2018 (Maldives); Permit Number IG0218T102018 (Maldives) issued 11 Feb 2018 [SDGT] (Linked To: AFRAAH, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AFRAAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

17. GREEN BIRDS, Alihaa, 7020, Naifaru, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 19 Aug 2019; Registration Number SP–1741/2019 (Maldives); Permit Number IG1107T102019 (Maldives) issued 01 Sep 2019 [SDGT] (Linked To: RAZZAQ, Mohamed Maathiu Abdul).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMED MAATHIU ABDUL RAZZAQ, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

18. INMA MALDIVES (a.k.a. INMA MALDIVES COMPANY), Dhekunu Thila, 5th floor, Sabudheyli Magu, Male, Maldives; Noor Villa, Rahdhebai Hingun, Male, Maldives; website *http://inma-maldives.business.site/*; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 May 2018; Organization Type: Wholesale of food, beverages and tobacco; Business Registration Number BP17202021 (Maldives) issued 09 May 2021; Registration Number P–0095/2018 (Maldives); Permit Number IG0641T102018 (Maldives) issued 07 May 2018 [SDGT] (Linked To: AHMED, Ameen).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AMEEN AHMED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

19. JAZEERAT ALMALDIFI (a.k.a. JAZEERATH AL MALDIFI; a.k.a. JAZEERATHALMALDIFI), Dhuveli, 1st Floor, Rahdhebai Magu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Feb 2019; Organization Type: Real estate activities on a fee or contract basis; Registration Number P–0025/2019 (Maldives) [SDGT] (Linked To: AHMED, Ameen).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AMEEN AHMED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

20. MULTI CONSTRUCTION PVT LTD, Shimaz, Nellaidhoo, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Nov 2006; Registration Number C–0833/2006 (Maldives) [SDGT] (Linked To: SHAREEF, Abdulla).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ABDULLA SHAREEF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

21. PANDA MALDIVES PVT LTD, Enboo, Enboo Goalhi, Maafannu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Nov 2016; Registration Number C–1089/2016 (Maldives) [SDGT] (Linked To: SHAFIU, Ali).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ALI SHAFIU, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

22. SIAS INVESTMENT PVT LTD (a.k.a. SIAS TRADING), Hulhumale, Lot 10799, Unigas Magu, Hulhumale 23000, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 06 Jul 2021; Organization Type: Retail sale via mail order houses or via internet; Business Number BN26372021 (Maldives); Business Registration Number BP23702021 (Maldives) issued 12 Jul 2021; Registration Number C–0696/2021 (Maldives) [SDGT] (Linked To: AFRAAH, Ahmed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED AFRAAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

23. BAUM PVT LTD (a.k.a. ''CAFE SHAZE''; a.k.a. ''JAM ROLLED ICE CREAM''), Feyrugasdhoshuge, 1st Floor, Ameeru Ahmed Magu, Male, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 Mar 2017; Organization Type: Non-specialized wholesale trade; Business Number BN–0734/2017 (Maldives); alt. Business Number BN–2097/2017 (Maldives); Registration Number C–0359/2017 (Maldives); Permit Number TS–0112/T10/2017 (Maldives); alt. Permit Number TS0040T102018 (Maldives); alt. Permit Number IG0593T102018 (Maldives) [SDGT] (Linked To: RAUF, Mohamed Inthif).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMED INTHIF RAUF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

24. MAROC INTERNATIONAL PVT LTD, Coral Ville, Hulhumale 23000, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Sep 2021; Registration Number C–0977/2021 (Maldives) [SDGT] (Linked To: RAUF, Mohamed Inthif).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMED INTHIF RAUF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

25. STREET INVESTMENTS PVT LTD (a.k.a. ''BEACH COCOHUT''), Seesan magu, Male 20028, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 12 Jun 2022; Organization Type: Restaurants and mobile food service activities; Business Number BN26312022 (Maldives); Business Registration Number BP33152022 (Maldives) issued 23 Aug 2022; Registration Number C–0688/2022 (Maldives) [SDGT] (Linked To: RAUF, Ahmed Alif).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED ALIF RAUF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

26. STREET MOTOR SERVICES (a.k.a. ''AVIAN PARADISE''), Male, Maldives; website street-motor-services.business.site/; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Oct 2014; Organization Type: Maintenance and repair of motor vehicles; Business Number BN19452021 (Maldives); Business Registration Number BP16972021 (Maldives) issued 06 May 2021; Registration Number SP–0539/2014 (Maldives) [SDGT] (Linked To: RAUF, Ahmed Alif).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED ALIF RAUF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

27. WHITE BEACH WATERSPORTS PVT LTD (a.k.a. WHITE BEACH WATERSPORTS), Male, Maldives; Beach Road, Hulhamale 23000, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Nov 2020; Organization Type: Other amusement and recreation activities; Registration Number C–0930/2020 (Maldives) [SDGT] (Linked To: RAUF, Ahmed Alif).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, AHMED ALIF RAUF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

28. NEW SUN INVESTMENTS PVT LTD (a.k.a. NEW SUN INVESTMENTS; a.k.a. NEW SUN INVESTMENTS PRIVATE LIMITED), Benhaage, Hithadhoo, Addu City 19020, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886;

Organization Established Date 05 Mar 2015; Registration Number C–0250/2015 (Maldives) [SDGT] (Linked To: NAUSHAD SHAREEF, Mohamed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMED NAUSHAD SHAREEF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

29. SKY NOVA INVESTMENT (a.k.a. ''TAS–TY ADDU''), Vanilla ge, Hithadhoo, Addu City 19020, Maldives; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Oct 2022; Business Number BN44802022 (Maldives); Registration Number SP–2913/2022 (Maldives) [SDGT] (Linked To: NAUSHAD SHAREEF, Mohamed).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MOHAMED NAUSHAD SHAREEF, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

On July 31, 2023, OFAC published the following revised information for the entries on the SDN List for the following individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism,'' as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism.''

Individual

AL–KHATIB, Ahmad (a.k.a. AL KHATIB, Ahmad; a.k.a. EL KHATIB, Ahmad; a.k.a. HISHMAH, Ahmad), Sao Paulo, Brazil; DOB 03 Jul 1969; alt. DOB 03 Jul 1967; POB Majdal Anjar, Lebanon; nationality Egypt; alt. nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL0554365 (Lebanon) issued 20 Mar 2011 expires 29 Mar 2016; Tax ID No. 234.904.268–51 (Brazil) (individual) [SDGT].

Dated: July 31, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–16612 Filed 8–3–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Disability Compensation (hereinafter the Committee) will hold meeting sessions on Tuesday, August 22, 2023, through Thursday, August 24, 2023, at various locations in Washington, DC and shown below.

The meeting sessions will begin and end as follows:

Date	Time	Location	Open session
August 22, 2023	10:00 a.m.–12:00 p.m. Eastern Standard Time (EST).	The Ritz-Carlton, Pentagon City, 1250 S Hayes St, Arlington, VA 22202.	Yes
August 22, 2023	1:00 p.m.–4:00 p.m. (EST)	MDEO Site Visit—Contract Examination Vendor Tour The Ritz-Carlton, Pentagon City, 1250 S Hayes St, Arlington, VA 22202.	No
August 23, 2023	9:00 a.m.–4:00 p.m. (EST)	The Ritz-Carlton, Pentagon City, 1250 S Hayes St, Arlington, VA 22202.	Yes
August 24, 2023	9:00 a.m.–12:00 p.m. (EST)	Washington VA Medical Center, 50 Irving Street NW, Washington, DC 20422–0001.	No
August 24, 2023	1:00 p.m.–4:00 p.m. (EST)	Washington, DC Vet Center, 1296 Upshur Street NW, Washington, DC 20011.	No

Sessions are open to the public, except when the Committee is conducting a tour of VA facilities. Tours of VA facilities are closed, to protect Veterans' privacy and personal information, by 5 U.S.C. 552b(c)(6).

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities (VASRD). The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation

On Tuesday, August 22, the Committee will convene an open session from 10:00 a.m. to 12:00 p.m. EST at The Ritz-Carlton, Pentagon City. The agenda includes Committee planning and May/June meeting debriefings, and hearing briefings from the Medical Disability Examination Office (MDEO). From 1:00 p.m. to 4:00 p.m. EST, the Committee will reconvene a closed session as it tours an MDEO Contract Examination Vendor. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

On Wednesday, August 23, the Committee will convene an open session from 9:00 a.m. to 4:00 p.m. EST to hear briefings and updates on VASRD to include an overview of the regulation process, overview briefing(s) on the Suicide Prevention Program, Committee discussion/planning and the Committee's 2024 Biennial Report planning.

On Thursday, August 24, the Committee will convene from 9:00 a.m. to 12:00 p.m. EST for a closed session as it tours the VA Medical Center, Washington, DC from. From 1:00 p.m. to 4:00 p.m. EST, the Committee will reconvene a closed session as it tours the Washington, DC Vet Center. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The public is invited to address the Committee during the public comment period, which will be open for 30-minutes from 3:30 p.m. to 4:00 p.m. EST on Wednesday, August 23, 2023. The public can also submit one-page summaries of their written statements for the Committee's review. Public comments must be received no later than August 15, 2023, for inclusion in the official meeting record. Please send these comments to Jadine Piper of the Veterans Benefits Administration, Compensation Service, at *21C_ACDC.VBACO@va.gov.*

Additionally, any member of the public planning to attend or seeking additional information, or those who wish to obtain a copy of the agenda should contact Jadine Piper at *21C_ACDC.VBACO@va.gov,* and provide their name, email address and phone

number. The call-in number (United States, Chicago) for those who would like to attend the meeting is: 872–701–0185; phone conference ID: 810 709 916#. Members of the public may also access the meeting by pasting the following URL into a web browser: *bit.ly/ACDCPublicAugustMeeting.*

Dated: July 31, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–16601 Filed 8–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., ch. 10., that the Advisory Committee on the Readjustment of Veterans will meet in person on November 7, 2023–November 9, 2023. The meeting sessions will be held at the Lafayette Building, 811 Vermont Avenue NW, Conference Room 3166, Washington, DC 20009. The sessions will begin and end as follows:

Dates	Times
Tuesday, November 7, 2023.	8:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).
Wednesday, November 8, 2023.	8:00 a.m. to 5:00 p.m. EST.
Thursday, November 9, 2023.	8:00 a.m. to 12:00 p.m. EST.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the VA regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 14 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato, via email at *VHARCSPlanningPolicy@va.gov* or at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420.

Any member of the public seeking additional information should contact Mr. Barbato at the email address noted above.

Dated: August 1, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–16683 Filed 8–3–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Friday,

No. 149 August 4, 2023

Part II

Securities and Exchange Commission

17 CFR Parts 229, 232, 239, et al.

Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 239, 240, and 249

[Release Nos. 33–11216; 34–97989; File No. S7–09–22]

RIN 3235–AM89

Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting new rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. Specifically, we are adopting amendments to require current disclosure about material cybersecurity incidents. We are also adopting rules requiring periodic disclosures about a registrant's processes to assess, identify, and manage material cybersecurity risks, management's role in assessing and managing material cybersecurity risks, and the board of directors' oversight of cybersecurity risks. Lastly, the final rules require the cybersecurity disclosures to be presented in Inline eXtensible Business Reporting Language (''Inline XBRL'').

DATES:

Effective date: The amendments are effective September 5, 2023.

Compliance dates: See Section II.I (Compliance Dates).

FOR FURTHER INFORMATION CONTACT: Nabeel Cheema, Special Counsel, at (202) 551–3430, in the Office of Rulemaking, Division of Corporation Finance; and, with respect to the application of the rules to business development companies, David Joire, Senior Special Counsel, at (202) 551–6825 or *IMOCC@sec.gov,* Chief Counsel's Office, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference		CFR citation (17 CFR)
Regulation S–K		§§ 229.10 through 229.1305.
	Items 106 and 601	§§ 229.106 and 229.601.
Regulation S–T		§§ 232.10 through 232.903.
	Rule 405	§ 232.405.
Securities Act of 1933 (''Securities Act'') [1]	Form S–3	§ 239.13.
Securities Exchange Act of 1934 (''Exchange Act'') [2]	Rule 13a–11	§ 240.13a–11.
	Rule 15d–11	§ 240.15d–11.
	Form 20–F	§ 249.220f.
	Form 6–K	§ 249.306.
	Form 8–K	§ 249.308.
	Form 10–K	§ 249.310.

Table of Contents

I. Introduction and Background

On March 9, 2022, the Commission proposed new rules, and rule and form amendments, to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incidents by public companies that are subject to the reporting requirements of the

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

Exchange Act.[3] The proposal followed on interpretive guidance on the application of existing disclosure requirements to cybersecurity risk and incidents that the Commission and staff had issued in prior years.

In particular, in 2011, the Division of Corporation Finance issued interpretive guidance providing the Division's views concerning operating companies' disclosure obligations relating to cybersecurity (''2011 Staff Guidance'').[4] In that guidance, the staff observed that ''[a]lthough no existing disclosure requirement explicitly refers to cybersecurity risks and cyber incidents, a number of disclosure requirements may impose an obligation on registrants to disclose such risks and incidents,'' and further that ''material information regarding cybersecurity risks and cyber incidents is required to be disclosed when necessary in order to make other required disclosures, in light of the circumstances under which they are made, not misleading.'' [5] The guidance pointed specifically to disclosure obligations under 17 CFR 229.503 (Regulation S–K ''Item 503(c)'') (Risk factors) (since moved to 17 CFR 229.105 (Regulation S–K ''Item 105'')), 17 CFR 229.303 (Regulation S–K ''Item 303'') (Management's discussion and analysis of financial condition and results of operations), 17 CFR 229.101 (Regulation S–K ''Item 101'') (Description of business), 17 CFR 229.103 (Regulation S–K ''Item 103'') (Legal proceedings), and 17 CFR 229.307 (Disclosure controls and procedures), as well as to Accounting Standards Codifications 350–40 (Internal-Use Software), 605–50 (Customer Payments and Incentives), 450–20 (Loss Contingencies), 275–10 (Risks and Uncertainties), and 855–10 (Subsequent Events).[6]

In 2018, ''[i]n light of the increasing significance of cybersecurity incidents,'' the Commission issued interpretive guidance to reinforce and expand upon the 2011 Staff Guidance and also address the importance of cybersecurity policies and procedures, as well as the application of insider trading prohibitions in the context of cybersecurity (''2018 Interpretive Release'').[7] In addition to discussing the provisions previously covered in the 2011 Staff Guidance, the new guidance addressed 17 CFR 229.407 (Regulation S–K ''Item 407'') (Corporate Governance), 17 CFR part 210 (''Regulation S–X''), and 17 CFR part 243 (''Regulation FD'').[8] The 2018 Interpretive Release noted that companies can provide current reports on Form 8–K and Form 6–K to maintain the accuracy and completeness of effective shelf registration statements, and it also advised companies to consider whether it may be appropriate to implement restrictions on insider trading during the period following an incident and prior to disclosure.[9]

As noted in the Proposing Release, current disclosure practices are varied. For example, while some registrants do report material cybersecurity incidents, most typically on Form 10–K, review of Form 8–K, Form 10–K, and Form 20–F filings by staff in the Division of Corporation Finance has shown that companies provide different levels of specificity regarding the cause, scope, impact, and materiality of cybersecurity incidents. Likewise, staff has also observed that, while the majority of registrants that are disclosing cybersecurity risks appear to be providing such disclosures in the risk factor section of their annual reports on Form 10–K, the disclosures are sometimes included with other unrelated disclosures, which makes it more difficult for investors to locate, interpret, and analyze the information provided.[10]

In the Proposing Release, the Commission explained that a number of trends underpinned investors' and other capital markets participants' need for more timely and reliable information related to registrants' cybersecurity than was produced following the 2011 Staff Guidance and the 2018 Interpretive Release. First, an ever-increasing share of economic activity is dependent on electronic systems, such that disruptions to those systems can have significant effects on registrants and, in the case of large-scale attacks, systemic effects on the economy as a whole.[11] Second, there has been a substantial rise in the prevalence of cybersecurity incidents, propelled by several factors: the increase in remote work spurred by the COVID–19 pandemic; the increasing reliance on third-party service providers for information technology services; and the rapid monetization of cyberattacks facilitated by ransomware, black markets for stolen data, and crypto-asset technology.[12] Third, the costs and adverse consequences of cybersecurity incidents to companies are increasing; such costs include business interruption, lost revenue, ransom payments, remediation costs, liabilities to affected parties, cybersecurity protection costs, lost assets, litigation risks, and reputational damage.[13]

Since publication of the Proposing Release, these trends have continued apace, with significant cybersecurity incidents occurring across companies and industries. For example, threat actors repeatedly and successfully executed attacks on high-profile companies across multiple critical industries over the course of 2022 and the first quarter of 2023, causing the Department of Homeland Security's Cyber Safety Review Board to initiate multiple reviews.[14] Likewise, state actors have perpetrated multiple high-profile attacks, and recent geopolitical instability has elevated such threats.[15] A recent study by two cybersecurity firms found that 98 percent of organizations use at least one third-party vendor that

[3] *See Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure,* Release No. 33–11038 (Mar. 9, 2022) [87 FR 16590 (Mar. 23, 2022)] (''Proposing Release'').

[4] *See* CF Disclosure Guidance: Topic No. 2—Cybersecurity (Oct. 13, 2011), *available at https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.*

[5] *Id.*

[6] *Id.*

[7] *See Commission Statement and Guidance on Public Company Cybersecurity Disclosures,* Release No. 33–10459 (Feb. 21, 2018) [83 FR 8166 (Feb. 26, 2018)], at 8167.

[8] *Id.*

[9] *Id.*

[10] *See infra* Section IV.A (noting that current cybersecurity disclosures appear in varying sections of companies' periodic and current reports and are sometimes included with other unrelated disclosures).

[11] Proposing Release at 16591–16592. *See also* U.S. Financial Stability Oversight Council, Annual Report (2021), at 168, *available at https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf* (finding that ''a destabilizing cybersecurity incident could potentially threaten the stability of the U.S. financial system'').

[12] Proposing Release at 16591–16592.

[13] *Id.*

[14] *See* Department of Homeland Security, *Cyber Safety Review Board to Conduct Second Review on Lapsus$* (Dec. 2, 2022), *available at https://www.dhs.gov/news/2022/12/02/cyber-safety-review-board-conduct-second-review-lapsus; see also* Tim Starks, *The Latest Mass Ransomware Attack Has Been Unfolding For Nearly Two Months,* Wash. Post (Mar. 27, 2023), *available at https://www.washingtonpost.com/politics/2023/03/27/latest-mass-ransomware-attack-has-been-unfolding-nearly-two-months/.*

[15] *See, e.g.,* Press Release, Federal Bureau of Investigation, *FBI Confirms Lazarus Group Cyber Actors Responsible for Harmony's Horizon Bridge Currency Theft* (Jan. 23, 2023), *available at https://www.fbi.gov/news/press-releases/fbi-confirms-lazarus-group-cyber-actors-responsible-for-harmonys-horizon-bridge-currency-theft;* Alert (AA22–257A), Cybersecurity & Infrastructure Security Agency, *Iranian Islamic Revolutionary Guard Corps-Affiliated Cyber Actors Exploiting Vulnerabilities for Data Extortion and Disk Encryption for Ransom Operations* (Sep. 14, 2022), *available at https://www.cisa.gov/uscert/ncas/alerts/aa22-257a;* National Security Agency et al., *Joint Cybersecurity Advisory: Russian State-Sponsored and Criminal Cyber Threats to Critical Infrastructure* (Apr. 20, 2022), *available at https://media.defense.gov/2022/Apr/20/2002980529/-1/-1/1/joint_csa_russian_state-sponsored_and_criminal_cyber_threats_to_critical_infrastructure_20220420.pdf.*

has experienced a breach in the last two years.[16] In addition, recent developments in artificial intelligence may exacerbate cybersecurity threats, as researchers have shown that artificial intelligence systems can be leveraged to create code used in cyberattacks, including by actors not versed in programming.[17] Overall, evidence suggests companies may be underreporting cybersecurity incidents.[18]

Legislatively, we note two significant developments occurred following publication of the Proposing Release. First, the President signed into law the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (''CIRCIA'') [19] on March 15, 2022, as part of the Consolidated Appropriations Act of 2022.[20] The centerpiece of CIRCIA is the reporting obligation placed on companies in defined critical infrastructure sectors.[21] Once rules are adopted by the Cybersecurity & Infrastructure Security Agency (''CISA''), these companies will be required to report covered cyber incidents to CISA within 72 hours of discovery, and report ransom payments within 24 hours.[22] Importantly, reports made to CISA pursuant to CIRCIA will remain confidential; while the information contained therein may be shared across Federal agencies for cybersecurity, investigatory, and law enforcement purposes, the information may not be disclosed publicly, except in anonymized form.[23] We note that CIRCIA also mandated the creation of a ''Cyber Incident Reporting Council . . . to coordinate, deconflict, and harmonize Federal incident reporting requirements'' (the ''CIRC''), of which the Commission is a member.[24] Second, on December 21, 2022, the President signed into law the Quantum Computing Cybersecurity Preparedness Act, which directs the Federal Government to adopt technology that is protected from decryption by quantum computing, a developing technology that may increase computer processing capacity considerably and thereby render existing computer encryption vulnerable to decryption.[25]

We received over 150 comment letters in response to the Proposing Release.[26] The majority of comments focused on the proposed incident disclosure requirement, although we also received substantial comment on the proposed risk management, strategy, governance, and board expertise requirements. In addition, the Commission's Investor Advisory Committee adopted recommendations (''IAC Recommendation'') with respect to the proposal, stating that it: supports the proposed incident disclosure requirement; supports the proposed risk management, strategy, and governance disclosure requirements; recommends the Commission reconsider the proposed board of directors' cybersecurity expertise disclosure requirement; suggests requiring companies to disclose the key factors they used to determine the materiality of a reported cybersecurity incident; and suggests extending the proposed 17 CFR 229.106 (Regulation S–K ''Item 106'') disclosure requirements to registration statements.[27]

We are making a number of important changes from the Proposing Release in response to comments received. With respect to incident disclosure, we are narrowing the scope of disclosure, adding a limited delay for disclosures that would pose a substantial risk to national security or public safety, requiring certain updated incident disclosure on an amended Form 8–K instead of Forms 10–Q and 10–K for domestic registrants, and on Form 6–K instead of Form 20–F for foreign private issuers (''FPIs''),[28] and omitting the proposed aggregation of immaterial incidents for materiality analyses. We are streamlining the proposed disclosure elements related to risk management, strategy, and governance, and we are not adopting the proposed requirement to disclose board cybersecurity expertise. The following

[16] SecurityScorecard, *Cyentia Institute and SecurityScorecard Research Report: Close Encounters of the Third (and Fourth) Party Kind* (Feb 1, 2023), *available at https://securityscorecard.com/research/cyentia-close-encounters-of-the-third-and-fourth-party-kind/.*

[17] Check Point Research, *OPWNAI: AI that Can Save the Day or Hack it Away* (Dec. 19, 2022), *available at https://research.checkpoint.com/2022/opwnai-ai-that-can-save-the-day-or-hack-it-away.*

[18] Bitdefender, *Whitepaper: Bitdefender 2023 Cybersecurity Assessment* (Apr. 2023), *available at https://businessresources.bitdefender.com/bitdefender-2023-cybersecurity-assessment.*

[19] Cyber Incident Reporting for Critical Infrastructure Act of 2022, Public Law 117–103, 136 Stat. 1038 (2022).

[20] Consolidated Appropriations Act of 2022, H.R. 2471, 117th Cong. (2022).

[21] The sectors are defined in Presidential Policy Directive/PPD–21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), as: Chemical; Commercial Facilities; Communications; Critical Manufacturing; Dams; Defense Industrial Base; Emergency Services; Energy; Financial Services; Food and Agriculture; Government Facilities; Healthcare and Public Health; Information Technology; Nuclear Reactors, Materials, and Waste; Transportation Systems; Water and Wastewater Systems. Because these sectors encompass some private companies and do not encompass all public companies, CIRCIA's reach is both broader and narrower than the set of companies subject to the rules we are adopting.

[22] 6 U.S.C. 681b(a)(1).

[23] 6 U.S.C. 681e. *See infra* Section II.A.3 for a discussion of why our final rules serve a different purpose and are not at odds with the goals of CIRCIA.

[24] 6 U.S.C. 681f.

[25] Quantum Computing Cybersecurity Preparedness Act, H.R. 7535, 117th Cong. (2022). More recently, the White House released a National Cybersecurity Strategy to combat the ongoing risks associated with cyberattacks. The National Cybersecurity Strategy seeks to rebalance the responsibility for defending against cyber threats toward companies instead of the general public, and looks to realign incentives to favor long-term investments in cybersecurity. *See* Press Release, White House, FACT SHEET: Biden-Harris Administration Announces National Cybersecurity Strategy (Mar. 2, 2023), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-biden-harris-administration-announces-national-cybersecurity-strategy/.*

[26] The public comments we received are *available at https://www.sec.gov/comments/s7-09-22/s70922.htm.* On Mar. 9, 2022, the Commission published the Proposing Release on its website. The comment period for the Proposing Release was open for 60 days from issuance and publication on SEC.gov and ended on May 9, 2022. One commenter asserted that the comment period was not sufficient and asked the Commission to extend it by 30 days. *See* letter from American Chemistry Council (''ACC''). In Oct. 2022, the Commission reopened the comment period for the Proposing Release and other rulemakings because certain comments on the Proposing Release and other rulemakings were potentially affected by a technological error in the Commission's internet comment form. *See Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments,* Release No. 33–11117 (Oct. 7, 2022) [87 FR 63016 (Oct. 18, 2022)] (''Reopening Release''). The Reopening Release was published on the Commission's website on Oct. 7, 2022 and in the **Federal Register** on Oct. 18, 2022, and the comment period ended on Nov. 1, 2022. A few commenters asserted that the comment period for the reopened rulemakings was not sufficient and asked the Commission to extend the comment period for those rulemakings. *See, e.g.,* letters from Attorneys General of the states of Montana *et al.* (Oct. 24, 2022) and U.S. Chamber of Commerce (Nov. 1, 2022). We have considered all comments received since Mar. 9, 2022 and do not believe an additional extension of the comment period is necessary.

[27] *See* U.S. Securities and Exchange Commission Investor Advisory Committee, Recommendation of the Investor as Owner Subcommittee and Disclosure Subcommittee of the SEC Investor Advisory Committee Regarding Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (Sept. 21, 2022), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-cybersecurity-disclosure-recommendation.pdf.* The Investor Advisory Committee also held a panel discussion on cybersecurity at its Mar. 10, 2022 meeting. *See* U.S. Securities and Exchange Commission Investor Advisory Committee, Meeting Agenda (Mar. 10, 2022), *available at https://www.sec.gov/spotlight/investor-advisory-committee/iac031022-agenda.htm.*

[28] An FPI is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50 percent of its outstanding voting securities held of record by U.S. residents; and (2) any of the following: (i) a majority of its executive officers or directors are citizens or residents of the United States; (ii) more than 50 percent of its assets are located in the United States; or (iii) its business is principally administered in the United States. 17 CFR 230.405. *See also* 17 CFR 240.3b–4(c).

table summarizes the requirements we are adopting, including changes from the Proposing Release, as described more fully in Section II below: [29]

Item	Summary description of the disclosure requirement [30]
Regulation S–K Item 106(b)—*Risk management and strategy*.	Registrants must describe their processes, if any, for the assessment, identification, and management of material risks from cybersecurity threats, and describe whether any risks from cybersecurity threats have materially affected or are reasonably likely to materially affect their business strategy, results of operations, or financial condition.
Regulation S–K Item 106(c)—*Governance*	Registrants must: —Describe the board's oversight of risks from cybersecurity threats. —Describe management's role in assessing and managing material risks from cybersecurity threats.
Form 8–K Item 1.05—*Material Cybersecurity Incidents*.	Registrants must disclose any cybersecurity incident they experience that is determined to be material, and describe the material aspects of its: —Nature, scope, and timing; and —Impact or reasonably likely impact. An Item 1.05 Form 8–K must be filed within four business days of determining an incident was material. A registrant may delay filing as described below, if the United States Attorney General ("Attorney General") determines immediate disclosure would pose a substantial risk to national security or public safety. Registrants must amend a prior Item 1.05 Form 8–K to disclose any information called for in Item 1.05(a) that was not determined or was unavailable at the time of the initial Form 8–K filing.
Form 20–F	FPIs must: —Describe the board's oversight of risks from cybersecurity threats. —Describe management's role in assessing and managing material risks from cybersecurity threats.
Form 6–K	FPIs must furnish on Form 6–K information on material cybersecurity incidents that they disclose or otherwise publicize in a foreign jurisdiction, to any stock exchange, or to security holders.

Overall, we remain persuaded that, as detailed in the Proposing Release: under-disclosure regarding cybersecurity persists despite the Commission's prior guidance; investors need more timely and consistent cybersecurity disclosure to make informed investment decisions; and recent legislative and regulatory developments elsewhere in the Federal Government, including those developments subsequent to the issuance of the Proposing Release such as CIRCIA [31] and the Quantum Computing Cybersecurity Preparedness Act,32 while serving related purposes, will not effectuate the level of public cybersecurity disclosure needed by investors in public companies.

II. Discussion of Final Amendments

A. Disclosure of Cybersecurity Incidents on Current Reports

1. Proposed Amendments

The Commission proposed to amend Form 8–K by adding new Item 1.05 that would require a registrant to disclose the following information regarding a material cybersecurity incident, to the extent known at the time of filing:

- When the incident was discovered and whether it is ongoing;
- A brief description of the nature and scope of the incident;
- Whether any data were stolen, altered, accessed, or used for any other unauthorized purpose;
- The effect of the incident on the registrant's operations; and
- Whether the registrant has remediated or is currently remediating the incident.[33]

The Commission clarified in the Proposing Release that this requirement would not extend to specific, technical information about the registrant's planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.[34]

The Commission proposed to set the filing trigger for Item 1.05 as the date the registrant determines that a cybersecurity incident is material; as with all other Form 8–K items, the proposed filing deadline would be four business days after the trigger.[35] To protect against any inclination on the part of a registrant to delay making a materiality determination with a view toward prolonging the filing deadline, the Commission proposed adding Instruction 1 to Item 1.05 requiring that ''a registrant shall make a materiality determination regarding a cybersecurity incident as soon as reasonably practicable after discovery of the incident.'' [36]

The Commission affirmed in the Proposing Release that the materiality standard registrants should apply in evaluating whether a Form 8–K would be triggered under proposed Item 1.05 would be consistent with that set out in the numerous cases addressing materiality in the securities laws, including *TSC Industries, Inc.* v. *Northway, Inc.,*[37] *Basic, Inc.* v. *Levinson,*[38] and *Matrixx Initiatives, Inc.* v. *Siracusano,*[39] and likewise with that set forth in 17 CFR 230.405 (''Securities

[29] The information in this table is not comprehensive and is intended only to highlight some of the more significant aspects of the final amendments. It does not reflect all of the amendments or all of the rules and forms that are affected by the final amendments, which are discussed in detail below. As such, this table should be read together with the entire release, including the regulatory text.

[30] For purposes of this release, the terms ''public companies,'' ''companies,'' and ''registrants'' include issuers that are business development companies as defined in section 2(a)(48) of the Investment Company Act of 1940, which are a type of closed-end investment company that is not registered under the Investment Company Act, but do not include investment companies registered under that Act.

[31] *Supra* note 19.

[33] Proposing Release at 16595.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 16596.

[37] *TSC Indus.* v. *Northway,* 426 U.S. 438, 449 (1976).

[38] *Basic Inc.* v. *Levinson,* 485 U.S. 224, 232 (1988).

[39] *Matrixx Initiatives* v. *Siracusano,* 563 U.S. 27 (2011).

Act Rule 405'') and 17 CFR 240.12b–2 (''Exchange Act Rule 12b–2''). That is, information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' [40] in making an investment decision, or if it would have ''significantly altered the 'total mix' of information made available.'' [41] ''Doubts as to the critical nature'' of the relevant information should be ''resolved in favor of those the statute is designed to protect,'' namely investors.[42]

The Commission explained that the timely disclosure of the information required by proposed Item 1.05 would enable investors and other market participants to assess the possible effects of a material cybersecurity incident on the registrant, including any short- and long-term financial effects or operational effects, resulting in information useful for their investment decisions.[43] Aligning the deadline for Item 1.05 with that of the other Form 8–K items would, the Commission maintained, significantly improve the timeliness of cybersecurity incident disclosures as well as standardize those disclosures.[44] The Commission did not propose to provide a reporting delay in cases of ongoing internal or external investigations of cybersecurity incidents.[45] Nevertheless, the Proposing Release requested comment on whether to allow a delay in reporting where the Attorney General determines that a delay is in the interest of national security.[46]

2. Comments

Proposed Item 1.05 received a significant amount of feedback from commenters. Some commenters supported Item 1.05 as proposed,[47] saying that the current level of disclosure on cybersecurity incidents is inadequate to meet investor needs, and Item 1.05 would remedy this inadequacy by effectuating the disclosure of decision-useful information.[48] One commenter also anticipated that Item 1.05 would reduce the risk of insider trading by shortening the time between discovery of an incident and public disclosure.[49]

Other commenters opposed proposed Item 1.05, for several reasons. Some commenters said that if proposed Item 1.05 were to result in disclosure while an incident is still ongoing, it would tip off the threat actor and thus make successful neutralization of the incident more difficult.[50] Commenters also expressed concern that public notice of a vulnerability could draw attacks from other threat actors who were previously unaware of the vulnerability; and such attacks could target the disclosing registrant or other companies with the same vulnerability, particularly if the vulnerability is with a third-party service provider used by multiple companies.[51] Some of these commenters objected specifically to the requirement in Item 1.05 to disclose whether remediation has occurred, stating that this information could assist threat actors in their targeting or invite further targeted attacks,[52] while others more generally stated that the Item 1.05 disclosure would be overly detailed, such that it would give a road map to threat actors for planning attacks.[53] One commenter argued that the prospect of possibly having to file an Item 1.05 Form 8–K could chill threat information sharing within industries, because companies would fear that any cybersecurity risk information they share could later be used to question their disclosure decisions.[54]

Some of the commenters that disagreed with the level of disclosure required by proposed Item 1.05 recommended that the Commission narrow the disclosure requirements of the rule. For example, one such commenter advised dropping the proposed requirement to disclose ''when the incident was discovered,'' arguing that this detail may cause confusion, particularly where an incident was detected some time ago but a significant aspect rendering it material surfaced only recently.[55] Another commenter opined that ''whether the registrant has remediated or is currently remediating the incident'' is duplicative of ''whether it is ongoing,'' so either of the two could be eliminated.[56] One commenter contended that a materiality filter should be added to the details required by Item 1.05, such that companies would have to disclose only details that themselves are material, rather than immaterial details of a material incident.[57]

By contrast, there were also commenters that recommended expanding the disclosure requirements in the proposed rule. In this regard, some commenters recommended requiring that registrants disclose asset losses, intellectual property losses, and the value of business lost due to the incident.[58] Other suggestions included requiring that incidents be quantified as to their severity and impact via standardized rating systems, and that registrants disclose how they became aware of the incident, as this may shed light on the effectiveness of a company's cybersecurity policies and procedures.[59] Additionally, commenters suggested banning trading by insiders during the time between the materiality determination and disclosure of the incident.[60]

Commenters provided reactions to the application of Item 1.05 to incidents

[40] *TSC Indus.,* 426 U.S. at 449.

[41] *Id.*

[42] *Id.* at 448.

[43] Proposing Release at 16595.

[44] *Id.*

[45] *Id.* at 16596.

[46] *Id.* at 16598.

[47] *See* letters from American Institute of CPAs (''AICPA''); Better Markets (''Better Markets''); BitSight Technologies, Inc. (''BitSight''); California Public Employees' Retirement System (''CalPERS''); Crindata, LLC (''Crindata''); Council of Institutional Investors (''CII''); Information Technology and Innovation Foundation (''ITIF''); North American Securities Administrators Association Inc. (''NASAA''); Professor Jerry Perullo (''Prof. Perullo''); Professor Preeti Choudhary (''Prof. Choudhary''); Tessa Mishoe (''T. Mishoe''). *See also* IAC Recommendation.

[48] *Id.*

[49] *See* letter from Better Markets.

[50] *See* letters from ACC; American Gas Association and Interstate Natural Gas Association of America (''AGA/INGAA''); BioTechnology Innovation Organization (''BIO''); Bank Policy Institute, American Bankers Association, and Mid-Size Bank Coalition of America (''BPI et al.''); BSA/The Software Alliance (''BSA''); Business Roundtable (''Business Roundtable''); Canadian Bankers Association (''CBA''); Edison Electric Institute (''EEI''); Energy Infrastructure Council (''EIC''); Federation of American Hospitals (''FAH''); Financial Services Sector Coordinating Council (''FSSCC''); Information Technology Industry Council (''ITI''); LTSE Services, Inc. (''LTSE''); National Association of Manufacturers (''NAM''); National Defense Industrial Association (''NDIA''); Quest Diagnostics Incorporated (''Quest''); Rapid7, Inc. (''Rapid7''); Society for Corporate Governance (''SCG''); Securities Industry and Financial Markets Association (''SIFMA''); TransUnion; R Street Institute (''R Street''); U.S. Chamber of Commerce (''Chamber'').

[51] *See* letters from ABA Committee on Federal Regulation of Securities (''ABA''); Aerospace Industries Association of America (''AIA''); Alliance for Automotive Innovation (''Auto Innovators''); AGA/INGAA; American Property Casualty Insurance Association (''APCIA''); BPI et al.; BSA; Business Roundtable; CBA; Chamber; Cellular Telecommunications and internet Assoc. (''CTIA''); Cybersecurity Coalition; EEI; EIC; Empire State Realty Trust, Inc. (''Empire''); Enbridge Inc. (''Enbridge''); FSSCC; internet Security Alliance; ITI; Microsoft Corporation (''Microsoft''); NDIA; PPG Industries, Inc. (''PPG''); PricewaterhouseCoopers LLP (''PWC''); Rapid7; R Street; SCG; SIFMA; U.S. Senator Rob Portman (''Sen. Portman''); Virtu Financial (''Virtu'').

[52] *See* letters from ABA; AGA/INGAA; BPI et al.; Cybersecurity Coalition; Empire; Enbridge; PWC; SIFMA; SCG; Virtu.

[53] *See* letters from AGA/INGAA; BSA; EIC; ITI; PPG.

[54] *See* letter from Consumer Technology Association (''CTA'').

[55] *See* letter from Prof. Perullo.

[56] *See* letter from ABA.

[57] *See* letter from ITI.

[58] *See* letters from Profs. Rajgopal & Sharpe; PWC.

[59] *See* letters from BitSight; Cloud Security Alliance (''CSA'').

[60] *See* letter from Prof. Mitts.

connected with third-party systems. A number of commenters contended that registrants should be exempt from having to disclose cybersecurity incidents in third-party systems they use because of their reduced control over such systems.[61] Similarly, several commenters advocated for a safe harbor for information disclosed about third-party systems, given registrants' reduced visibility into such systems.[62] A few commenters suggested a longer reporting timeframe for third-party incidents, because the registrant may be dependent on the third party for information (which may not be provided in a timely manner), and to avoid harm to other companies reliant on the same third party.[63] Commenters also recommended that Item 1.05 be phased in over a longer period of time with respect to third-party incidents, to give registrants time to develop information sharing processes with their third-party service providers.[64]

Commenters also requested guidance or otherwise raised concerns where the proposed requirements might trigger disclosures *by* third-party service providers. A commenter requested clarity on whether an incident should be disclosed by the third-party service provider registrant that owns the affected system or the customer registrant that owns the affected information, or both.[65] And two commenters argued that third-party service providers should simply pass along information to their end customers, who would then make their own materiality determination and disclose accordingly; this should particularly be the case, a commenter said, where an attack on a third-party data center results in a data breach for an end customer but does not affect the services the data center provides.[66]

The proposed timing of incident disclosure also received a significant level of public comment. For example, a few commenters said the level of detail required by Item 1.05 is impractical to produce in the allotted time.[67] Other commenters said that the proposed deadline would lead to the disclosure of tentative, unclear, or potentially inaccurate information that is not decision-useful to investors,[68] resulting in the market mispricing the underlying securities.[69] Commenters also argued that Item 1.05 is qualitatively different from all other Form 8–K items in that the trigger for Item 1.05 is largely outside the company's control.[70] Some commenters worried the proposed deadline would lead to disclosure of ''false positives,'' that is, incidents that appear material at first but later on with the emergence of more information turn out not to be material.[71]

Commenters suggested a range of alternative reporting deadlines for Item 1.05. A common suggestion was to modify the measurement date from the determination of materiality to another point in the lifecycle of the incident when the incident is no longer a threat to the registrant—commenters variously termed this as ''containment,'' ''remediation,'' ''mitigation,'' and comparable terms.[72] One commenter recommended conditioning a reporting delay on the registrant being actively engaged in containing the incident and reasonably believing that containment can be completed in a timely manner.[73] Similarly, several commenters recommended that the rule allow for a delay in providing Item 1.05 disclosure based on a registrant's assessment of the potential negative consequences of public disclosure, using a variety of measures they suggested.[74] Another suggestion was to replace the proposed deadline with an instruction to disclose material incidents ''without unreasonable delay.'' [75]

Some commenters recommended instead increasing the number of days between the reporting trigger and the reporting deadline. A few commenters recommended adding one business day to make the deadline five business days; [76] one noted this would result in every registrant having at least a full calendar week to gather information and prepare the Form 8–K.[77] Another commenter recommended a deadline of 15 business days, along with a cure period to allow registrants a defined period of time to fix potential reporting mistakes.[78] A few commenters recommended a 30-day deadline,[79] with their choice of 30 days tending to be a proxy for some other factor, such as containment or remediation,[80] or state notification requirements.[81]

Several commenters recommended addressing the timing concerns by replacing current reporting on Form 8–K with periodic reporting on Forms 10–Q and 10–K, to allow additional time to assess an incident's impact before reporting to markets.[82] In this vein, one commenter likened cybersecurity incident disclosure to the disclosure of

[61] *See* letters from ABA; AIA; APCIA; Business Roundtable; Cybersecurity Coalition; Chamber; EIC; FAH; ISA; ITI; NAM; NDIA; National Multifamily Housing Council and National Apartment Association (''NMHC''); Paylocity; SIFMA.

[62] *See* letters from Chevron Corporation (''Chevron''); APCIA; BPI et al.; BIO; CSA; Financial Executive International's Committee on Corporate Reporting (''FEI''); ITI; ISA; NMHC; SIFMA.

[63] *See* letters from ABA; R Street.

[64] *See* letters from Business Roundtable; Deloitte & Touche LLP (''Deloitte'').

[65] *See* letter from Business Roundtable.

[66] *See* letters from BSA; ITI.

[67] *See* letters from ABA; NMHC; Quest.

[68] *See* letters from ABA; ACC; AIA; Auto Innovators; American Investment Council (''AIC''); BIO; Business Roundtable; CBA; Chamber; Confidentiality Coalition; CTIA; Davis Polk & Wardwell LLP (''Davis Polk''); Debevoise & Plimpton (''Debevoise''); Federated Hermes; FSSCC; Microsoft; NAM; Nasdaq Stock Market, LLC (''Nasdaq''); NDIA; Quest; SCG; TransUnion; Wilson Sonsini Goodrich & Rosati (''Wilson Sonsini''); Virtu.

[69] *See* letters from ABA; ACC; AIA; AIC; BIO; BPI et al.; Business Roundtable; Confidentiality Coalition; Davis Polk; ISA; Nasdaq; PPG; Quest; Rapid7; SCG; Sen. Portman; SIFMA; Virtu.

[70] *See* letters from CTIA; Debevoise; EIC; LTSE; New York City Bar Association (''NYC Bar''); Quest.

[71] *See* letters from LTSE; PPG; SCG.

[72] *See* letters from American Council of Life Insurers (''ACLI''); BCE Inc., Rogers Communications Inc., TELUS Corporation (''BCE''); BPI et al.; Business Roundtable; Chamber; CTA; Cybersecurity Coalition; Empire; FAH; Federated Hermes; FSSCC; ISA; ITI; NAM; Nasdaq; NDIA; NMHC; NYSE Group (''NYSE''); Quest; Rapid7; Sen. Portman; SCG; SIFMA; SM4RT Secure LLC (''SM4RT Secure''); TransUnion.

[73] *See* letter from Rapid7.

[74] *See* letters from BSA (suggesting a ''tailored, balancing test''); EEI (advocating delay ''to the extent . . . the registrant in good faith concludes that its disclosure will expose it or others to ongoing or additional risks of a cybersecurity incident''); EIC; Microsoft (requesting that companies be allowed to ''manage the timing'' of disclosure ''when compelling conditions exist such that premature disclosure would result in greater harm to the company, its investors, or the national digital ecosystem''); Nareit and The Real Estate Roundtable (''Nareit'') (stating delay should be permitted where disclosure ''would exacerbate injury to the company and/or its shareholders''); SIFMA (advocating a '''responsible disclosure' exception'' that applies ''where disclosure of a cyber incident or vulnerability could have a more damaging effect than delayed disclosure''); Wilson Sonsini (stating ''the Commission should allow board members to decide to delay reporting if doing so could cause material harm to the company'').

[75] *See* letters from CTIA; National Restaurant Association (''NRA'').

[76] *See* letters from AIC; Debevoise; NYC Bar.

[77] *See* letter from AIC.

[78] *See* letter from R Street.

[79] *See* letters from APCIA; Hunton Andrews Kurth, LLP (''Hunton''); Rapid7.

[80] *See* letters from APCIA (''[w]e believe that permitting a registrant to delay the filing for a short period of time strikes an appropriate balance between timely disclosure to shareholders and an opportunity for a registrant to achieve the best resolution for itself and its shareholders''); Rapid7 (''[i]n Rapid7's experience, the vast majority of incidents can be contained and mitigated within that time frame [30 days]'').

[81] *See* letters from APCIA (''[a]llowing up to 30 days for disclosure would also bring the SEC's proposal in line with data breach disclosure requirements at the state level''); Hunton (''[w]hile state data breach notification laws vary from state to state, 30 days from the cybersecurity incident is the earliest date any state requires that notification to affected persons be made'').

[82] *See* letters from ABA; Davis Polk; Debevoise; LTSE; NYC Bar; Quest; SCG.

legal proceedings under Regulation S–K Item 103.[83]

A few commenters recommended instead that the materiality trigger be replaced with a quantifiable trigger; for example, an incident implicating a specified percentage of revenue, or the costs of an incident exceeding a specified benchmark, could trigger disclosure.[84] Other commenters advocated for the disclosure trigger to be tied to any legal obligation that forces a registrant to notify persons outside the company.[85]

Commenters also recommended a number of exceptions to the filing deadline. The most common recommendation was to include a provision allowing for delayed filing where there is an active law enforcement investigation or the disclosure otherwise implicates national security or public safety.[86] A representative comment in this vein advanced a provision whereby registrants may ''delay reporting of a cybersecurity incident that is the subject of a *bona fide* investigation by law enforcement,'' because such ''delay in reporting may not only facilitate such an investigation, it may be critical to its success.'' [87]

In calling for a law enforcement delay, associations for industries in critical sectors emphasized the national security implications of public cybersecurity incident disclosure. For example, one association explained that disclosure ''may alert malicious actors that we have uncovered their illegal activities in circumstances where our defense and intelligence agencies wish to keep that information secret.'' [88] Likewise, another association pointed out that, in its industry, companies ''are likely to possess some of the nation's most critical confidential information, including cybersecurity threat information furnished by government entities, such as the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and the National Security Agency (NSA),'' and therefore, disclosure may not be possible.[89]

Commenters largely advocated for ''a broad law enforcement exception that applies not only in the interest of national security but also when law enforcement believes disclosure will hinder their efforts to identify or capture the threat actor.'' [90] Many commenters that responded to the Commission's request for comment regarding a provision whereby the Attorney General determines that a delay is in the interest of national security indicated that such a provision should be more expansive and extend to other law enforcement authorities.[91] One of these commenters questioned whether the Attorney General would opine on matters ''that are under the ambit of other Federal agencies, such as the Department of Homeland Security, Department of State and the Department of Defense.'' [92] Another commenter pointed out that ''the Department of Justice is not the primary, or even the lead, organization in the Federal Government for cybersecurity response, rather the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency is often the first call that companies make,'' while ''[f]or defense contractors, the Department of Defense is likely to have the highest interest in the timing of an announcement.'' [93] For the financial industry specifically, one suggestion was to permit a delay if the Federal Reserve, Federal Deposit Insurance Corporation, or Office of the Comptroller of the Currency finds that disclosure would compromise the safety or soundness of the financial institution or of the financial system as a whole.[94]

Some commenters specifically urged that state law enforcement be included within any delay provision,[95] and one commenter appeared to contemplate inclusion of foreign law enforcement.[96] A few commenters advocated for a confidential reporting system, whereby a registrant would initially file a nonpublic report with the Commission while a law enforcement investigation is ongoing, and then unseal the report upon the investigation's completion.[97]

A number of commenters provided feedback regarding proposed Instruction 1, which would have directed registrants to make their materiality determination regarding an incident ''as soon as reasonably practicable after discovery of the incident.'' Several commenters recommended removing the instruction altogether as, in their view, it would place unnecessary pressure on companies to make premature determinations before they have sufficient information.[98] Other commenters stated that the instruction is too ambiguous for registrants to ascertain whether they have complied with it.[99] Conversely, one commenter advised the Commission not to provide further guidance on the meaning of ''as soon as reasonably practicable,'' explaining that doing so would interfere with each registrant's individual assessment of what is practicable given its specific context, resulting in pressure to move more quickly than may be appropriate.[100] Another commenter likewise found that ''as soon as reasonably practicable'' is a ''reasonable approach'' that ''provides public companies with the appropriate degree of flexibility to conduct a thorough assessment while ensuring that the markets get timely and relevant information.'' [101] One commenter recommended a safe harbor for actions and determinations made in good faith to satisfy Instruction 1 that later turn out to be mistaken.[102]

In response to a request for comment in the Proposing Release, several commenters recommended registrants be permitted to furnish rather than file an Item 1.05 Form 8–K, so that filers of an Item 1.05 Form 8–K would not be subject to liability under Section 18 of the Exchange Act.[103] A significant number of commenters also endorsed the proposal to amend 17 CFR 240.13a–

[83] *See* letter from Quest.

[84] *See* letters from BIO; Bitsight; EIC; Paylocity.

[85] *See* letters from ABA; Business Roundtable.

[86] *See* letters from ABA; ACC; ACLI; AGA/INGAA; AIA; AICPA; APCIA; Auto Innovators; Rep. Banks; BPI et al.; BIO; BSA; Business Roundtable; CBA; Chamber; Chevron; CII; CSA; CTA; CTIA; Cybersecurity Coalition; Debevoise; EEI; EIC; Empire; Enbridge; FAH; FedEx Corporation (''FedEx''); FEI; FSSCC; Global Privacy Alliance (''GPA''); Hunton; ISA; ITI; ITIF; Microsoft; NAM; Nareit; NASAA; NDIA; NMHC; NRA; NYC Bar; Prof. Perullo; Sen. Portman; PPG; PWC; Quest; R Street; Profs. Rajgopal & Sharpe; Rapid7; SCG; SIFMA; TransUnion; Virtu; USTelecom—The Broadband Association (''USTelecom''); U.S. Chamber of Commerce & various associations (''Chamber et al.'').

[87] *See* letter from Debevoise.

[88] *See* letter from AIA.

[89] *See* letter from EEI.

[90] *See* letter from ABA.

[91] *See* letters from BPI et al.; CBA; CSA; Hunton; ITIF; SCG; Wilson Sonsini.

[92] *See* letter from Hunton. This commenter also questioned whether law enforcement would be inclined to provide a written determination, particularly within four business days, because in its experience with State data breach laws, ''the relevant state and federal law enforcement agencies seldom (if ever) provide written instructions when the relevant exception comes into play.''

[93] *See* letter from Wilson Sonsini.

[94] *See* letter from BPI et al. *Cf.* letter from FSSCC.

[95] *See, e.g.,* letter from ITIF.

[96] *See* letter from CBA (stating ''the scope of the contemplated exemption is indefensibly narrow, particularly for registrants with operations outside of the United States . . . there should be an exemption to permit delayed disclosure upon the request of any competent national, state or local law enforcement authority'').

[97] *See* letters from CSA; Hunton; SCG. *See also* letter from LTSE (positing the Regulation SCI disclosure framework as a model for Item 1.05).

[98] *See* letters from ABA; AGA/INGAA; Federated Hermes; ISA; Paylocity; Quest; SCG.

[99] *See* letter from Center for Audit Quality (''CAQ''); CSA; Institute of Internal Auditors (''IIA''); LTSE; NYC Bar.

[100] *See* letter from Cybersecurity Coalition.

[101] *See* letter from NASAA.

[102] *See* letter from Nasdaq.

[103] *See* letters from BPI et al.; Business Roundtable; Chevron; CSA; EEI; LTSE; NAM; SCG.

11(c) (''Rule 13a–11(c)'') and 17 CFR 240.15d–11(c) (''Rule 15d–11(c)'') under the Exchange Act to include Item 1.05 in the list of Form 8–K items eligible for a limited safe harbor from liability under Section 10(b) or 17 CFR 240.10b–5 (''Rule 10b–5'') under the Exchange Act.[104] Likewise, the proposal to amend General Instruction I.A.3.(b) of Form S–3 and General Instruction I.A.2 of Form SF–3 to provide that an untimely filing on Form 8–K regarding new Item 1.05 would not result in loss of Form S–3 or Form SF–3 eligibility received much support.[105]

Finally, a number of commenters averred that Item 1.05 would conflict with other Federal and state cybersecurity reporting or other regulatory regimes. For example, one commenter stated Item 1.05 would counteract the goals of CIRCIA by requiring public disclosure of information the act would keep confidential, and went on to assert that CIRCIA was intended as the primary means for reporting incidents to the Federal Government.[106] Also related to CIRCIA, a number of commenters urged harmonization of the Commission's proposal with forthcoming regulations expected from CISA pursuant to CIRCIA.[107] Several commenters alleged Item 1.05 would conflict with rules the Department of Health and Human Services (''HHS'') has adopted pursuant to the Health Insurance Portability and Accountability Act (''HIPAA'') regarding the reporting of private health information breaches.[108] A few commenters likewise said Item 1.05 would conflict with the reporting regime set forth in Federal Communications Commission (''FCC'') regulations for breaches of customer proprietary network information.[109] Conflicts were also alleged with regulations and programs of the Department of Defense (''DOD''),[110] Department of Energy (''DOE''),[111] and Department of Homeland Security (''DHS'').[112] Commenters called for harmonization of Item 1.05 with regulations issued by Federal banking regulators,[113] as well as with regulations of the Federal Trade Commission (''FTC'').[114] Some commenters noted the potential interaction between the proposed rules and state laws.[115] One commenter noted the McCarran-Ferguson Act, which provides that a state law preempts a Federal statute if the state law was enacted for the purpose of regulating the business of insurance and the Federal statute does not specifically relate to the business of insurance.[116]

3. Final Amendments

Having considered the comments, we remain convinced that investors need timely, standardized disclosure regarding cybersecurity incidents materially affecting registrants' businesses, and that the existing regulatory landscape is not yielding consistent and informative disclosure of cybersecurity incidents from registrants.[117] However, we are revising the proposal in two important respects in response to concerns raised by commenters. First, we are narrowing the amount of information required to be disclosed, to better balance investors' needs and registrants' cybersecurity posture. And second, we are providing for a delay for disclosures that would pose a substantial risk to national security or public safety, contingent on a written notification by the Attorney General, who may take into consideration other Federal or other law enforcement agencies' findings.

As described above, commenters' criticisms of Item 1.05 generally arose from two aspects of the proposal: (1) the scope of disclosure; and (2) the timing of disclosure. With respect to disclosure scope, we note in particular commenter concerns that the disclosure of certain details required by proposed Item 1.05 could exacerbate security threats, both for the registrants' systems and for systems in the same industry or beyond, and could chill threat information sharing within industries. We agree that a balancing of concerns consistent with our statutory authority is necessary in crafting Item 1.05 to avoid empowering threat actors with actionable information that could harm a registrant and its investors. However, we are not persuaded, as some commenters suggested,[118] that we should forgo requiring disclosure of the existence of an incident while it is ongoing to avoid risks, such as the risk of tipping off threat actors. Some companies already disclose material cybersecurity incidents while they are ongoing and before they are fully remediated, but the timing, form, and substance of those disclosures are inconsistent. Several commenters indicated both that investors look for information regarding registrants' cybersecurity incidents and that current disclosure levels are inadequate to their needs in making investment decisions.[119] In addition, we note below in Section IV evidence showing that delayed reporting of cybersecurity incidents can result in mispricing of securities, and that such mispricing can be exploited by threat actors, employees, related third parties, and others through trades made before an incident becomes public.[120] Accordingly, we believe it is necessary to adopt a requirement for uniform current reporting of material cybersecurity incidents.

To that end, and to balance investors' needs with the concerns raised by commenters, we are streamlining Item 1.05 to focus the disclosure primarily on the impacts of a material cybersecurity incident, rather than on requiring details regarding the incident itself. The final rules will require the registrant to ''describe the material aspects of the nature, scope, and timing of the

[104] *See* letters from ABA; APCIA; BIO; Business Roundtable; Chevron; CTIA; Cybersecurity Coalition; Debevoise; EEI; LTSE; NYC Bar; PWC; SCG.

[105] *See* letters from ABA; APCIA; BIO; Business Roundtable; Chevron; CTIA; Cybersecurity Coalition; Debevoise; EEI; LTSE; NYC Bar; PWC; SCG.

[106] *See* letter from Sen. Portman.

[107] *See* letters from ACC; ACLI; APCIA; BPI et al.; BIO; Confidentiality Coalition; Chamber; CTA; CTIA; Cybersecurity Coalition; EIC; FEI; FSSCC; Insurance Coalition (''IC''); ISA; ITI; ITIF; Nareit; NAM; NRA; R Street; SCG; SIFMA; USTelecom.

[108] *See* letters from Chamber; Confidentiality Coalition; FAH; R Street.

[109] *See* letters from Chamber; CTIA; USTelecom.

[110] *See* letter from Chamber et al.

[111] *See* letter from EEI.

[112] *See* letter from ACC. This letter additionally alleged conflicts with regulations of the Department of Energy, Transportation Security Agency, Department of Defense, and Environmental Protection Agency, but did not explain specifically where those conflicts lie.

[113] *See* letters from FSSCC; Structured Finance Association (''SFA''); SIFMA.

[114] *See* letters from BIO; CTIA.

[115] *See* letters from IC (noting ''[a]n important issue will be to ensure harmonized regulation between the federal government and the several states with proposed or preexisting cybersecurity regulations''); R Street (noting that state privacy laws ''mandate reporting of incidents across very different timelines''); SIFMA (noting that ''many state financial services and/or insurance regulators already require regulated entities certify cybersecurity compliance'').

[116] *See* letter from IC.

[117] As the Commission has previously stated, markets rely on timely dissemination of information to accurately and quickly value securities. *Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date,* Release No. 33–8400 (Mar. 16, 2004) [69 FR 15593 (Mar. 25, 2004)] (''Additional Form 8–K Disclosure Release''). Congress recognized that the ongoing dissemination of accurate information by issuers about themselves and their securities is essential to the effective operation of the markets, and specifically recognized the importance of current reporting in this regard by requiring that ''[e]ach issuer reporting under Section 13(a) or 15(d) . . . disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer . . . as the Commission determines . . . is necessary or useful for the protection of investors and in the public interest.'' 15 U.S.C. 78m(l).

[118] *See supra* note 50.

[119] *See* letters from Better Markets; CalPERS; CII.

[120] *See infra* notes 413 and 462.

incident, and the material impact or reasonably likely material impact on the registrant, including its financial condition and results of operations.'' We believe this formulation more precisely focuses the disclosure on what the company determines is the material impact of the incident, which may vary from incident to incident. The rule's inclusion of ''financial condition and results of operations'' is not exclusive; companies should consider qualitative factors alongside quantitative factors in assessing the material impact of an incident.[121] By way of illustration, harm to a company's reputation, customer or vendor relationships, or competitiveness may be examples of a material impact on the company. Similarly, the possibility of litigation or regulatory investigations or actions, including regulatory actions by state and Federal Governmental authorities and non-U.S. authorities, may constitute a reasonably likely material impact on the registrant.

We are not adopting, as proposed, a requirement for disclosure regarding the incident's remediation status, whether it is ongoing, and whether data were compromised. While some incidents may still necessitate, for example, discussion of data theft, asset loss, intellectual property loss, reputational damage, or business value loss, registrants will make those determinations as part of their materiality analyses. Further, we are adding an Instruction 4 to Item 1.05 to provide that a ''registrant need not disclose specific or technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.'' While the Commission provided this assurance in the Proposing Release,[122] we agree with some commenters that codifying it in the Item 1.05 instructions should provide added clarity to registrants on the type of disclosure required by Item 1.05.

With respect to commenters' questions concerning the application of Item 1.05 to incidents occurring on third-party systems, we are not exempting registrants from providing disclosures regarding cybersecurity incidents on third-party systems they use, nor are we providing a safe harbor for information disclosed about third-party systems. While we appreciate the commenters' concerns about a registrant's reduced control over such systems, we note the centrality of the materiality determination: whether an incident is material is not contingent on where the relevant electronic systems reside or who owns them. In other words, we do not believe a reasonable investor would view a significant breach of a registrant's data as immaterial merely because the data were housed on a third-party system, especially as companies increasingly rely on third-party cloud services that may place their data out of their immediate control.[123] Instead, as discussed above, materiality turns on how a reasonable investor would consider the incident's impact on the registrant.

Depending on the circumstances of an incident that occurs on a third-party system, disclosure may be required by both the service provider and the customer, or by one but not the other, or by neither. We appreciate that companies may have reduced visibility into third-party systems; registrants should disclose based on the information available to them. The final rules generally do not require that registrants conduct additional inquiries outside of their regular channels of communication with third-party service providers pursuant to those contracts and in accordance with registrants' disclosure controls and procedures. This is consistent with the Commission's general rules regarding the disclosure of information that is difficult to obtain.[124]

Turning to disclosure timing, we believe that the modifications from the proposed rules regarding the disclosures called for by Item 1.05 alleviate many of the concerns some commenters had regarding the proposed disclosure deadline of four business days from the materiality determination. Because the streamlined disclosure requirements we are adopting are focused on an incident's basic identifying details and its material impact or reasonably likely material impact, the registrant should have the information required to be disclosed under this rule as part of conducting the materiality determination. For example, most organizations' materiality analyses will include consideration of the financial impact of a cybersecurity incident, so information regarding the incident's impact on the registrant's financial condition and results of operations will likely have already been developed when Item 1.05 is triggered.[125] Thus, we believe that the four business day timeframe from the date of a materiality determination will be workable.

The reformulation of Item 1.05 also addresses the concern among commenters that the disclosure may be tentative and unclear, resulting in false positives and mispricing in the market. In the majority of cases, the registrant will likely be unable to determine materiality the same day the incident is discovered. The registrant will develop information after discovery until it is sufficient to facilitate a materiality analysis.[126] At that point, we believe investors are best served knowing, within four business days after the materiality determination, that the incident occurred and what led management to conclude the incident is material. While it is possible that occasionally there may be incidents that initially appear material but developments after the filing of the Item 1.05 Form 8–K reveal to be not material, the alternative of delaying disclosure beyond the four business day period after a materiality determination has the potential to lead to far more mispricing and will negatively impact investors making investment and voting decisions without the benefit of knowing that there is a material cybersecurity incident.

Commenters posited an array of alternative deadlines for the Item 1.05 Form 8–K, as recounted above. We are not persuaded by commenters' arguments that disclosure should be delayed until companies mitigate,

[121] *See also* Proposing Release at 16596 (stating that ''[a] materiality analysis is not a mechanical exercise'' and not solely quantitative, but rather should take into consideration ''all relevant facts and circumstances surrounding the cybersecurity incident, including both quantitative and qualitative factors'').

[122] *Id.* at 16595.

[123] *See* Deloitte, *Global Third-Party Risk Management Survey 2022,* at 15, *available at https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/risk/deloitte-uk-global-tprm-survey-report-2022.pdf* (discussing results of a global survey of 1,309 ''senior leaders from a variety of organizations'' indicating that ''73% of respondents currently have a moderate to high level of dependence on [cloud-service providers]'' and ''[t]hat is expected to increase to 88% in the years ahead'').

[124] *See* 17 CFR 230.409 and 17 CFR 240.12b–21, which provide that information need only be disclosed insofar as it is known or reasonably available to the registrant. Accordingly, we are not providing additional time to comply with Item 1.05 as it relates to third-party incidents, as requested by some commenters.

[125] To the extent any required information is not determined or is unavailable at the time of the required filing, Instruction 2 to Item 1.05, as adopted, directs the registrant to include a statement to this effect in the Form 8–K and then file a Form 8–K amendment containing such information within four business days after the registrant, without unreasonable delay, determines such information or within four business days after such information becomes available. *See infra* Section II.B.3.

[126] As discussed below, registrants should develop such information without unreasonable delay.

contain, remediate, or otherwise diminish the harm of the incident, because, as discussed above, Item 1.05 does not require disclosure of the types of details that have the potential to be exploited by threat actors, but rather focuses on the incident's material impact or reasonably likely material impact on the registrant. While there may be, as commenters noted, some residual risk of the disclosure of an incident's existence tipping off threat actors, such risk is justified, in our view, by investors' need for timely information, and similar risk already exists today with some companies' current cybersecurity incident disclosure practices. We are also not persuaded that Item 1.05 is sufficiently different from other Form 8–K items such that deviating from the form's four business day deadline following the relevant trigger would be indicated. While some commenters argued that Item 1.05 is qualitatively different from all other Form 8–K filings in that its trigger is largely outside the company's control, we disagree because other Form 8–K items may also be triggered unexpectedly, such as Item 4.01 (Changes in Registrant's Certifying Accountants) and Item 5.02 (Departure of Directors or Principal Officers). And as compared to those items, the information needed for Item 1.05 may be further along in development when the filing is triggered, whereas, for example, a company may have no advance warning that a principal officer is departing.

With respect to the five business day deadline suggested by a few commenters to allow registrants a full calendar week from the materiality determination to the disclosure, we note that in the majority of cases registrants will have had additional time leading up to the materiality determination, such that disclosure becoming due less than a week after discovery should be uncommon. More generally with respect to the various alternative timing suggestions, we observe that the Commission adopted the uniform four business day deadline in 2004 to simplify the previous bifurcated deadlines, and we find commenters have not offered any compelling rationale to return to bifurcated deadlines.[127] Form 8–K provides for current reporting of events that tend to be material to investor decision-making, and we see no reason to render the reporting of Item 1.05 less current than other Form 8–K items.

In the Proposing Release, the Commission requested comment on whether to allow registrants to delay filing an Item 1.05 Form 8–K where the Attorney General determines that a delay is in the interest of national security.[128] In response to comments, we are adopting a delay provision in cases where disclosure poses a substantial risk to national security or public safety. Pursuant to Item 1.05(c), a registrant may delay making an Item 1.05 Form 8–K filing if the Attorney General determines that the disclosure poses a substantial risk to national security or public safety and notifies the Commission of such determination in writing.[129] Initially, disclosure may be delayed for a time period specified by the Attorney General, up to 30 days following the date when the disclosure was otherwise required to be provided. The delay may be extended for an additional period of up to 30 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing.

In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security and notifies the Commission of such determination in writing. We are providing for the final additional delay period in recognition that, in extraordinary circumstances, national security concerns may justify additional delay beyond that warranted by public safety concerns, due to the relatively more critical nature of national security concerns. Beyond the final 60-day delay, if the Attorney General indicates that further delay is necessary, the Commission will consider additional requests for delay and may grant such relief through Commission exemptive order.[130]

We have consulted with the Department of Justice to establish an interagency communication process to allow for the Attorney General's determination to be communicated to the Commission in a timely manner. The Department of Justice will notify the affected registrant that communication to the Commission has been made, so that the registrant may delay filing its Form 8–K.

We agree with commenters that a delay is appropriate for the limited instances in which public disclosure of a cybersecurity incident may cause harm to national security or public safety. The final rules appropriately balance such security concerns against investors' informational needs. In particular, the provision's ''substantial risk to national security or public safety'' bases are sufficiently expansive to ensure that significant risks of harm from disclosure may be protected against, while also ensuring that investors are not denied timely access to material information.[131] With respect to commenters who recommended that other Federal agencies and non-Federal law enforcement agencies also be permitted to trigger a delay or who argued that other agencies may be the primary organization in the Federal Government for the response, we note that the rule does not preclude any such agency from requesting that the Attorney General determine that the disclosure poses a substantial risk to national security or public safety and communicate that determination to the Commission. However, we believe that designating a single law enforcement agency as the Commission's point of contact on such delays is critical to ensuring that the rule is administrable.

Turning to other timing-related issues raised by commenters, we are not adopting commenters' suggestion to replace Item 1.05 with periodic reporting of material cybersecurity incidents on Forms 10–Q and 10–K because such an approach may result in significant variance as to when investors learn of material cybersecurity incidents. Based on when an incident occurs during a company's reporting

[127] *See* Additional Form 8–K Disclosure Release. *See also Proposed Rule: Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date,* Release No. 33–8106 (June 17, 2002) [67 FR 42914 (June 25, 2002)].

[128] Proposing Release at 16598.

[129] We note that the delay provision we are adopting does not relieve a company's obligations under Regulation FD or with respect to the securities laws' antifraud prohibitions that proscribe certain insider trading, including Exchange Act Section 10(b). Under Regulation FD, material nonpublic information disclosed to any investor, for example, through investor outreach activities, would be required to be disclosed publicly, subject to limited exceptions. *See* 17 CFR 243.100 *et seq.*

[130] Any exercise of exemptive authority in these circumstances would need to meet all of the standards of Section 36 of the Exchange Act. Furthermore, Item 1.05 of Form 8–K in no way limits the Commission's general exemptive authority under Section 36.

[131] The delay provision for substantial risk to national security or public safety is separate from Exchange Act Rule 0–6, which provides for the omission of information that has been classified by an appropriate department or agency of the Federal Government for the protection of the interest of national defense or foreign policy. If the information a registrant would otherwise disclose on an Item 1.05 Form 8–K or pursuant to Item 106 of Regulation S–K or Item 16K of Form 20–F is classified, the registrant should comply with Exchange Act Rule 0–6.

cycle, the timing between the materiality determination and reporting on the next Form 10–Q or Form 10–K could vary from a matter of months to a matter of weeks or less. For example, if two companies experience a similar cybersecurity incident, but one determines the incident is material early during a quarterly period and the other makes such determination at the end of the quarterly period, commenters' suggested approach would have both companies report the incident around the same time despite the first company having determined the incident was material weeks or months sooner, which would result in a significant delay in this information being provided to investors. Such variance would therefore reduce comparability across registrants and may put certain registrants at a competitive disadvantage.

We also decline to use a quantifiable trigger for Item 1.05 because some cybersecurity incidents may be material yet not cross a particular financial threshold. We note above that the material impact of an incident may encompass a range of harms, some quantitative and others qualitative. A lack of quantifiable harm does not necessarily mean an incident is not material. For example, an incident that results in significant reputational harm to a registrant may not be readily quantifiable and therefore may not cross a particular quantitative threshold, but it should nonetheless be reported if the reputational harm is material. Similarly, whereas a cybersecurity incident that results in the theft of information may not be deemed material based on quantitative financial measures alone, it may in fact be material given the impact to the registrant that results from the scope or nature of harm to individuals, customers, or others, and therefore may need to be disclosed.

In another change from the proposal, and to respond to commenters' concerns that the proposed ''as soon as reasonably practicable'' language in Instruction 1 could pressure companies to draw conclusions about incidents with insufficient information, we are revising the instruction to state that companies must make their materiality determinations ''without unreasonable delay.'' As explained in the Proposing Release, the instruction was intended to address any concern that some registrants may delay making such a determination to avoid a disclosure obligation.[132] We understand commenter concerns that the proposed instruction could result in undue pressure to make a materiality determination before a registrant has sufficient information to do so, and we recognize that a materiality determination necessitates an informed and deliberative process. We believe the revised language should alleviate this unintended consequence, while providing registrants notice that, though the determination need not be rushed prematurely, it also cannot be unreasonably delayed in an effort to avoid timely disclosure. For example, for incidents that impact key systems and information, such as those the company considers its ''crown jewels,''[133] as well as incidents involving unauthorized access to or exfiltration of large quantities of particularly important data, a company may not have complete information about the incident but may know enough about the incident to determine whether the incident was material. In other words, a company being unable to determine the full extent of an incident because of the nature of the incident or the company's systems, or otherwise the need for continued investigation regarding the incident, should not delay the company from determining materiality. Similarly, if the materiality determination is to be made by a board committee, intentionally deferring the committee's meeting on the materiality determination past the normal time it takes to convene its members would constitute unreasonable delay.[134] As another example, if a company were to revise existing incident response policies and procedures in order to support a delayed materiality determination for or delayed disclosure of an ongoing cybersecurity event, such as by extending the incident severity assessment deadlines, changing the criteria that would require reporting an incident to management or committees with responsibility for public disclosures, or introducing other steps to delay the determination or disclosure, that would constitute unreasonable delay. In light of the revision to Instruction 1, we find that a safe harbor, as suggested by some commenters, is unnecessary; adhering to normal internal practices and disclosure controls and procedures will suffice to demonstrate good faith compliance. Importantly, we remind registrants, as the Commission did in the Proposing Release, that ''[d]oubts as to the critical nature'' of the relevant information ''will be commonplace'' and should ''be resolved in favor of those the statute is designed to protect,'' namely investors.[135]

Revised Instruction 1 should also reassure registrants that they should continue sharing information with other companies or government actors about emerging threats. Such information sharing may not necessarily result in an Item 1.05 disclosure obligation. The obligation to file the Item 1.05 disclosure is triggered once a company has developed information regarding an incident sufficient to make a materiality determination, and a decision to share information with other companies or government actors does not in itself necessarily constitute a determination of materiality. A registrant may alert similarly situated companies as well as government actors immediately after discovering an incident and before determining materiality, so long as it does not unreasonably delay its internal processes for determining materiality.

As proposed, we are adding Item 1.05 to the list of Form 8–K items in General Instruction I.A.3.(b) of Form S–3, so that the untimely filing of an Item 1.05 Form 8–K will not result in the loss of Form S–3 eligibility.[136] We note the significant support from commenters regarding this proposal, and as noted in the Proposing Release, continue to believe that the consequences of the loss of Form S–3 eligibility would be unduly severe given the circumstances that will surround Item 1.05 disclosures. Likewise, as supported by many commenters, we are adopting as proposed amendments to Rules 13a–11(c) and 15d–11(c) under the Exchange Act to include new Item 1.05 in the list of Form 8–K items eligible for a limited safe harbor from liability under Section 10(b) or Rule 10b–5 under the Exchange Act. This accords with the view the Commission articulated in 2004 that the safe harbor is appropriate if the triggering event for the Form 8–K

[132] Proposing Release at 16596.

[133] *See* National Cybersecurity Alliance, *Identify Your ''Crown Jewels''* (July 1, 2022), *available at https://staysafeonline.org/cybersecurity-for-business/identify-your-crown-jewels/* (explaining that ''[c]rown jewels are the data without which your business would have difficulty operating and/or the information that could be a high-value target for cybercriminals'').

[134] We note that Form 8–K Item 1.05 does not specify whether the materiality determination should be performed by the board, a board committee, or one or more officers. The company may establish a policy tasking one or more persons to make the materiality determination. Companies should seek to provide those tasked with the materiality determination information sufficient to make disclosure decisions.

[135] Proposing Release at 16596 (quoting *TSC Indus.* v. *Northway,* 426 U.S. at 448). The Court's opinion in *TSC Indus.* has a nuanced discussion of the balance of considerations in setting a materiality standard. 426 U.S. at 448–450.

[136] Because of our decision to exempt asset-backed issuers from the new rules (*see infra* Section II.G.1), we are not amending Form SF–3.

requires management to make a rapid materiality determination.[137]

We decline to permit registrants to furnish rather than file the Item 1.05 Form 8–K, as suggested by some commenters. While we understand commenters' points that reducing liability may ease the burden on registrants, we believe that treating Item 1.05 disclosures as filed will help promote the accuracy and reliability of such disclosures for the benefit of investors. Of the existing Form 8–K items, only Items 2.02 (Results of Operations and Financial Condition) and 7.01 (Regulation FD Disclosure) are permitted to be furnished rather than filed. The Commission created exceptions for those two items to allay concerns that do not pertain here. Specifically, with respect to Item 2.02, the Commission was motivated by concerns that requiring the information to be filed would discourage registrants from proactively issuing earnings releases and similar disclosures.[138] Similarly, with respect to Item 7.01, the Commission decided to allow the disclosure to be furnished to address concerns that, if required to be filed, the disclosure could be construed as an admission of materiality, which might lead some registrants to avoid making proactive disclosure.[139] By contrast, Item 1.05 is not a voluntary disclosure, and it is by definition material because it is not triggered until the registrant determines the materiality of an incident. It is thus more akin to the Form 8–K items other than Items 2.02 and 7.01, in that it is a description of a material event that has occurred about which investors need adequate information. Therefore, the final rules require an Item 1.05 Form 8–K to be filed.

We are not including a new rule to ban trading by insiders during the materiality determination time period, as suggested by some commenters. Those with a fiduciary duty or other relationship of trust and confidence are already prohibited from trading while in possession of material, nonpublic information.[140] And because we are adopting the four business days from materiality determination deadline, we agree with the point raised by some commenters that the risk of insider trading is low given the limited time period between experiencing a material incident and public disclosure. We also note that we recently adopted amendments to 17 CFR 240.10b5–1 (''Rule 10b5–1'') that added a certification condition for directors and officers wishing to avail themselves of the rule's affirmative defense; specifically, if relying on the amended affirmative defense, directors and officers need to certify in writing, at the time they adopt the trading plan, that they are unaware of material nonpublic information about the issuer or its securities, and are adopting the plan in good faith and not as part of a plan or scheme to evade the insider trading prohibitions.[141] Therefore, given the timing of the incident disclosure requirement as well as the recently adopted amendments to Rule 10b5–1, we do not find need for a new rule banning trading by insiders during the time period between the materiality determination and disclosure.

A number of commenters raised concerns about conflicts with other Federal laws and regulations. Of the Federal laws and regulations that we reviewed and commenters raised concerns with, we have identified one conflict, with the FCC's notification rule for breaches of customer proprietary network information (''CPNI'').[142] Of the remaining Federal laws and regulations noted by commenters as presenting conflicts, our view is that Item 1.05 neither directly conflicts with nor impedes the purposes of other such laws and regulations.

The FCC's rule for notification in the event of breaches of CPNI requires covered entities to notify the United States Secret Service (''USSS'') and the Federal Bureau of Investigation (''FBI'') no later than seven business days after reasonable determination of a CPNI breach, and further directs the entities to refrain from notifying customers or disclosing the breach publicly until seven business days have passed following the notification to the USSS and FBI.[143] To accommodate registrants who are subject to this rule and may as a result face conflicting disclosure timelines,[144] we are adding paragraph (d) to Item 1.05 providing that such registrants may delay making a Form 8–K disclosure up to the seven business day period following notification to the USSS and FBI specified in the FCC rule,[145] with written notification to the Commission.[146]

We also considered the conflicts commenters alleged with CIRCIA. Specifically, they stated that Item 1.05 is at odds with the goals of CIRCIA, and that it may conflict with forthcoming regulations from CISA. The confidential reporting system established by CIRCIA serves a different purpose from Item 1.05 and through different means; the former focuses on facilitating the Federal Government's preparation for and rapid response to cybersecurity threats, while the latter focuses on providing material information about public companies to investors in a timely manner. While CISA has yet to propose regulations to implement CIRCIA, given the statutory authority, text, and legislative history of CIRCIA, it appears unlikely the regulations would affect the balance of material information available to investors about public companies, because the reporting regime CIRCIA establishes is confidential.[147] Nonetheless, the Commission participates in interagency working groups on cybersecurity regulatory implementation, and will continue to monitor developments in this area to determine if modification to Item 1.05 becomes appropriate in light of future developments.[148]

We also considered the HIPAA-related conflict alleged by commenters,

[137] Additional Form 8–K Disclosure Release at 15607.

[138] *See Conditions for Use of Non-GAAP Financial Measures,* Release No. 33–8176 (Jan. 22, 2003) [68 FR 4819 (Jan. 30, 2003)].

[139] *See Selective Disclosure and Insider Trading,* Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2000)].

[140] *United States* v. *O'Hagan,* 521 U.S. 642 (1997).

[141] *See Insider Trading Arrangements and Related Disclosures,* Release No. 33–11138 (Dec. 14, 2022) [87 FR 80362 (Dec. 29, 2022)].

[142] 47 CFR 64.2011. CPNI is defined in 47 CFR 222(h)(1) as: ''(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.''

[143] We note that the FCC recently proposed amending its rule; among other things, the proposal would eliminate the seven-business day waiting period, potentially eliminating the conflict. Federal Communications Commission, *Data Breach Reporting Requirements,* 88 FR 3953 (Jan. 23, 2023).

[144] Commission staff consulted with FCC staff about a potential delay provision to address any conflict between the FCC rule and the Form 8–K reporting requirements.

[145] The exception we are creating does not apply to 47 CFR 64.2011(b)(3), which provides that the USSS or FBI may direct the entity to further delay notification to customers or public disclosure beyond seven business days if such disclosure ''would impede or compromise an ongoing or potential criminal investigation or national security.'' If the USSS or FBI believes that disclosure would result in a substantial risk to national security or public safety, it may, as explained above, work with the Department of Justice to seek a delay of disclosure.

[146] Such notice should be provided through correspondence on EDGAR no later than the date when the disclosure required by Item 1.05 was otherwise required to be provided.

[147] 6 U.S.C. 681e.

[148] Should a conflict arise in the future with CISA regulations or regulations of another Federal agency, the Commission can address such conflict via rulemaking or other action at that time.

specifically with respect to HHS's rule on Notification in the Case of Breach of Unsecured Protected Health Information. That rule provides, in the event of a breach of unsecured protected health information, for the covered entity to provide notification to affected individuals ''without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.'' [149] If the breach involves more than 500 residents of a state or jurisdiction, the rule directs the covered entity to also notify prominent media outlets within the same timeframe.[150] The rule further provides that if a company receives written notice from ''a law enforcement official'' requesting a delay and specifying the length of the delay, then the company ''shall . . . delay such notification, notice, or posting for the time period specified by the official.'' [151]

We do not view Form 8–K Item 1.05 as implicated by the HHS rule. Importantly, the HHS rule's delay provision applies specifically to any ''notification, notice, or posting required under this subpart,'' or in other words notice to affected individuals, media, and the Secretary of HHS.[152] Such notification focuses on the consequences of the breach for the affected individuals; for example, individuals must be told what types of protected health information were accessed, and what steps they should take to protect themselves from harm.[153] This is different from the disclosure required by Item 1.05, which focuses on the consequences for the company that are material to investors, and whose timing is tied not to discovery but to a materiality determination. The HHS rule does not expressly preclude the latter type of public disclosure, or other potential communications companies experiencing a breach may make. Therefore, we believe that a registrant subject to the HHS rule will not face a conflict in complying with Item 1.05.[154]

We also considered the conflicts commenters alleged with regulations and programs of DOD, DOE, DHS, the Federal banking regulatory agencies, state insurance laws, and miscellaneous other Federal agencies or laws. We find that, while there may be some overlap of subject matter, Item 1.05 neither conflicts with nor impedes the purpose of those regulations and programs.[155] We disagree with one commenter's assertion that cybersecurity incident disclosure ''falls squarely within the jurisdiction of state insurance commissioners'' as state cybersecurity incident reporting regulations would not pertain to the ''business of insurance'' as courts have interpreted the McCarran-Ferguson Act, and the commenter did not note any particular state insurance laws that would present a conflict.[156] With respect to Federal banking regulatory agencies specifically, we note that, in the event they believe that the disclosure of a material cybersecurity incident would threaten the health of the financial system in such a way that results in a substantial risk to national security or public safety, they may, as explained above, work with the Department of Justice to seek to delay disclosure.

It would not be practical to further harmonize Item 1.05 with other agencies' cybersecurity incident reporting regulations, as one commenter suggested,[157] because Item 1.05 serves a different purpose—it is focused on the needs of investors, rather than the needs of regulatory agencies, affected individuals, or the like. With respect to state insurance and privacy laws, commenters did not provide any evidence sufficient to alter the Commission's finding in the Proposing Release that, to the extent that Item 1.05 would require disclosure in a situation where state law would excuse or delay notification, we consider prompt reporting of material cybersecurity incidents to investors critical to investor protection and well-functioning, orderly, and efficient markets.

B. Disclosures About Cybersecurity Incidents in Periodic Reports

1. Proposed Amendments

The Commission proposed to add new Item 106 to Regulation S–K to, among other things, require updated cybersecurity disclosure in periodic reports. If a registrant previously provided disclosure regarding one or more cybersecurity incidents pursuant to Item 1.05 of Form 8–K, proposed 17 CFR 229.106(d)(1) (Regulation S–K ''Item 106(d)(1)'') would require such registrant to disclose ''any material changes, additions, or updates'' on the registrant's quarterly report on Form 10–Q or annual report on Form 10–K.[158] In addition, proposed Item 106(d)(1) would require disclosure of the following information:

- Any material effect of the incident on the registrant's operations and financial condition;
- Any potential material future impacts on the registrant's operations and financial condition;
- Whether the registrant has remediated or is currently remediating the incident; and
- Any changes in the registrant's policies and procedures as a result of the cybersecurity incident, and how the incident may have informed such changes.[159]

The Commission explained that it paired current reporting under Item 1.05 of Form 8–K with periodic reporting under 17 CFR 229.106(d) (Regulation S–K ''Item 106(d)'') to balance investors' need for timely disclosure with their need for complete disclosure.[160] When an Item 1.05 Form 8–K becomes due, the Commission noted, a registrant may not possess complete information about the material cybersecurity incident. Accordingly, under the proposed rules, a registrant would provide the information known at the time of the Form 8–K filing and follow up in its periodic reports with more complete information as it becomes available, along with any updates to previously disclosed information.

The Commission also proposed 17 CFR 229.106(d)(2) (Regulation S–K ''Item 106(d)(2)'') to require disclosure in a registrant's next periodic report when, to the extent known to management, a series of previously undisclosed individually immaterial cybersecurity incidents become material in the aggregate.[161] The Proposing Release explained that this requirement may be triggered where, for example, a threat actor engages in a number of smaller but continuous related cyberattacks against the same company and collectively they become material.[162] Item 106(d)(2) would require disclosure of essentially the

[149] 45 CFR 164.404(b). The notification must describe the breach, the types of unsecured protected health information involved, steps the individuals should take to protect themselves, what the entity is doing to mitigate harm and remediate, and where the individuals can seek additional information. *Id.*

[150] 45 CFR 164.406.

[151] 45 CFR 164.412.

[152] *Id.*

[153] 45 CFR 164.404(c).

[154] For the same reason, the Federal Trade Commission's Health Breach Notification rule, which is similar to HHS's rule, does not present a conflict either. *See* 16 CFR part 318.

[155] For example, one commenter alleged conflicts with DHS's Chemical Facilities Anti-Terrorism Standards program (''CFATS'') and with the Maritime Transportation Security Act (''MTSA''). *See* letter from American Chemistry Council. Both CFATS and MTSA provide for the protection of certain sensitive information, but neither is implicated by cybersecurity incident disclosure to the Commission.

[156] *See, e.g., SEC* v. *National Sec., Inc.,* 393 U.S. 453 (1969).

[157] *See* letter from BIO.

[158] Proposing Release at 16598.

[159] *Id.*

[160] *Id.*

[161] *Id.* at 16599.

[162] *Id.*

same information required in proposed Item 1.05 of Form 8–K, as follows:

- A general description of when the incidents were discovered and whether they are ongoing;
- A brief description of the nature and scope of the incidents;
- Whether any data were stolen or altered in connection with the incidents;
- The effect of the incidents on the registrant's operations; and
- Whether the registrant has remediated or is currently remediating the incidents.[163]

2. Comments

Reaction among commenters to proposed Item 106(d)(1) was mixed. Some wrote in support, noting that updated incident disclosure is needed to avoid previously disclosed information becoming stale and misleading as more information becomes available, and saying that updates help investors assess the efficacy of companies' cybersecurity procedures.[164] Others took issue with specific aspects of the proposed rule. For example, some commenters stated that the proposed requirement to disclose ''any potential material future impacts'' is vague and difficult to apply, and urged removing or revising it.[165] Similarly, other commenters said that registrants should not be required to describe progress on remediation, noting that such information could open them up to more attacks.[166] In the same vein, one commenter suggested that no updates be required until remediation is sufficiently complete.[167] One commenter said the requirement to disclose changes in policies and procedures is unnecessary and overly broad,[168] and another commenter said the requirement should be narrowed to ''material changes.'' [169]

More generally, commenters sought clarification on how to differentiate instances where updates should be included in periodic reports from instances where updates should be filed on Form 8–K; they found the guidance in the Proposing Release on this point ''unclear.'' [170] And one commenter argued that, regardless of where the update is filed, the incremental availability of information would make it difficult for companies to determine when the update requirement is triggered.[171]

With respect to proposed Item 106(d)(2), a large number of commenters expressed concern about the aggregation requirement, saying, for example, that companies experience too many events to realistically communicate internally upward to senior management, and that retaining and analyzing data on past events would be too costly.[172] A number of other commenters relatedly said that, for the aggregation requirement to be workable, companies need more guidance on the nature, timeframe, and breadth of incidents that should be collated.[173] In this regard, one supporter of the requirement explained in its request for additional guidance that ''cybersecurity incidents are so unfortunately common that a strict reading of this section could cause overreporting to the point that it is meaningless for shareholders.'' [174]

Some commenters suggested revising the rule to cover only ''related'' incidents.[175] Possible definitions offered for ''related'' incidents included those ''performed by the same malicious actor or that exploited the same vulnerability,'' [176] and those resulting from ''attacks on the same systems, processes or controls of a registrant over a specified period of time.'' [177] Suggestions for limiting the time period over which aggregation should occur included the preceding one year,[178] and the preceding two years.[179] One commenter requested the Commission clarify that a company's Item 106(d)(2) disclosure need describe only the aggregate material impact of the incidents, rather than describing each incident individually; the commenter was concerned with threat actors becoming informed of a company's vulnerabilities through overly detailed disclosure.[180] Another commenter suggested granting registrants additional time to come into compliance with Item 106(d)(2) after Commission adoption, so that they can develop system functionality to retain details about immaterial incidents.[181]

Commenters also wrote in support of the aggregation requirement.[182] One of these commenters stated that aggregation is needed especially where an advanced persistent threat actor [183] seeks to exfiltrate data or intellectual property over time.[184]

3. Final Amendments

In response to comments, we are not adopting proposed Item 106(d)(1) and instead are adopting a new instruction to clarify that updated incident disclosure must be provided in a Form 8–K amendment. Specifically, we are revising proposed Instruction 2 to Item 1.05 of Form 8–K to direct the registrant to include in its Item 1.05 Form 8–K a statement identifying any information called for in Item 1.05(a) that is not determined or is unavailable at the time of the required filing and then file an amendment to its Form 8–K containing such information within four business days after the registrant, without unreasonable delay, determines such information or within four business days after such information becomes available. This change mitigates commenters' concerns with Item 106(d)(1). In particular, under the final rules, companies will not have to distinguish whether information

[163] *Id.* at 16619–16620.

[164] *See* letters from AICPA; Crindata; R Street. *See also* IAC Recommendation.

[165] *See* letters from EEI; Prof. Perullo; PWC; SCG.

[166] *See* letters from BCE; BPI et al.; Enbridge. *See also* letter from EEI (suggesting narrowing the rule to ''material remediation,'' and delaying such disclosure until remediation is complete).

[167] *See* letter from EEI.

[168] *See* letter from Prof. Perullo.

[169] *See* letter from EEI.

[170] *See* letter from PWC; *accord* letter from Deloitte. The Proposing Release stated: ''Notwithstanding proposed Item 106(d)(1), there may be situations where a registrant would need to file an amended Form 8–K to correct disclosure from the initial Item 1.05 Form 8–K, such as where that disclosure becomes inaccurate or materially misleading as a result of subsequent developments regarding the incident. For example, if the impact of the incident is determined after the initial Item 1.05 Form 8–K filing to be significantly more severe than previously disclosed, an amended Form 8–K may be required.'' Proposing Release at 16598.

[171] *See* letter from Quest.

[172] *See* letters from ABA; ACLI; AIA; Business Roundtable; EEI; Enbridge; Ernst & Young LLP (''E&Y''); FAH; FedEx; Center on Cyber and Technology Innovation at the Foundation for Defense of Democracies (''FDD''); GPA; Hunton; ITI; ISA; LTSE; Microsoft; Nareit; NAM; NDIA; NRA; Prof. Perullo; SCG; SIFMA.

[173] *See* letters from ACC; APCIA; BDO USA, LLP (''BDO''); BPI et al.; CAQ; Chamber; Chevron; Deloitte; EIC; FEI; M. Barragan; PWC; R Street.; TransUnion.

[174] *See* letter from R Street.

[175] *See* letters from ABA; APCIA; EEI; E&Y; PWC.

[176] *See* letter from ABA.

[177] *See* letter from E&Y.

[178] *See* letter from APCIA.

[179] *See* letter from EEI.

[180] *See* letter from AGA/INGAA.

[181] *See* letter from Deloitte.

[182] *See* letters from CII; CSA; R Street; NASAA.

[183] The National Institute of Standards and Technology explains that an advanced persistent threat ''is an adversary or adversarial group that possesses the expertise and resources that allow it to create opportunities to achieve its objectives by using multiple attack vectors, including cyber, physical, and deception. The APT objectives include establishing a foothold within the infrastructure of targeted organizations for purposes of exfiltrating information; undermining or impeding critical aspects of a mission, function, program, or organization; or positioning itself to carry out these objectives in the future. The APT pursues its objectives repeatedly over an extended period, adapts to defenders' efforts to resist it, and is determined to maintain the level of interaction needed to execute its objectives.'' National Institute of Standards and Technology, *NIST Special Publication 800–172, Enhanced Security Requirements for Protecting Controlled Unclassified Information* (Feb. 2021), at 2.

[184] *See* letter from CSA.

regarding a material cybersecurity incident that was not determined or was unavailable at the time of the initial Form 8–K filing should be included on current reports or periodic reports, as the reporting would be in an amended Form 8–K; details that commenters suggested raised security concerns, such as remediation status, are not required; and concerns that the proposed rule was vague or overbroad have been addressed by narrowing the required disclosure to the information required by Item 1.05(a). We also believe that use of a Form 8–K amendment rather than a periodic report will allow investors to more quickly identify updates regarding incidents that previously were disclosed.

We appreciate that new information on a reported cybersecurity incident may surface only in pieces; the final rules, however, do not require updated reporting for *all* new information. Rather, Instruction 2 to Item 1.05 directs companies to file an amended Form 8–K with respect to any information called for in Item 1.05(a) that was not determined or was unavailable at the time of the initial Form 8–K filing. Other than with respect to such previously undetermined or unavailable information, the final rules do not separately create or otherwise affect a registrant's duty to update its prior statements. We remind registrants, however, that they may have a duty to correct prior disclosure that the registrant determines was untrue (or omitted a material fact necessary to make the disclosure not misleading) at the time it was made [185] (for example, if the registrant subsequently discovers contradictory information that existed at the time of the initial disclosure), or a duty to update disclosure that becomes materially inaccurate after it is made [186] (for example, when the original statement is still being relied on by reasonable investors). Registrants should consider whether they need to revisit or refresh previous disclosure, including during the process of investigating a cybersecurity incident.[187]

We are not adopting proposed Item 106(d)(2), in response to concerns that the proposed aggregation requirement was vague or difficult to apply. We are persuaded by commenters that the proposed requirement might be difficult to differentiate from Item 1.05 disclosure, or by contrast, could result in the need for extensive internal controls and procedures to monitor all immaterial events to determine whether they have become collectively material. The intent of the proposed requirement was to capture the material impacts of related incidents, and prevent the avoidance of incident disclosure through disaggregation of such related events. However, upon further reflection, and after review of comments, we believe that the proposed requirement is not necessary based on the scope of Item 1.05.

To that end, we emphasize that the term ''cybersecurity incident'' as used in the final rules is to be construed broadly, as the Commission stated in the Proposing Release.[188] The definition of ''cybersecurity incident'' we are adopting extends to ''a series of related unauthorized occurrences.'' [189] This reflects that cyberattacks sometimes compound over time, rather than present as a discrete event. Accordingly, when a company finds that it has been materially affected by what may appear as a series of related cyber intrusions, Item 1.05 may be triggered even if the material impact or reasonably likely material impact could be parceled among the multiple intrusions to render each by itself immaterial. One example was provided in the Proposing Release: the same malicious actor engages in a number of smaller but continuous cyberattacks related in time and form against the same company and collectively, they are either quantitatively or qualitatively material.[190] Another example is a series of related attacks from multiple actors exploiting the same vulnerability and collectively impeding the company's business materially.

C. Disclosure of a Registrant's Risk Management, Strategy and Governance Regarding Cybersecurity Risks

1. Risk Management and Strategy

a. Proposed Amendments

The Commission proposed to add 17 CFR 229.106(b) (Regulation S–K ''Item 106(b)'') to require registrants to provide more consistent and informative disclosure regarding their cybersecurity risk management and strategy in their annual reports. The Commission noted the Division of Corporation Finance staff's experience that most registrants disclosing a cybersecurity incident do not describe their cybersecurity risk oversight or any related policies and procedures, even though companies typically address significant risks by developing risk management systems that often include written policies and procedures.[191]

Proposed Item 106(b) would require a description of the registrant's policies and procedures, if any, for the identification and management of cybersecurity threats, including, but not limited to: operational risk (*i.e.,* disruption of business operations); intellectual property theft; fraud; extortion; harm to employees or customers; violation of privacy laws and other litigation and legal risk; and reputational risk. As proposed, registrants would be required to include a discussion, as applicable, of:

- Whether the registrant has a cybersecurity risk assessment program and if so, a description of the program ((b)(1));
- Whether the registrant engages assessors, consultants, auditors, or other third parties in connection with any cybersecurity risk assessment program ((b)(2));
- Whether the registrant has policies and procedures to oversee, identify, and mitigate the cybersecurity risks associated with its use of any third-party service provider (including, but not limited to, those providers that have access to the registrant's customer and employee data), including whether and how cybersecurity considerations affect the selection and oversight of these providers and contractual and other mechanisms the company uses to mitigate cybersecurity risks related to these providers ((b)(3));
- Whether the registrant undertakes activities to prevent, detect, and minimize effects of cybersecurity incidents ((b)(4));
- Whether the registrant has business continuity, contingency, and recovery

[185] *See Backman* v. *Polaroid Corp.,* 910 F.2d 10, 16–17 (1st Cir. 1990) (en banc) (finding that the duty to correct applies ''if a disclosure is in fact misleading when made, and the speaker thereafter learns of this'').

[186] *See id.* at 17 (describing the duty to update as potentially applying ''if a prior disclosure 'becomes materially misleading in light of subsequent events'" (quoting *Greenfield* v. *Heublein, Inc.,* 742 F.2d 751, 758 (3d Cir. 1984))). *But see Higginbotham* v. *Baxter Intern., Inc.,* 495 F.3d 753, 760 (7th Cir. 2007) (rejecting duty to update before next quarterly report); *Gallagher* v. *Abbott Laboratories,* 269 F.3d 806, 808–11 (7th Cir. 2001) (explaining that securities laws do not require continuous disclosure).

[187] Relatedly, registrants should be aware of the requirement under Item 106(b)(2) of Regulation S–K to describe ''[w]hether any risks from cybersecurity threats, *including as a result of any previous cybersecurity incidents,* have materially affected or are reasonably likely to materially affect the registrant'' (emphasis added). *See infra* Section II.C.1.c.

[188] Proposing Release at 16601.

[189] *See infra* Section II.C.3.

[190] Proposing Release at 16599.

[191] *Id.*

plans in the event of a cybersecurity incident ((b)(5));

- Whether previous cybersecurity incidents have informed changes in the registrant's governance, policies and procedures, or technologies ((b)(6));
- Whether cybersecurity related risk and incidents have affected or are reasonably likely to affect the registrant's results of operations or financial condition and if so, how ((b)(7)); and
- Whether cybersecurity risks are considered as part of the registrant's business strategy, financial planning, and capital allocation and if so, how ((b)(8)).[192]

The Commission anticipated that proposed Item 106(b) would benefit investors by requiring more consistent disclosure of registrants' strategies and actions to manage cybersecurity risks.[193] Such risks, the Commission observed, can affect registrants' business strategy, financial outlook, and financial planning, as companies increasingly rely on information technology, collection of data, and use of digital payments as critical components of their businesses.[194]

The Commission noted that the significant number of cybersecurity incidents pertaining to third-party service providers prompted the proposal to require disclosure of registrants' selection and oversight of third-party entities.[195] The Commission also proposed requiring discussion of how prior cybersecurity incidents have affected or are reasonably likely to affect the registrant, because such disclosure would equip investors to better comprehend the level of cybersecurity risk the company faces and assess the company's preparedness regarding such risk.[196]

b. Comments

Many commenters supported proposed Item 106(b) for requiring information that is vital to investors as they assess companies' risk profiles and make investment decisions.[197] One said cybersecurity disclosures now are ''scattered and unpredictable'' rather than ''uniform,'' which ''diminishes their effectiveness.'' [198] Similarly, another found that current disclosures ''do not provide investors with the information necessary to evaluate whether companies have adequate governance structures and measures in place to deal with cybersecurity challenges.'' [199] The IAC recommended extending the proposed Item 106(b) disclosure requirements (as well as the proposed Item 106(c) disclosure requirements) to registration statements, stating that ''pre-IPO companies may face heightened [cybersecurity] risks.'' [200]

By contrast, a number of commenters opposed proposed Item 106(b). In particular, they commented that much of the proposed Item 106(b) disclosure could increase a company's vulnerability to cyberattacks; they expressed particular concern regarding the potential harms from disclosures about whether cybersecurity policies are in place, incident response processes and techniques, previous incidents and what changes they spurred, and third-party service providers.[201] Another criticism was that proposed Item 106(b) would effectively force companies to model their cybersecurity policies on the rule's disclosure elements, rather than the practices best suited to each company's context.[202] One commenter saw proposed Item 106(b) as counteracting the streamlining accomplished in the Commission's 2020 release modernizing Regulation S–K.[203]

Some commenters offered suggestions to narrow proposed Item 106(b) to address their concerns. On proposed paragraph (b)(1), one commenter recommended allowing a registrant to forgo describing its risk assessment program if it confirms that it ''uses best practices and standards'' to identify and protect against cybersecurity risks and detect and respond to such events.[204] On proposed paragraph (b)(3), a few commenters said that registrants should be required to disclose only high-level information relating to third parties, such as confirmation that policies and procedures are appropriately applied to third-party selection and oversight, and should not have to identify the third parties or discuss the underlying mechanisms, controls, and contractual requirements.[205]

Some commenters opposed proposed paragraph (b)(6)'s requirement to discuss whether ''previous cybersecurity incidents informed changes in the registrant's governance, policies and procedures, or technologies'' entirely, stating it would undermine a registrant's cybersecurity.[206] One commenter recommended the proposed (b)(6) disclosure be required only at a high level, without specific details,[207] while two commenters appeared to propose only requiring disclosure as it pertains to previous material incidents.[208] Commenters suggested a materiality filter for proposed paragraph (b)(7)'s requirement to discuss whether ''cybersecurity-related risks and previous cybersecurity-related incidents have affected or are reasonably likely to affect the registrant's strategy, business model, results of operations, or financial condition and if so, how,'' so that the requirement would apply only where a registrant has been materially affected or is reasonably likely to be materially affected.[209]

More broadly, one commenter recommended replacing the rule's references to ''policies and procedures'' with ''strategy and programs,'' because in the commenter's experience companies may not codify their cybersecurity strategy in the same way they codify other compliance policies and procedures.[210] One commenter also suggested offering companies the choice to place the proposed Item 106(b) disclosures in either the Form 10–K or the proxy statement.[211]

Several commenters supported requiring registrants that lack cybersecurity policies and procedures to explicitly say so, commenting, for example, that ''investors should not be left to intuit the meaning of a company's silence in its disclosures.'' [212] One

[192] *Id.* at 16599–16600.

[193] *Id.* at 16599.

[194] *Id.*

[195] *Id.*

[196] *Id.*

[197] *See* letters of AICPA; *BuildingCyberSecurity.org* (''BCS''); Better Markets; Bitsight; Blue Lava, Inc. (''Blue Lava''); CalPERS; ITIF; National Association of Corporate Directors (''NACD''); NASAA; PWC; PRI; R Street; SecurityScorecard; Tenable Holdings Inc. (''Tenable''). *See also* IAC Recommendation.

[198] *See* letter from Better Markets.

[199] *See* letter from PRI.

[200] *See* IAC Recommendation.

[201] *See* letters from ABA; ACLI; APCIA; BIO; BPI et al.; Business Roundtable; Chamber; CSA; CTIA; EIC; Enbridge; FAH; Federated Hermes; GPA; ITI; ISA; Nareit; NAM; NMHC; NRA; National Retail Federation (''NRF''); SIFMA; Sen. Portman; TechNet; TransUnion; USTelecom; Virtu.

[202] *See* letters from BPI et al.; Chamber; EIC; Nareit; NRF; NYSE; SCG; SIFMA; Virtu.

[203] *See* letter from Nasdaq (citing *Modernization of Regulation S–K Items 101, 103, and 105,* Release No. 33–10825 (Aug. 26, 2020) [85 FR 63726 (Oct. 8, 2020)]).

[204] *See* letter from Cybersecurity Coalition.

[205] *See* letters from BPI et al.; Chamber; SIFMA. Other commenters supported the level of detail required in (b)(3). *See* letters from AICPA; PRI.

[206] *See* letters from ITI; SCG; Tenable.

[207] *See* letter from Cybersecurity Coalition.

[208] *See* letters from AGA/INGA; American Public Gas Association (''APGA'').

[209] *See* letter from PWC.

[210] *See* letter from Prof. Perullo.

[211] *See* letter from Nasdaq.

[212] *See* letters from Blue Lava; CSA; Cybersecurity Coalition; ITI; NASAA; Prof. Perullo; Tenable. The quoted language is from NASAA's letter. *See also* IAC Recommendation (recommending ''that issuers that have not developed any cybersecurity policies or procedures be required to make a statement to that effect'' because ''the vast majority of investors . . . would view the complete absence of

Continued

commenter further stated that registrants should be required to explain why they have not adopted cybersecurity policies and procedures.[213] By contrast, two commenters opposed requiring registrants that lack cybersecurity policies and procedures to explicitly say so,[214] with one commenter saying that ''a threat actor may target registrants they perceive to have unsophisticated cybersecurity programs,'' [215] and the other commenter saying ''it is highly unlikely that any SEC registrants would not have 'established any cybersecurity policies and procedures.'' [216]

In response to the Commission's request for comment about whether to require a registrant to specify whether any cybersecurity assessor, consultant, auditor, or other service provider that it relies on is through an internal function or through an external third-party service provider, several commenters opposed the idea as not useful, with one saying that ''a significant majority—possibly the entirety—of SEC registrants'' rely on third-party service providers for some portion of their cybersecurity.[217] Conversely, another commenter supported the third-party specification, and suggested requiring registrants to name the third parties, as over time, this would create more transparency in whether breaches correlate with specific third parties.[218]

Commenters also offered a range of recommended additions to the rule. One commenter recommended modifying proposed paragraph (b)(1) to require registrants to specify whether their cybersecurity programs assess risks continuously or periodically, arguing the latter approach leaves companies more exposed.[219] The same commenter suggested paragraph (b)(2) require ''a description of the class of services and solutions'' provided by third parties.[220]

A few commenters recommended that we direct registrants to quantify their cybersecurity risk exposure through independent risk assessments.[221] Similarly, one commenter urged us to require registrants to explain how they quantify their cybersecurity risk,[222] while another said we should set out quantifiable metrics against which companies measure their cybersecurity systems, though it did not specify what these metrics should be.[223] Two commenters suggested that we require companies to disclose whether their cybersecurity programs have been audited by a third party.[224] And one commenter recommended that we require registrants to disclose whether they use the cybersecurity framework of the National Institute of Standards and Technology (''NIST''), to ease comparison of registrant risk profiles.[225]

c. Final Amendments

We continue to believe that investors need information on registrants' cybersecurity risk management and strategy, and that uniform, comparable, easy to locate disclosure will not emerge absent new rules. Commenters raised concerns with proposed Item 106(b)'s security implications and what they saw as its prescriptiveness. We agree that extensive public disclosure on how a company plans for, defends against, and responds to cyberattacks has the potential to advantage threat actors. Similarly, we acknowledge commenters' concerns that the final rule could unintentionally affect a registrant's risk management and strategy decision-making. In response to those comments, we confirm that the purpose of the rules is, and was at proposal, to inform investors, not to influence whether and how companies manage their cybersecurity risk. Additionally, to respond to commenters' concerns about security, the final rules eliminate or narrow certain elements from proposed Item 106(b). We believe the resulting rule requires disclosure of information material to the investment decisions of investors, in a way that is comparable and easy to locate, while steering clear of security sensitive details.

As adopted, 17 CFR 229.106(b)(1) (Regulation S–K ''Item 106(b)(1)'') requires a description of ''the registrant's processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes.'' We believe this revised formulation of the rule should help avoid levels of detail that may go beyond information that is material to investors and address commenters' concerns that those details could increase a company's vulnerability to cyberattack. We have also substituted the term ''processes'' for the proposed ''policies and procedures'' to avoid requiring disclosure of the kinds of operational details that could be weaponized by threat actors, and because the term ''processes'' more fully compasses registrants' cybersecurity practices than ''policies and procedures,'' which suggest formal codification.[226] We still expect the disclosure to allow investors to ascertain a registrant's cybersecurity practices, such as whether they have a risk assessment program in place, with sufficient detail for investors to understand the registrant's cybersecurity risk profile. The shift to ''processes'' also obviates the question of whether to require companies that do not have written policies and procedures to disclose that fact. We believe that, to the extent a company discloses that it faces a material cybersecurity risk in connection with its overall disclosures of material risks,[227] an investor can ascertain whether such risks have resulted in the adoption of processes to assess, identify, and manage material cybersecurity risks based on whether the company also makes such disclosures under the final rules.

We have also added a materiality qualifier to the proposed requirement to disclose ''risks from cybersecurity threats,'' and have removed the proposed list of risk types (*i.e.,* ''intellectual property theft; fraud; extortion; harm to employees or customers; violation of privacy laws and other litigation and legal risk; and reputational risk''), to foreclose any perception that the rule prescribes cybersecurity policy. We continue to believe these are the types of risks that registrants may face in this context, and enumerate them here as guidance. We note that registrants will continue to tailor their cybersecurity processes to threats as they perceive them. The rule requires registrants to describe those processes insofar as they relate to material cybersecurity risks.

We have also revised Item 106(b)'s enumerated disclosure elements in

cybersecurity risk governance as overwhelmingly material to investment decision-making'').

[213] *See* letter from NASAA.

[214] *See* letters from EIC; IIA.

[215] *See* letter from EIC.

[216] *See* letter from IIA.

[217] *See* letters from BCS; Chevron; EIC; IIA; Prof. Perullo. The quoted language is from the letter of IIA.

[218] *See* letter from Blue Lava.

[219] *See* letter from Tenable.

[220] *Id.*

[221] *See* letters from BitSight; Kovrr Risk Modeling Ltd.; SecurityScorecard.

[222] *See* letter from Safe Security.

[223] *See* letter from FDD.

[224] *See* letters from BCS; Better Markets.

[225] *See* letter from SandboxAQ. This commenter also recommended registrants be required to disclose whether they use post-quantum cryptography as part of their risk mitigation efforts.

[226] *See* letter from Prof. Perullo (distinguishing the formality of ''policies and procedures'' from the informality of ''strategy or program''). We have adopted ''processes'' in place of the commenter's suggestion of ''strategy or program'' because ''processes'' is broader and commonly understood. We decline the suggestion from another commenter to allow registrants to avoid this disclosure altogether by confirming they adhere to ''best practices and standards,'' because there is no single set of widely accepted best practices and standards, and industry practices may evolve. *See* letter from Cybersecurity Coalition.

[227] *See* Item 105 of Regulation S–K.

response to commenters that raised concerns regarding the level of detail required by some elements of the proposal. Specifically, we are not adopting proposed paragraphs (4) (prevention and detection activities), (5) (continuity and recovery plans), and (6) (previous incidents). We have similarly revised proposed paragraph (3) to eliminate some of the detail it required, consistent with commenter suggestions to require only high-level disclosure regarding third-party service providers. The enumerated elements that a registrant should address in its Item 106(b) disclosure, as applicable, are:

- Whether and how the described cybersecurity processes in Item 106(b) have been integrated into the registrant's overall risk management system or processes;
- Whether the registrant engages assessors, consultants, auditors, or other third parties in connection with any such processes; and
- Whether the registrant has processes to oversee and identify material risks from cybersecurity threats associated with its use of any third-party service provider.

We have also revised the rule text to clarify that the above elements compose a non-exclusive list of disclosures; registrants should additionally disclose whatever information is necessary, based on their facts and circumstances, for a reasonable investor to understand their cybersecurity processes.

We have moved proposed paragraph (7) into a separate paragraph, at 17 CFR 229.106(b)(2) (Regulation S–K ''Item 106(b)(2)''), instead of including it in the enumerated list in Item 106(b)(1), and have added a materiality qualifier in response to a comment.[228] Item 106(b)(2) requires a description of ''[w]hether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the registrant, including its business strategy, results of operations, or financial condition and if so, how.'' [229]

The final rules will require disclosure of whether a registrant engages assessors, consultants, auditors, or other third parties in connection with their cybersecurity because we believe it is important for investors to know a registrant's level of in-house versus outsourced cybersecurity capacity. We understand that many registrants rely on third-party service providers for some portion of their cybersecurity, and we believe this information is accordingly necessary for investors to assess a company's cybersecurity risk profile in making investment decisions. However, we are not persuaded, as one commenter contended, that registrants should be required to name the third parties (though they may choose to do so), because we believe this may magnify concerns about increasing a company's cybersecurity vulnerabilities. For the same reason, we decline the commenter suggestion to require a description of the services provided by third parties.

We are also not persuaded that risk quantification or other quantifiable metrics are appropriate as mandatory elements of a cybersecurity disclosure framework. While such metrics may be used by registrants and investors in the future, commenters did not identify any such metrics that would be appropriate to mandate at this time. Additionally, to the extent that a registrant uses any quantitative metrics in assessing or managing cybersecurity risks, it may disclose such information voluntarily. For similar reasons, we decline commenters' recommendations to require disclosure of independent assessments and audits, as well as commenters' recommendations on disclosure of use of the NIST framework, and on distinguishing between continuous and periodic risk assessment.

We decline the commenter suggestion to allow Item 106(b) disclosure to be provided in the proxy statement, as the proxy statement is generally confined to information pertaining to the election of directors. We are also not requiring Item 106 disclosures in registration statements as recommended by the IAC, consistent with our efforts to reduce the burdens associated with the final rule. However, as discussed further below,[230] we reiterate the Commission's guidance from the 2018 Interpretive Release that ''[c]ompanies should consider the materiality of cybersecurity risks and incidents when preparing the disclosure that is required in registration statements.'' [231] Finally, we note that registrants may satisfy the Item 106 disclosure requirements through incorporation by reference pursuant to 17 CFR 240.12b–23 (''Rule 12b–23'').[232]

2. Governance

a. Proposed Amendments

The Commission proposed to add 17 CFR 229.106(c) (Regulation S–K ''Item 106(c)'') to require a description of management and the board's oversight of a registrant's cybersecurity risk. This information would complement the proposed risk management and strategy disclosure by clarifying for investors how a registrant's leadership oversees and implements its cybersecurity processes.[233] Proposed 17 CFR 229.106(c)(1) (Regulation S–K ''Item 106(c)(1)'') would focus on the board's role, requiring discussion, as applicable, of:

- Whether the entire board, specific board members, or a board committee is responsible for the oversight of cybersecurity risks;
- The processes by which the board is informed about cybersecurity risks, and the frequency of its discussions on this topic; and
- Whether and how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight.

Proposed 17 CFR 229.106(c)(2) (Regulation S–K ''Item 106(c)(2)'') meanwhile would require a description of management's role in assessing and managing cybersecurity-related risks, as well as its role in implementing the registrant's cybersecurity policies, procedures, and strategies, including at a minimum discussion of:

- Whether certain management positions or committees are responsible for measuring and managing cybersecurity risk, specifically the prevention, mitigation, detection, and remediation of cybersecurity incidents, and the relevant expertise of such persons or members;
- Whether the registrant has a designated chief information security officer, or someone in a comparable position, and if so, to whom that individual reports within the registrant's organizational chart, and the relevant expertise of any such persons;
- The processes by which such persons or committees are informed about and monitor the prevention, mitigation, detection, and remediation of cybersecurity incidents; and

[228] *See* letter from PWC.

[229] With respect to the Item 106(b)(2)'s requirement to describe any risks as a result of any previous cybersecurity incidents, *see supra* Section II.B.3 for a discussion of the duties to correct or update prior disclosure that registrants may have in certain circumstances. As we note in that section, registrants should consider whether they need to revisit or refresh previous disclosure, including during the process of investigating a cybersecurity incident.

[230] *See infra* text accompanying notes 355 and 356.

[231] 2018 Interpretive Release at 8168.

[232] As required by Rule 12b–23, in order to incorporate information by reference in answer, or partial answer, to Item 106, a registrant must, among other things, include an active hyperlink if the information is publicly available on EDGAR.

[233] Proposing Release at 16600.

• Whether and how frequently such persons or committees report to the board of directors or a committee of the board of directors on cybersecurity risk.

The Proposing Release explained that proposed Item 106(c)(1) would reinforce the Commission's 2018 Interpretive Release,[234] which said that disclosure on how a board engages management on cybersecurity helps investors assess the board's exercise of its oversight responsibility.[235] The Proposing Release noted that proposed Item 106(c)(2) would be of importance to investors in that it would help investors understand how registrants are planning for cybersecurity risks and inform their decisions on how best to allocate their capital.[236]

b. Comments

A few commenters supported proposed Item 106(c) as providing investors with more uniform and informed understanding of registrants' governance of cybersecurity risks.[237] A number of commenters opposed proposed Item 106(c). They contended that the proposed Item 106(c) disclosures would be too granular to be decision-useful; instead, some of these commenters recommended that we limit the rule to a high-level explanation of management and the board's role in cybersecurity risk oversight.[238]

One commenter said proposed Item 106(c)(1) should be dropped because it duplicates existing 17 CFR 229.407(h) (Regulation S–K ''Item 407(h)''), which requires reporting of material information regarding a board's leadership structure and role in risk oversight, including how it administers its oversight function.[239] Others saw similarities with Item 407(h) as well and suggested instead that proposed Item 106(c) be subsumed into Item 407, thus co-locating governance disclosures.[240]

In response to a request for comment in the Proposing Release on whether the Commission should expressly provide for the use of hyperlinks or cross-references in Item 106, one commenter supported the use of hyperlinks and cross-references, but sought clarification of whether the practice is already permitted under Commission rules.[241] Another commenter opposed, saying Item 407(h)'s more general discussion of board governance is distinct from Item 106(c)(1)'s specific focus on cybersecurity.[242] The commenter cautioned that allowing registrants to employ hyperlinks and cross-references in Item 106 would lead to ''less detail,'' resulting in disclosure insufficient to investor needs.[243]

One commenter recommended that we move proposed Item 106(c)(2) to the enumerated list of topics called for in proposed Item 106(b).[244] Another commenter suggested expanding the rule to include disclosure of management and staff training on cybersecurity, asserting that the information is useful to investors because policies depend on staff for successful implementation.[245] Two commenters suggested allowing the Item 106(c) disclosures to be made in the proxy statement.[246]

c. Final Amendments

In response to comments, and aligned with our changes to Item 106(b), we have streamlined Item 106(c) to require disclosure that is less granular than proposed. Under Item 106(c)(1) as adopted, registrants must ''[d]escribe the board's oversight of risks from cybersecurity threats,'' and, if applicable, ''identify any board committee or subcommittee responsible'' for such oversight ''and describe the processes by which the board or such committee is informed about such risks.'' We have removed proposed Item 106(c)(1)(iii), which had covered whether and how the board integrates cybersecurity into its business strategy, risk management, and financial oversight. While we have also removed the proposed Item 106(c)(1)(ii) requirement to disclose ''the frequency of [the board or committee's] discussions'' on cybersecurity, we note that, depending on context, some registrants' descriptions of the processes by which their board or relevant committee is informed about cybersecurity risks may include discussion of frequency.[247]

Given these changes, we find that Item 407(h) and Item 106(c)(1) as adopted serve distinct purposes and should not be combined, as suggested by some commenters—the former requires description of the board's leadership structure and administration of risk oversight generally, while the latter requires detail of the board's oversight of specific cybersecurity risk. As noted by one commenter,[248] to the extent these disclosures are duplicative, a registrant would be able to incorporate such information by reference.[249]

We have also modified Item 106(c)(2) to add a materiality qualifier, to make clear that registrants must ''[d]escribe management's role in assessing and managing the registrant's *material* risks from cybersecurity threats'' (emphasis added).[250] The enumerated disclosure elements now constitute a ''non-exclusive list'' registrants should consider including. We have revised the first element to require the disclosure of management positions or committees ''responsible for assessing and managing such risks, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise.'' Because this requirement would typically encompass identification of whether a registrant has a chief information security officer, or someone in a comparable position, we are not adopting the proposed second element that would have specifically called for disclosure of whether the registrant has a designated chief information security officer. Given our purpose of streamlining the disclosure requirements, we also are not adopting the proposed requirement to disclose the frequency of management-board discussions on cybersecurity, though, as noted above, discussion of frequency may in some cases be included as part of describing the processes by which the board or relevant committee is informed about cybersecurity risks in compliance with Item 106(c)(1), to the extent it is relevant to an understanding of the board's oversight of risks from cybersecurity threats.

Thus, as adopted, Item 106(c)(2) directs registrants to consider disclosing the following as part of a description of management's role in assessing and managing the registrant's material risks from cybersecurity threats:

• Whether and which management positions or committees are responsible

[234] *Id.* (citing 2018 Interpretive Release at 8170).

[235] 2018 Interpretive Release at 8170.

[236] Proposing Release at 16600.

[237] *See, e.g.,* letters from Better Markets; CalPERS.

[238] *See* letters from ABA; AGA/INGAA; EEI; Nareit; NYSE.

[239] *See* letter from Davis Polk. The commenter went on to say that, to the extent Item 106(c) requires disclosure of immaterial information regarding the board, it should be dropped.

[240] *See* letters from ABA; BDO; PWC.

[241] *See* letter from E&Y.

[242] *See* letter from Tenable.

[243] *Id.*

[244] *See* letter from Davis Polk.

[245] *See* letter from PRI.

[246] *See* letters from Business Roundtable; Nasdaq.

[247] For example, if the board or committee relies on periodic (*e.g.,* quarterly) presentations by the registrant's chief information security officer to inform its consideration of risks from cybersecurity threats, the registrant may, in the course of describing those presentations, also note their frequency.

[248] *See* letter from E&Y.

[249] Rule 12b–23.

[250] We have not added a materiality qualifier to Item 106(c)(1) because, if a board of directors determines to oversee a particular risk, the fact of such oversight being exercised by the board is material to investors. By contrast, management oversees many more matters and management's oversight of non-material matters is likely not material to investors, so a materiality qualifier is appropriate for Item 106(c)(2).

for assessing and managing such risks, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;

- The processes by which such persons or committees are informed about and monitor the prevention, detection, mitigation, and remediation of cybersecurity incidents; and
- Whether such persons or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

As many commenters recommended, these elements are limited to disclosure that we believe balances investors' needs to understand a registrant's governance of risks from cybersecurity threats in sufficient detail to inform an investment or voting decision with concerns that the proposal could inadvertently pressure registrants to adopt specific or inflexible cybersecurity-risk governance practices or organizational structures. We do not believe these disclosures should be subsumed into Item 106(b), as one commenter recommended, because identifying the management committees and positions responsible for risks from cybersecurity threats is distinct from describing the cybersecurity practices management has deployed. We also decline the commenter suggestion to require disclosure of management and staff training on cybersecurity; registrants may choose to make such disclosure voluntarily. Finally, we decline the commenter suggestion to allow Item 106(c) disclosure to be provided in the proxy statement; governance information in the proxy statement is generally meant to inform shareholders' voting decisions, whereas Item 106(c) disclosure informs investors' assessment of investment risk.

3. Definitions

a. Proposed Definitions

The Commission proposed to define three terms to delineate the scope of the amendments: ''cybersecurity incident,'' ''cybersecurity threat,'' and ''information systems.'' [251] Proposed 229 CFR 229.106(a) (Regulation S–K ''Item 106(a)'') would define them as follows:

- *Cybersecurity incident* means an unauthorized occurrence on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.
- *Cybersecurity threat* means any potential occurrence that may result in an unauthorized effort to adversely affect the confidentiality, integrity or availability of a registrant's information systems or any information residing therein.
- *Information systems* means information resources, owned, or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

As noted above, the Commission explained that what constitutes a ''cybersecurity incident'' should be construed broadly, encompassing a range of event types.[252]

b. Comments

Most commenters that offered feedback on the proposed definitions suggested narrowing them in some fashion. On ''cybersecurity incident,'' many commenters urged limiting the definition to cases of actual harm, thereby excluding incidents that had only the potential to cause harm.[253] They suggested accomplishing this by replacing ''jeopardizes'' with phrases such as ''adversely affects'' or ''results in substantial loss of.'' [254] One of these commenters noted that such a change would more closely align the definition with that in CIRCIA.[255] Other commenters objected to the definition's use of ''any information'' as overbroad, saying it would lead to inconsistent application.[256] One commenter sought clarification of whether the definition encompasses accidental incidents, such as chance technology outages, that do not involve a malicious actor,[257] while another commenter advocated broadening the definition to any incident materially disrupting operations, regardless of what precipitated it.[258]

On ''cybersecurity threat,'' commenters urged narrowing the rule by replacing the language ''may result in'' with ''could reasonably be expected to result in'' or some other probability threshold.[259] One stated that ''the use of a 'may' standard establishes an unhelpfully low standard that would require registrants to establish policies and procedures to identify threats that are potentially overbroad and not appropriately tailored to those threats that are reasonably foreseeable.'' [260] In a similar vein, two commenters objected to the language ''any potential occurrence'' as over-inclusive and lacking ''instructive boundaries.'' [261]

On ''information systems,'' many commenters favored replacing ''owned or used by'' with ''owned or operated by,'' ''owned or controlled by,'' or like terms, so that registrants' reporting obligations stop short of incidents on third-party information systems.[262] A few commenters said the definition could be construed to cover hard-copy information and should be revised to foreclose such a reading.[263]

More broadly, many commenters advised the Commission to align these definitions with comparable definitions in other Federal laws and regulations, such as CIRCIA and NIST.[264] One commenter explained that ''[a]ligning definitions with those in existing federal laws and regulations would help ensure that the defined terms are consistently understood, interpreted and applied in the relevant disclosure.'' [265] However, another commenter cautioned against aligning with definitions, such as those of NIST, that were developed with a view toward internal risk management and response rather than external reporting; the commenter identified CIRCIA and the Federal banking regulators' definitions as more apposite.[266] One commenter noted that additional proposed defined terms were included in the Commission's rulemaking release *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies* [267] that were not included in the Proposing Release and recommended that we

[251] Proposing Release at 16600–16601.

[252] *Id.* at 16601.

[253] *See* letters from ABA; BPI et al.; Chamber et al.; Davis Polk; Enbridge; FDD; FEI; Hunton; PWC; SCG; SIFMA.

[254] *See* letters from BPI et al.; Hunton.

[255] *See* letter from BPI et al. (''The word 'jeopardizes' should be replaced with 'results in substantial loss of' to capture incidents that are causing some actual harm, and to better harmonize the definition with the reporting standard set forth by Congress in CIRCIA.'').

[256] *See* letters from Deloitte; SIFMA.

[257] *See* letter from CSA.

[258] *See* letter from Crindata.

[259] *See* letters from Chevron; Debevoise; NYC Bar.

[260] *See* letter from Debevoise.

[261] *See* letters from Chevron; Deloitte.

[262] *See* letters from ABA; APCIA; Business Roundtable; Chamber; Cybersecurity Coalition; ISA; ITI; NAM; NDIA; Paylocity. Other commenters made similar arguments about third party systems without speaking specifically to the definition, saying, for example, that registrants may not have sufficient visibility into third-party systems and may be bound by confidentiality agreements. *See* letters from AIA; EIC; FAH; NMHC; SIFMA.

[263] *See* letters from ABA; BPI et al.; Enbridge.

[264] *See* letters from ABA; CAQ; Chevron; FEI; IC; IIA; Microsoft; PWC; SandboxAQ; SIFMA.

[265] *See* letter from ABA.

[266] *See* letter from SCG.

[267] Release No. 33–11028 (Feb. 9, 2022) [87 FR 13524 (Mar. 9, 2022)].

''consider whether the defined terms should be consistent.'' [268]

In the Proposing Release, the Commission asked whether to define other terms used in the proposed amendments, and specifically sought comment on whether a definition of ''cybersecurity'' would be useful.[269] Several commenters supported defining ''cybersecurity,'' [270] reasoning, for example, that any rulemaking on cybersecurity should define that baseline term; [271] that, left undefined, the term would be open to varying interpretations; [272] and that details such as whether hardware is covered should be resolved.[273] Separately, two commenters recommended the Commission define ''operational technology,'' [274] with one explaining that the ''proposed definitions understandably focus on data breaches, which are a major cybersecurity threat, but we believe an operational technology breach could have even more detrimental effects in certain cases (such as for ransomware attacks that have impacted critical infrastructure) and warrants disclosure guidance from the Commission.'' [275]

Several commenters also sought either a formal definition or more guidance on the term ''material'' specific to the cybersecurity space.[276] Some read the proposal, particularly the incident examples provided in the Proposing Release, as lowering the bar for materiality and being overly subjective, which they indicated may result in over-reporting of cybersecurity incidents or introduce uncertainty, and they urged the Commission to affirm the standard materiality definition.[277] Another commenter sought cybersecurity-specific guidance on materiality, including ''concrete thresholds to assist registrants in determining materiality.'' [278] A few commenters recommended conditioning the materiality determination on the underlying information being verified to ''a high degree of confidence'' and ''unlikely to materially change,'' [279] while one commenter looked to replace materiality altogether with a significance standard like that in CIRCIA.[280]

c. Final Definitions

We are adopting definitions for ''cybersecurity incident,'' ''cybersecurity threat,'' and ''information systems'' largely as proposed, with three modifications.

First, on ''cybersecurity incident,'' we are adding the phrase ''or a series of related unauthorized occurrences'' to the ''cybersecurity incident'' definition. This reflects our guidance in Section II.B.3 above that a series of related occurrences may collectively have a material impact or reasonably likely material impact and therefore trigger Form 8–K Item 1.05, even if each individual occurrence on its own would not rise to the level of materiality. Second, we are making a clarifying edit to ''information systems.'' Some commenters said the definition could be construed to cover hard-copy resources.[281] We recognize that reading is possible, if unlikely and unintended, and we are therefore inserting ''electronic'' before ''information resources,'' to ensure the rules pertain only to electronic resources. Third, we are making minor revisions to the ''cybersecurity threat'' definition for clarity and to better align it with the ''cybersecurity incident'' definition.

Accordingly, the definitions are as follows:

- *Cybersecurity incident* means an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.
- *Cybersecurity threat* means any potential unauthorized occurrence on or conducted through a registrant's information systems that may result in adverse effects on the confidentiality, integrity or availability of a registrant's information systems or any information residing therein.
- *Information systems* means electronic information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

We recognize commenters' concern regarding the term ''jeopardizes'' in the proposed ''cybersecurity incident'' definition and the resulting scope of the definition. Nonetheless, we note that the definition is not self-executing; rather it is operationalized by Item 1.05, which is conditioned on the incident having been material to the registrant. Typically that would entail actual harm, though the harm may sometimes be delayed, and a material cybersecurity incident may not result in actual harm in all instances. For example, a company whose intellectual property is stolen may not suffer harm immediately, but it may foresee that harm will likely occur over time as that information is sold to other parties, such that it can determine materiality before the harm occurs. The reputational harm from a breach may similarly increase over time in a foreseeable manner. There may also be cases, even if uncommon, where the jeopardy caused by a cybersecurity incident materially affects the company, even if the incident has not yet caused actual harm. In such circumstances, we believe investors should be apprised of the material effects of the incident. We are therefore retaining the word ''jeopardizes'' in the definition.

We are not persuaded that the proposed ''cybersecurity incident'' definition's use of ''any information'' would lead to inconsistent application of the definition among issuers or cause a risk of over-reporting, as suggested by some commenters. As noted above, the ''cybersecurity incident'' definition is operationalized by Item 1.05. Item 1.05 does not require disclosure whenever ''any information'' is affected by an intruder. Disclosure is triggered only when the resulting effect of an incident on the registrant is material.

We are also retaining ''unauthorized'' in the incident definition as proposed. In general, we believe that an accidental occurrence is an unauthorized occurrence. Therefore, we note that an accidental occurrence may be a cybersecurity incident under our definition, even if there is no confirmed malicious activity. For example, if a company's customer data are accidentally exposed, allowing unauthorized access to such data, the data breach would constitute a ''cybersecurity incident'' that would necessitate a materiality analysis to determine whether disclosure under Item 1.05 of Form 8–K is required.

On ''cybersecurity threat,'' we appreciate commenters' concerns with

[268] *See* letter from Deloitte.

[269] Proposing Release at 16601.

[270] *See* letters from BCS; Blue Lava; EIC; R. Hackman; R Street.

[271] *See* letter from R Street.

[272] *See* letter from Blue Lava.

[273] *See* letter from BCS.

[274] *See* letters from Chevron; EIC.

[275] *See* letter from Chevron.

[276] *See* letters from ACLI; AIC; AICPA; APCIA; Bitsight; Harry Broadman, Eric Matrejek, and Brad Wilson (''Broadman et al.''); Debevoise; EIC; International Information System Security Certification Consortium (''ISC2''); M. Barragan; NYC Bar; Prof. Perullo; R Street; SIFMA; TransUnion; Virtu.

[277] *See* letters from APCIA; ACLI; EIC; Virtu.

[278] *See* letter from SIFMA.

[279] *See* letters from Debevoise; NYC Bar. *See also* letter from AIC (suggesting ''unlikely to change,'' without ''materially'').

[280] *See* letter from National Electrical Manufacturers Association (''NEMA'').

[281] *See* letters from ABA; BPI et al.; Enbridge.

the proposed definition's use of ''may result in'' and ''any potential occurrence.'' Unlike with ''cybersecurity incident,'' where the interplay of the proposed definition with proposed Item 1.05 ensured only material incidents would become reportable, proposed Item 106(b)'s reference to ''the identification and management of risks from cybersecurity threats'' was not qualified by materiality. We are therefore adding a materiality condition to Item 106(b). As adopted, Item 106(b) will require disclosure of registrants' processes to address the material risks of potential occurrences that could reasonably result in an unauthorized effort to adversely affect the confidentiality, integrity, or availability of a registrant's information systems. Given the addition of a materiality condition to Item 106(b), we do not believe that further revision to the ''cybersecurity threat'' definition is warranted.

On ''information systems,'' we decline to change ''owned or used by'' to ''owned or operated by,'' ''owned or controlled by,'' or similar terms advanced by commenters. Commenters recognized that ''used by'' covers information resources owned by third parties. That is by design: covering third party systems is essential to the working of Item 106 of Regulation S–K and Item 1.05 of Form 8–K. As we explain above, in Section II.A.3, the materiality of a cybersecurity incident is contingent neither on where the relevant electronic systems reside nor on who owns them, but rather on the impact to the registrant. We do not believe that a reasonable investor would view a significant data breach as immaterial merely because the data are housed on a cloud service. If we were to remove ''used by,'' a registrant could evade the disclosure requirements of the final rules by contracting out all of its information technology needs to third parties. Accordingly, the definition of ''information systems'' contemplates those resources owned by third parties and used by the registrant, as proposed.

In considering commenters' suggestion to align our definitions with CIRCIA, NIST, and other Federal regulations, we observe that there is no one standard definition for these terms, and that regulators have adopted definitions based on the specific contexts applicable to their regulations. Nonetheless, we also observe that the final ''cybersecurity incident'' definition is already similar to the CIRCIA and NIST incident definitions, in that all three focus on the confidentiality, integrity, and availability of information systems.[282] Our definition of ''information systems'' also tracks CIRCIA and NIST, as all three cover ''information resources'' that are ''organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition'' of information.[283] Of course, the definitions do not match precisely, but some variation is inevitable where various Federal laws and regulations have different purposes, contexts, and goals. We therefore find that further alignment is not needed.

We decline to define any other terms. We acknowledge commenters who asked for additional guidance regarding the application of a materiality determination to cybersecurity or sought to replace materiality with a significance standard. As noted in the Proposing Release, however, we expect that registrants will apply materiality considerations as would be applied regarding any other risk or event that a registrant faces. Carving out a cybersecurity-specific materiality definition would mark a significant departure from current practice, and would not be consistent with the intent of the final rules.[284] Accordingly, we reiterate, consistent with the standard set out in the cases addressing materiality in the securities laws, that information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' [285] in making an investment decision, or if it would have ''significantly altered the 'total mix' of information made available.'' [286] Because materiality's focus on the total mix of information is from the perspective of a reasonable investor, companies assessing the materiality of cybersecurity incidents, risks, and related issues should do so through the lens of the reasonable investor. Their evaluation should take into consideration all relevant facts and circumstances, which may involve consideration of both quantitative and qualitative factors. Thus, for example, when a registrant experiences a data breach, it should consider both the immediate fallout and any longer term effects on its operations, finances, brand perception, customer relationships, and so on, as part of its materiality analysis. We also note that, given the fact-specific nature of the materiality determination, the same incident that affects multiple registrants may not become reportable at the same time, and it may be reportable for some registrants but not others.

We also decline to separately define ''cybersecurity,'' as suggested by some commenters. We do not believe such further definition is necessary, given the broad understanding of this term. To that end, we note that the cybersecurity industry itself appears not to have settled on an exact definition, and because the field is quickly evolving and is expected to continue to evolve over time, any definition codified in regulation could soon become stale as technology develops. Likewise, the final rules provide flexibility by not defining ''cybersecurity,'' allowing a registrant to determine meaning based on how it considers and views such matters in practice, and on how the field itself evolves over time.

We decline to define ''operational technology'' as suggested by some commenters because the term does not appear in the rules we are adopting.

D. Disclosure Regarding the Board of Directors' Cybersecurity Expertise

1. Proposed Amendments

Congruent with proposed Item 106(c)(2) on the board's oversight of cybersecurity risk, the Commission proposed adding 17 CFR 229.407(j) (Regulation S–K ''Item 407(j)'') to require disclosure about the cybersecurity expertise, if any, of a registrant's board members.[287] The proposed rule did not define what constitutes expertise, given the wide-ranging nature of cybersecurity skills, but included a non-exclusive list of criteria to consider, such as prior work experience, certifications, and the like. As proposed, paragraph (j) would build on existing 17 CFR 229.401(e) (Regulation S–K ''Item 401(e)'') (business experience of directors) and Item 407(h) (board risk oversight), and would be required in the annual report on Form 10–K and in the proxy or information statement when action is to be taken on the election of directors. Thus, the Proposing Release said,

[282] For CIRCIA, *see supra* note 19, at sec. 103, 136 Stat. 1039; and 6 U.S.C. 681b(c)(2)(A)(i). For NIST, *see Incident,* Glossary, NIST Computer Security Resource Center, *available at https://csrc.nist.gov/glossary/term/incident.*

[283] For CIRCIA, *see supra* note 19, at sec. 103, 136 Stat. 1039; and 44 U.S.C. 3502(8). For NIST, *see Information System,* Glossary, NIST Computer Security Resource Center, *available at https://csrc.nist.gov/glossary/term/information_system.*

[284] *See, e.g., Basic Inc.* v. *Levinson,* 485 U.S. 224, 236 (1988) (''[a]ny approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive'').

[285] *TSC Indus.* v. *Northway,* 426 U.S. 438, 449 (1976); *Matrixx Initiatives* v. *Siracusano,* 563 U.S. 27, 38–40 (2011); *Basic,* 485 U.S. at 240.

[286] *Id.* See also the definition of ''material'' in 17 CFR 230.405 [Securities Act Rule 405]; 17 CFR 240.12b–2 [Exchange Act Rule 12b–2].

[287] Proposing Release at 16601.

proposed Item 407(j) would help investors in making both investment and voting decisions.[288]

The Commission also proposed to include a safe harbor in 17 CFR 229.407(j)(2) (Regulation S–K ''Item 407(j)(2)'') providing that any directors identified as cybersecurity experts would not be deemed experts for liability purposes, including under Section 11 of the Securities Act.[289] This was intended to clarify that identified directors do not assume any duties, obligations, or liabilities greater than those assumed by non-expert directors.[290] Nor would such identification decrease the duties, obligations, and liabilities of non-expert directors relative to identified directors.[291]

2. Comments

Proposed Item 407(j) garnered significant comment. Supporters wrote that understanding a board's level of cybersecurity expertise is important to assessing a company's ability to manage cybersecurity risk.[292] For example, one commenter said ''[b]oard cybersecurity expertise serves as a useful starting point for investors to assess a company's approach to cybersecurity;'' [293] while another commenter said investors need the Item 407(j) disclosure ''[t]o cast informed votes on directors.'' [294] One comment letter submitted an academic study by the authors of the letter and noted that its findings ''underscore the importance of understanding the role of boards in cybersecurity oversight.'' [295]

By contrast, many commenters argued cybersecurity risk is not intrinsically different from other risks that directors assess with or without specific technical expertise.[296] For example, one reasoned that, given the ''ever-changing range of risks confronting a company,'' directors require ''broad-based skills in risk and management oversight, rather than subject matter expertise in one particular type of risk.'' [297] Commenters also predicted the disclosure requirement would pressure companies to retain cybersecurity experts on their board, and submitted there is not enough cybersecurity talent in the marketplace at this time for all or most companies to do so.[298] One of these commenters further contended that finding such expertise will be harder for smaller reporting companies.[299] Another commenter warned that, given the current cybersecurity talent pool, the end result may be lower diversity on boards; [300] and one said hiring cybersecurity experts to the board may come at the expense of spending on a company's cybersecurity defenses.[301] Commenters also expressed concern that the identified expert directors would face elevated risks, such as being targeted by nation states for surveillance or hackers attempting to embarrass them, thus creating a disincentive to board service.[302]

More generally, sentiment among those opposed to Item 407(j) was that the rule is overly prescriptive and in effect would direct how companies operate their cybersecurity programs.[303] As an alternative, some commenters pushed for other ways to show competency, such as identifying outside experts the board relies on for cybersecurity expertise, disclosing how frequently the board meets with the chief information security officer, listing relevant director training, and relying on adjacent technology skills.[304]

Whether they supported or opposed the proposed disclosure requirement, commenters largely endorsed the proposed Item 407(j)(2) safe harbor; its absence, they said, could make candidates with cybersecurity expertise reluctant to serve on boards.[305] Two commenters requested the Commission define ''cybersecurity expertise;'' [306] one of them said being ''duly accredited and certified as a cybersecurity professional'' should be a prerequisite, and posited specific industry certifications to establish expertise.[307] Another commenter suggested adding participation in continuing education to the 17 CFR 229.407(j)(1)(i) factors considered in assessing expertise.[308]

3. Final Amendments

After considering the comments, we are not adopting proposed Item 407(j). We are persuaded that effective cybersecurity processes are designed and administered largely at the management level, and that directors with broad-based skills in risk management and strategy often effectively oversee management's efforts without specific subject matter expertise, as they do with other sophisticated technical matters. While we acknowledge that some commenters indicated that the proposed Item 407(j) information would be helpful to investors, we nonetheless agree that it may not be material information for all registrants. We believe investors can form sound investment decisions based on the information required by Items 106(b) and (c) without the need for specific information regarding board-level expertise. And to that end, a registrant that has determined that board-level expertise is a necessary component to the registrant's cyber-risk management would likely provide that disclosure pursuant to Items 106(b) and (c).

E. Disclosure by Foreign Private Issuers

1. Proposed Amendments

The Commission proposed to establish disclosure requirements for FPIs parallel to those proposed for domestic issuers in Regulation S–K Items 106 and 407(j) and Form 8–K Item 1.05.[309] Specifically, the Commission proposed to amend Form 20–F to incorporate the requirements of proposed Item 106 and 407(j) to disclose information regarding an FPI's cybersecurity risk management, strategy, and governance.[310] With respect to

[288] *Id.*

[289] *Id.* at 16602.

[290] *Id.*

[291] *Id.*

[292] *See* letters from O. Borges; CalPERS; Prof. Choudhary; CII; Digital Directors Network (''DDN''); ISC2; Prof. Lowry et al.; NACD; PRI; SANS Institute; SM4RT Secure.

[293] *See* letter from PRI.

[294] *See* letter from CII.

[295] *See* letter from Prof. Lowry et al.

[296] *See* letters from ABA; ACC; AGA/INGAA; AICPA; Auto Innovators; BDO; BPI et al.; Business Roundtable; CAQ; CBA; Chamber; CTA; CTIA; Davis Polk; Deloitte; EEI; EIC; Hunton; ITI; IC; LTSE; Microsoft; Nareit; NAM; NDIA; NRA; NYSE; PPG; Safe Security; SCG; SIFMA; TechNet; USTelecom; Virtu; Wilson Sonsini. *See also* IAC Recommendation.

[297] *See* letter from ABA.

[298] *See* letters from ACC; APCIA; BIO; Blue Lava; Chamber; FDD; ITI (May 9, 2022); NDIA; NYSE; SCG (May 9, 2022). In this vein, a commenter requested the Commission affirm Item 407(j) is only a disclosure provision and is not intended to mandate cybersecurity expertise on the board. *See* letter from Federated Hermes.

[299] *See* letter from BIO.

[300] *See* letter from Chamber (''An unintended consequence of the SEC proposal is likely to create new barriers for underrepresented groups to move into cybersecurity leadership roles largely due to the expense of obtaining credentials and other formal certifications. The costs associated with obtaining cybersecurity-related degrees and other credentials could hinder the advancement of individuals who could otherwise rise through the ranks within the field of cybersecurity.'').

[301] *See* letter from Wilson Sonsini.

[302] *See* letters from BIO; Chevron; EEI; EIC; Hunton; Profs. Rajgopal & Sharp.

[303] *See, e.g.,* letter from ACC.

[304] *See* letters from AGA/INGAA; BPI et al.; Business Roundtable; DDN; LTSE; PRI; Wilson Sonsini.

[305] *See* letters from ABA; BIO; CII; CSA; A. Heighington; NACD; Paylocity; Prof. Perullo.

[306] *See* letters from Federated Hermes; ISC2.

[307] *See* letter from ISC2.

[308] *See* letter from SandboxAQ.

[309] Proposing Release at 16602. The Commission did not propose to amend Form 40–F, choosing rather to maintain the multijurisdictional disclosure system (''MJDS'') whereby eligible Canadian FPIs use Canadian disclosure standards and documents to satisfy SEC registration and disclosure requirements.

[310] As noted in the Proposing Release, FPIs would include the expertise disclosure only in their

incident disclosure, the Commission proposed to: (1) amend General Instruction B of Form 6–K to reference material cybersecurity incidents among the items that may trigger a current report on Form 6–K,[311] and (2) amend Form 20–F to require updated disclosure regarding incidents previously disclosed on Form 6–K.

2. Comments

A few commenters agreed that the Commission should not exempt FPIs from the proposed disclosure requirements, given they face the same threats as domestic issuers.[312] Another commenter said the Commission should not delay compliance for FPIs, for similar reasons.[313] On the other hand, one commenter said the proposal would disproportionately burden FPIs because, under its reading of the proposed amendment to General Instruction B, Form 6–K would require disclosure of all cybersecurity incidents, not just those that are material.[314] The commenter went on to say that the interplay of the European Union's Market Abuse Regulation (''MAR'') would render the proposed Form 6–K amendment particularly taxing, because MAR requires immediate announcement of non-public price sensitive information.[315]

On MJDS filers, commenters endorsed the Commission's determination not to propose to amend Form 40–F, maintaining that Canadian issuers eligible to use MJDS should be permitted to follow their domestic disclosure standards, consistent with other disclosure requirements for those registrants.[316]

3. Final Amendments

We are adopting the Form 20–F and Form 6–K amendments as proposed, with modifications that are consistent with those being applied to Item 106 of Regulation S–K and Item 1.05 of Form 8–K. We continue to believe that FPIs' cybersecurity incidents and risks are not any less important to investors' capital allocation than those of domestic registrants. We also do not find that the Form 6–K amendments unduly burden FPIs. Importantly, the language the Commission proposed to add to General Instruction B (''cybersecurity incident'') of Form 6–K would be modified by the existing language ''that which is material with respect to the issuer and its subsidiaries concerning.'' Nonetheless, for added clarity, we are including the word ''material'' before ''cybersecurity incident.'' Thus, for a cybersecurity incident to trigger a disclosure obligation on Form 6–K, the registrant must determine that the incident is material, in addition to meeting the other criteria for required submission of the Form.[317] Even registrants subject to the European Union's MAR will first have developed the relevant information for foreign disclosure or publication under MAR, so any added burden for preparing and furnishing the Form 6–K should be minor. As the Commission stated in the Proposing Release, we do not find reason to adopt prescriptive cybersecurity disclosure requirements for Form 40–F filers, given that the MJDS generally permits eligible Canadian FPIs to use Canadian disclosure standards and documents to satisfy the Commission's registration and disclosure requirements.[318] We note that such filers are already subject to the Canadian Securities Administrators' 2017 guidance on the disclosure of cybersecurity risks and incidents.[319]

F. Structured Data Requirements

1. Proposed Amendments

The Commission proposed to mandate that registrants tag the new disclosures in Inline XBRL, including by block text tagging narrative disclosures and detail tagging quantitative amounts.[320] The Proposing Release explained that the structured data requirements would make the disclosures more accessible to investors and other market participants and facilitate more efficient analysis.[321] The proposed requirements would not be unduly burdensome to registrants, the release posited, because they are similar to the Inline XBRL requirements for other disclosures.[322]

2. Comments

Commenters largely supported the proposal to require Inline XBRL tagging of the new disclosures, as structured data would enable automated extraction and analysis.[323] Opposition to the requirement centered on filer burden, including an argument that, given the time-sensitive nature of the Item 1.05 Form 8–K disclosure, mandating structured data tagging would unduly add to companies' burden in completing timely reporting.[324]

3. Final Amendments

After considering comments, we are adopting the structured data requirements as proposed, with a staggered compliance date of one year.[325] We are not persuaded that Inline XBRL tagging will unduly add to companies' burden in preparing and filing Item 1.05 Form 8–K in a timely fashion, and we believe such incremental costs are appropriate given the significant benefits to investors. Compared to the Inline XBRL tagging companies will already be performing for their financial statements, the tagging requirements here are less extensive and complex. Inline XBRL tagging will enable automated extraction and analysis of the information required by the final rules, allowing investors and other market participants to more efficiently identify responsive disclosure, as well as perform large-scale analysis and comparison of this information across registrants.[326] The Inline XBRL requirement will also enable automatic comparison of tagged disclosures against prior periods. If we were not to adopt the Inline XBRL requirement as suggested by some commenters, some of the benefit of the new rules would be diminished. However, we are delaying compliance with the structured data requirements for one year beyond initial compliance with the disclosure requirements. This

annual reports, as they are not subject to Commission rules for proxies and information statements.

[311] A registrant is required under Form 6–K to furnish copies of all information that it: (i) makes or is required to make public under the laws of its jurisdiction of incorporation, (ii) files, or is required to file under the rules of any stock exchange, or (iii) otherwise distributes to its security holders.

[312] *See* letters from CSA; Cybersecurity Coalition; Prof. Perullo; Tenable.

[313] *See* letter from Crindata.

[314] *See* letter from SIFMA.

[315] *Id.*

[316] *See* letters from ACLI; BCE; Cameco Corporation; CBA; Sun Life Financial Inc.

[317] *See supra* note 311 for the other criteria.

[318] Proposing Release at 16603.

[319] Canadian Securities Administrators, *CSA Multilateral Staff Notice 51–347—Disclosure of cyber security risks and incidents* (Jan. 19, 2017).

[320] Proposing Release at 16603.

[321] *Id.*

[322] *Id.*

[323] *See* letters from AICPA; CAQ; Crowe LLP; E&Y; FDD; K. Fuller; NACD; PWC; Professors Lawrence Trautman & Neal Newman; XBRL US.

[324] *See* letters from NYC Bar; SFA.

[325] We have incorporated modifications of a technical nature to the regulatory text.

[326] These considerations are generally consistent with objectives of the recently enacted Financial Data Transparency Act of 2022, which directs the establishment by the Commission and other financial regulators of data standards for collections of information, including with respect to periodic and current reports required to be filed or furnished under Exchange Act Sections 13 and 15(d). Such data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. *See* James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, tit. LVIII, 136 Stat. 2395, 3421–39 (2022).

approach should both help lessen any compliance burden and improve data.

G. Applicability to Certain Issuers

1. Asset-Backed Issuers

The Commission proposed to amend Form 10–K to clarify that an asset-backed issuer, as defined in 17 CFR 229.1101 (Regulation AB ''Item 1101''), that does not have any executive officers or directors may omit the information required by proposed Item 106(c).[327] The Commission noted that asset-backed issuers would likewise be exempt from proposed Item 407(j) pursuant to existing Instruction J to Form 10–K.[328] The Commission further requested comment on whether to generally exempt asset-backed issuers from the proposed rules.

One commenter stated that the proposed rules should not apply to issuers of asset-backed securities, given that they are limited purpose or passive special purpose vehicles with limited activities, no operations or businesses, and no information systems.[329] The commenter also opposed applying the proposed rules to other transaction parties (such as the sponsor, servicer, originator, and trustee), because such parties are neither issuers of nor obligors on an asset-backed security, and ''it is extraordinarily unlikely that a transaction party's financial performance or position would be impacted by a cybersecurity incident to such an extent as to impede its ability to perform its duties and responsibilities to the securitization transaction.'' [330] The commenter acknowledged that cybersecurity disclosure rules may make sense for servicers of asset-backed securities, but counseled that any new rules should be tailored to such entities, rather than applying the proposed rules.[331]

We are exempting asset-backed securities issuers from the final rules.[332] We agree with the commenter that the final rules would not result in meaningful disclosure by asset-backed issuers. In particular, we are persuaded by the fact that asset-backed issuers are typically special purpose vehicles whose activities are limited to receiving or purchasing, and transferring or selling, assets to an issuing entity [333] and, accordingly, do not own or use information systems, whereas the final rules are premised on an issuer's ownership or use of information systems.[334] To the extent that a servicer or other party to an asset-backed security transaction is a public company, it will be required to comply with the final rules with respect to information systems it owns or uses. Therefore, an investor in an asset-backed security who wants to assess the cybersecurity of transaction parties will be able to do so for those that are public companies. The Commission may consider cybersecurity disclosure rules specific to asset-backed securities at a later date.

2. Smaller Reporting Companies

In the Proposing Release, the Commission did not include an exemption or alternative compliance dates or transition accommodations for smaller reporting companies, but it did request comment on whether to do so.[335] The Commission noted that smaller companies may face equal or greater cybersecurity risk than larger companies, such that cybersecurity disclosures may be particularly important for their investors.[336]

A few commenters advocated an exemption for smaller reporting companies, asserting that they face outsized costs from the proposal and lower cybersecurity risk.[337] And some commenters called for a longer compliance phase-in period for smaller reporting companies, to help them mitigate their cost burdens and benefit from the compliance and disclosure experience of larger companies.[338] Other commenters opposed an exemption for smaller reporting companies,[339] in part because they may face equal [340] or greater [341] cybersecurity risk than larger companies, or because investors' relative share in a smaller company may be higher, such that small companies' cybersecurity risk ''may actually embody the most pressing cybersecurity risk to an investor.'' [342]

Consistent with the proposal, we decline to exempt smaller reporting companies. We believe the streamlined requirements of the final rules will help reduce some of the costs associated with the proposal for all registrants, including smaller reporting companies. Also, we do not believe that an additional compliance period is needed for smaller reporting companies with respect to Item 106, as this information is factual in nature regarding a registrant's existing cybersecurity strategy, risk management, and governance, and so should be readily available to those companies to assess for purposes of preparing disclosure. Finally, given the significant cybersecurity risks smaller reporting companies face and the outsized impacts that cybersecurity incidents may have on their businesses, their investors need access to timely disclosure on material cybersecurity incidents and the material aspects of their cybersecurity risk management and governance. However, we agree with commenters that stated smaller reporting companies would likely benefit from additional time to comply with the incident disclosure requirements. Accordingly, as discussed below, we are providing smaller reporting companies an additional 180 days from the non-smaller reporting company compliance date before they must begin complying with Item 1.05 of Form 8–K.

H. Need for New Rules and Commission Authority

Some commenters argued that the 2011 Staff Guidance and 2018 Interpretive Release are sufficient to compel adequate cybersecurity disclosure, obviating the need for new rules.[343] In this regard, two commenters highlighted the Proposing Release's statement that cybersecurity disclosures ''have improved since the issuance of

[327] Proposing Release at 16600.

[328] *Id.* at 16601.

[329] *See* letter from SFA.

[330] *Id.*

[331] *Id.*

[332] *See* General Instruction G to Form 8–K, and General Instruction J to Form 10–K.

[333] *See* letter from SFA (citing the definitions contained in 17 CFR 229.1101(b), 17 CFR 230.191, and 17 CFR 240.3b–19).

[334] The definition of ''cybersecurity incident'' focuses on ''a registrant's information systems.'' Likewise, the definition of ''cybersecurity threat'' concerns ''a registrant's information systems or any information residing therein.''

[335] Proposing Release at 16601.

[336] *Id.* at 16613.

[337] *See* letters from BIO; NDIA.

[338] *See* letters from BIO; BDO; NACD; Nasdaq. In addition, the Commission's Small Business Capital Formation Advisory Committee highlights generally in its parting perspectives letter that ''exemptions, scaling, and phase-ins for new requirements where appropriate, allows smaller companies to build their businesses and balance the needs of companies and investors while promoting strong and effective U.S. public markets.'' *See* Parting Perspectives Letter, U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee (Feb. 28, 2023), *available at https://www.sec.gov/files/committee-perspectives-letter-022823.pdf. See also* U.S. Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation, *Annual Report Fiscal Year 2022* (''2022 OASB Annual Report''), *available at https://www.sec.gov/files/2022-oasb-annual-report.pdf,* at 83 (recommending generally that in engaging in rulemaking that affects small businesses, the Commission tailor the disclosure and reporting framework to the complexity and size of operations of companies, either by scaling obligations or delaying compliance for the smallest of the public companies).

[339] *See* letters from CSA; Cybersecurity Coalition; NASAA; Prof. Perullo; Tenable.

[340] *See* letter from Cybersecurity Coalition.

[341] *See* letters from NASAA and Tenable.

[342] *See* letter from Prof. Perullo.

[343] *See* letters from BPI et al.; CTIA; ISA; ITI; SCG; SIFMA; Virtu.

the 2011 Staff Guidance and the 2018 Interpretive Release.'' [344] Another commenter said that Commission staff's findings that certain cybersecurity incidents were reported in the media but not disclosed in a registrant's filings and that registrants' disclosures provide different levels of specificity suggested that ''existing guidance is working, because each registrant should always be conducting an individualized, case-by-case analysis'' and therefore disclosures ''should expectedly vary significantly.'' [345] One commenter questioned whether the materials cited in the Proposing Release support the Commission's conclusion there that current cybersecurity reporting may be inconsistent, not timely, difficult to locate, and contain insufficient detail.[346] Two commenters recommended that the Commission ''reemphasize'' the prior guidance and ''utilize its enforcement powers to ensure public companies continue to report material cyber incidents.'' [347] One commenter provided the results from a survey it conducted of its members, finding that ''only 10–20% of the 192 respondents reported that their shareholders have requested information or asked a question on'' various cybersecurity topics, while ''64.3% of the respondents indicated that their investors had not engaged with them'' on those topics.[348] Another commenter pointed to a 2022 study finding that less than 1% of cybersecurity breaches are ''material,'' and asserted that current disclosures adequately reflect such a level of material breaches.[349] Some commenters also stated that the Commission should forgo regulation of cybersecurity disclosure because other agencies' regulations are sufficient.[350]

Other commenters, by contrast, stated that the 2011 Staff Guidance and the 2018 Interpretive Release, while helpful, have not been sufficient to provide investors with the material information they need. One such commenter explained that ''[t]he Commission's past guidance, while in line with our views, does not go far enough. The Proposed Rule is needed to provide clarity regarding what, when, and how to disclose material cybersecurity incident information . . . The improved standardization of disclosures included in the Proposed Rule adds clarity to the reporting process.'' [351] Another commenter stated that ''[t]he lack of timely, comprehensive disclosure of material cyber events exposes investors and the community at large to potential harm.'' [352]

As the Commission explained in the Proposing Release, Commission staff has observed insufficient and inconsistent cybersecurity disclosure notwithstanding the prior guidance.[353] Here, in response to commenters, we emphasize that the final rules supplement the prior guidance but do not replace it. The final rules are aimed at remedying the lack of material cybersecurity incident disclosure, and the scattered, varying nature of cybersecurity strategy, risk management, and governance disclosure, the need for which some commenters confirmed.[354] The final rules therefore add an affirmative cybersecurity incident disclosure obligation, and they centralize cybersecurity risk management, strategy, and governance disclosure. While we acknowledge commenters who noted the improvements to certain cybersecurity-related disclosures in response to the 2018 Interpretive Release, and we agree there have been improvements in the areas that the guidance touched upon, we note that the guidance does not mandate consistent or comparable public disclosure of material incidents or otherwise address the topics that are the subject of the final rules. And in response to commenters who suggested that other agencies' rules on cybersecurity reporting are sufficient, we note that, unlike the final rules, such rules are not tailored to the informational needs of investors; instead, they focus on the needs of regulators, customers, and individuals whose data have been breached. Accordingly, we believe the final rules are necessary and appropriate in the public interest and for the protection of investors, consistent with the Commission's authority.

We also note that the 2018 Interpretive Release remains in place, as it treats a number of topics not covered by the new rules. Those topics include, for instance, incorporating cybersecurity-related information into risk factor disclosure under Regulation S–K Item 105, into management's discussion and analysis under Regulation S–K Item 303, into the description of business disclosure under Regulation S–K Item 101, and, if there is a relevant legal proceeding, into the Regulation S–K Item 103 disclosure.[355] The 2018 Interpretive Release also notes the Commission's expectation that, consistent with Regulation S–X, a company's financial reporting and control systems should be designed to provide reasonable assurance that information about the range and magnitude of the financial impacts of a cybersecurity incident would be incorporated into its financial statements on a timely basis as that information becomes available.[356]

With respect to the Commission's authority to adopt the final rules, some commenters asserted that the Commission does not have the authority to regulate cybersecurity disclosure.[357] These commenters argued that the Proposing Release did not adequately explain which statutory provisions the Commission was relying on to propose the disclosure requirements, that the statutory provisions the Commission did identify do not provide a legal basis to require the proposed disclosures, that the release did not show the requirements were necessary or appropriate to achieve statutory goals,

[344] *See* letters from Virtu (citing Proposing Release at 16594); BPI et al. (pointing to the Proposing Release's citation of Stephen Klemash and Jamie Smith, *What companies are disclosing about cybersecurity risk and oversight,* EY (Aug. 10, 2020), *available at https://www.ey.com/en_us/board-matters/whatcompanies-are-disclosing-about-cybersecurity-riskand-oversight*).

[345] *See* letter from ITI.

[346] *See* letter from BPI et al. (discussing Moody's Investors Service, Research Announcement, *Cybersecurity disclosures vary greatly in high-risk industries* (Oct. 3, 2019); NACD et al., *The State of Cyber-Risk Disclosures of Public Companies* (Mar. 2021), at 3).

[347] *See* letters from Virtu; SIFMA.

[348] *See* letter from SCG.

[349] *See* letter from ISA.

[350] *See, e.g.,* letters from CTIA (''The wireless industry is also regulated by the FCC, in several relevant respects . . . In addition to FCC requirements, wireless carriers comply with disclosure obligations under state law, which may require notices to individual consumers and state regulators. Providers are also subject to FCC reporting requirements regarding network outages.''); Sen. Portman (''Congress intended that the Cyber Incident Reporting for Critical Infrastructure Act be the primary means for reporting of cyber incidents to the Federal Government, that such reporting be through CISA, and that the required rule occupy the space regarding cyber incident reporting''); SIFMA (stating the proposal ''is unwarranted in light of other, existing regulations and the Commission's lack of statutory responsibility for cybersecurity regulation of public companies'').

[351] *See* letter from CalPERS. *Accord* letter from Better Markets (''Even in instances where a company discloses relevant cybersecurity incidents, board and management oversights and abilities, and policies and procedures in a comprehensive manner, the information is scattered throughout various sections of the Form 10–K. While the 2018 guidance adopted by the Commission successfully identified potential disclosure requirements for companies to think about when disclosing cybersecurity risks, governance, and incidents, it did not solve the problem confronting investors who must search various sections of the Form 10–K for the disclosures.'').

[352] *See* letter from CII.

[353] Proposing Release at 16594, 16599, 16603.

[354] *See supra* notes 351 and 352.

[355] *See* 2018 Interpretive Release.

[356] *Id.*

[357] *See* letters from International Association of Drilling Contractors; NRF; Virtu.

and that the requirements implicate the major questions doctrine and non-delegation principles. Additionally, one commenter stated that ''Congress intended that [CIRCIA] be the primary means for reporting of cyber incidents to the federal government.'' [358]

We disagree. Disclosure to investors is a central pillar of the Federal securities laws. The Securities Act of 1933 ''was designed to provide investors with full disclosure of material information concerning public offerings of securities.'' [359] In addition, the Securities Exchange Act of 1934 imposes ''regular reporting requirements on companies whose stock is listed on national securities exchanges.'' [360] Together, the provisions of the Federal securities laws mandating release of information to the market—and authorizing the Commission to require additional disclosures—have prompted the Supreme Court to ''repeatedly'' describe ''the fundamental purpose'' of the securities laws as substituting ''a philosophy of full disclosure for the philosophy of caveat emptor.'' [361] This bedrock principle of ''[d]isclosure, and not paternalistic withholding of accurate information, is the policy chosen and expressed by Congress.'' [362] Moreover, ''[u]nderlying the adoption of extensive disclosure requirements was a legislative philosophy: 'There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.''' [363]

Several provisions of the Federal securities laws empower the Commission to carry out these fundamental Congressional objectives. Under the Securities Act, the Commission has authority to require, in a publicly filed registration statement, that issuers offering and selling securities in the U.S. public capital markets include information specified in Schedule A of the Act, including the general character of the issuer's business, the remuneration paid to its officers and directors, details of its material contracts and certain financial information, as well as ''such other information . . . as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.'' [364] In addition, under the Exchange Act, issuers of securities traded on a national securities exchange or that otherwise have total assets and shareholders of record that exceed certain thresholds must register those securities with the Commission by filing a registration statement containing ''[s]uch information, in such detail, as to the issuer'' in respect of, among other things, ''the organization, financial structure and nature of the [issuer's] business'' as the Commission by rule or regulation determines to be in the public interest or for the protection of investors.[365] These same issuers must also provide ''such information and documents . . . as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with [a] . . . registration statement'' as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.[366] Separately, these issuers also must disclose ''on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer . . . as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.'' [367]

These grants of authority are intentionally broad.[368] Congress designed them to give the Commission, which regulates dynamic aspects of a market economy, the power and ''flexibility'' to address problems of inadequate disclosure as they arose.[369] As the United States Court of Appeals for the District of Columbia Circuit explained, ''[r]ather than casting disclosure rules in stone, Congress opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable.'' [370]

The Commission has long relied on the broad authority in these and other statutory provisions [371] to prescribe rules to ensure that the public company disclosure regime provides investors with the information they need to make informed investment and voting decisions, in each case as necessary or appropriate in the public interest or for the protection of investors.[372] Indeed, the Commission's predecessor agency,[373] immediately upon enactment of the Securities Act, relied upon such authority to adopt Form A–1, precursor

[358] *See* letter from Sen. Portman. We address this comment in Section II.A.3, *supra.*

[359] *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 195 (1976); *accord Pinter* v. *Dahl,* 486 U.S. 622 (1988) (''[t]he primary purpose of the Securities Act is to protect investors by requiring publication of material information thought necessary to allow them to make informed investment decisions concerning public offerings of securities in interstate commerce'').

[360] *Ernst & Ernst,* 425 U.S. at 195 (1976); *see also Lawson* v. *FMR LLC,* 571 U.S. 429, 451 (2014) (referring to the Sarbanes-Oxley Act's ''endeavor to 'protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws''' (quoting Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745, 745 (2002))).

[361] *Lorenzo* v. *SEC,* 139 S. Ct. 1094, 1103 (2019); *accord Santa Fe Indus.* v. *Green,* 430 U.S. 462, 477–778 (1977); *Affiliated Ute Citizens of Utah* v. *United States,* 406 U.S. 128, 151 (1972); *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 186 (1963).

[362] *Basic,* 485 U.S. at 234. Congress also legislated on the core premise that ''public information generally affects stock prices,'' *Halliburton Co.* v. *Erica P. John Fund, Inc.,* 573 U.S. 258, 272 (2014), and those prices can significantly affect the economy, 15 U.S.C. 78b(2) and (3).

[363] *Basic,* 485 U.S. at 230 (quoting H.R. Rep. No. 73–1383, at 11 (1934)); *accord SEC* v. *Zandford,* 535 U.S. 813, 819 (2002) (''Among Congress' objectives in passing the [Exchange] Act was 'to insure honest securities markets and thereby promote investor confidence' after the market crash of 1929'' (quoting *United States* v. *O'Hagan,* 521 U.S. 642, 658 (1997))); *Nat'l Res. Def. Council, Inc.* v. *SEC,* 606 F.2d 1031, 1050 (D.C. Cir. 1979) (the Securities Act and Exchange Act ''were passed during an unprecedented economic crisis in which regulation of the securities markets was seen as an urgent national concern,'' and the Commission ''was necessarily given very broad discretion to promulgate rules governing corporate disclosure,'' which is ''evident from the language in the various statutory grants of rulemaking authority'').

[364] Securities Act Section 7(a)(1) and Schedule A.

[365] Exchange Act Sections 12(b) and 12(g).

[366] Exchange Act Section 13(a). Other issuers that are required to comply with the reporting requirements of Section 13(a) include those that voluntarily register a class of equity securities under Exchange Act Section 12(g)(1) and, pursuant to Exchange Act 15(d), issuers that file a registration statement under the Securities Act that becomes effective.

[367] Exchange Act Section 13(l).

[368] *See Natural Resources Defense Council, Inc.* v. *SEC,* 606 F.2d 1031, 1045 (1979); *see also* H.R. Rep. No. 73–1383, at 6–7 (1934).

[369] Courts have routinely applied and interpreted the Commission's disclosure regulations without suggesting that the Commission lacked the authority to promulgate them. *See, e.g., SEC* v. *Life Partners Holdings, Inc.,* 854 F.3d 765 (5th Cir. 2017) (applying regulations regarding disclosure of risks and revenue recognition); *SEC* v. *Das,* 723 F.3d 943 (8th Cir. 2013) (applying Regulation S–K provisions regarding related-party transactions and executive compensation); *Panther Partners Inc.* v. *Ikanos Commc'ns, Inc.,* 681 F.3d 114 (2d Cir. 2012) (applying Item 303 of Regulation S–K, which requires disclosure of management's discussion and analysis of financial condition); *SEC* v. *Goldfield Deep Mines Co.,* 758 F.2d 459 (9th Cir. 1985) (applying disclosure requirements for certain legal proceedings).

[370] *Natural Resources Defense Council, Inc.,* 606 F.2d at 1045.

[371] Securities Act Section 19(a); Exchange Act Section 3(b); and Exchange Act Section 23(a).

[372] In considering whether a particular item of disclosure is necessary or appropriate in the public interest or for the protection of investors, the Commission considers both the importance of the information to investors as well as the costs to provide the disclosure. In addition, when engaged in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act.

[373] Prior to enactment of the Exchange Act, the Federal Trade Commission was empowered with administration of the Securities Act.

to today's Form S–1 registration statement, to require disclosure of information including, for example, a list of states where the issuer owned property and was qualified to do business and the length of time the registrant had been engaged in its business—topics that are not specifically enumerated in Schedule A of the Securities Act.[374] Form A–1 also required disclosures related to legal proceedings, though there is no direct corollary in Schedule A.[375]

Consistent with the statutory scheme that Congress enacted, the Commission has continued to amend its disclosure requirements over time in order to respond to marketplace developments and investor needs. Accordingly, over the last 90 years, the Commission has eliminated certain disclosure items and adopted others pursuant to the authority in Sections 7 and 19(a) of the Securities Act and Sections 3(b), 12, 13, 15, and 23(a) of the Exchange Act. Those amendments include the adoption of an integrated disclosure system in 1982, which reconciled the various disclosure items under the Securities Act and the Exchange Act and was intended to ensure that ''investors and the marketplace have been provided with meaningful, nonduplicative information upon which to base investment decisions.'' [376]

In keeping with Congressional intent, the Commission's use of its authority has frequently focused on requiring disclosures that will give investors enhanced information about risks facing registrants. For example, in 1980, the Commission adopted Item 303 of Regulation S–K to require registrants to include in registration statements and annual reports a management's discussion and analysis of financial condition (''MD&A''). This discussion is intended to allow investors to understand the registrant's ''financial condition, changes in its financial condition and results of operation'' through the eyes of management.[377] Item 303 includes a number of specific disclosure items, such as requiring the identification of any known trends or uncertainties that will result in, or that are reasonably likely to result in, a material change to the registrant's liquidity,[378] a material change in the mix and relative cost of the registrant's capital resources,[379] or a material impact on net sales, revenues, or income from continuing operations.[380] Item 303 also requires registrants to ''provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operation.'' [381] The Commission developed the MD&A disclosure requirements to supplement and provide context to the financial statement disclosures previously required by the Commission.

A few years later, in 1982, the Commission codified a requirement that dated back to the 1940s for registrants to include a ''discussion of the material factors that make an investment in the registrant or offering speculative or risky,'' commonly referred to as ''risk factors.'' [382] By definition, these disclosures encompass a discussion of risks, or prospective future events or losses, that might affect a registrant or investment. The initial risk factor disclosure item provided examples of possible risk factors, such as the absence of an operating history of the registrant, an absence of profitable operations in recent periods, the nature of the business in which the registrant is engaged or proposes to engage, or the absence of a previous market for the registrant's common equity.[383]

In subsequent years, the Commission expanded both the scope of risks about which registrants must provide disclosures and the granularity of those disclosures. For example, in 1997, the Commission first required registrants to disclose quantitative information about market risk.[384] That market risk disclosure included requirements to present ''separate quantitative information . . . to the extent material'' for different categories of market risk, such as ''interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk.'' [385] Under these market risk requirements, registrants must also disclose various metrics such as ''value at risk'' and ''sensitivity analysis disclosures.'' In addition, registrants must provide certain qualitative disclosures about market risk, to the extent material.[386]

Each of these disclosure items reflects the Commission's long-standing view that understanding the material risks faced by a registrant and how the registrant manages those risks can be just as important to assessing its business operations and financial condition as knowledge about its physical assets or material contracts. Indeed, investors may be unable to assess the value of those assets or contracts adequately without appreciating the material risks to which they are subject.[387]

---

[374] Items 3 through 5 of Form A–1; *see* Release No. 33–5 (July 6, 1933) [not published in the **Federal Register**]. The Commission's disclosure requirements no longer explicitly call for this information.

[375] This early requirement called for a statement of all litigation that may materially affect the value of the security to be offered, including a description of the origin, nature, and names of parties to the litigation. Item 17 of Form A–1. The Commission has retained a disclosure requirement related to legal proceedings in both Securities Act registration statements and in Exchange Act registration statements and periodic reports. 17 CFR 229.103.

[376] *See Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)]. Even prior to the adoption of the integrated disclosure system in 1982, the Commission addressed anticipated disclosure issues in particular areas through the use of Guides for the Preparation and Filing of Registration Statements. *See Proposed Revision of Regulation S–K and Guides for the Preparation and Filing of Registration Statements and Reports,* Release No. 33–6276 (Dec. 23, 1980) [46 FR 78 (Jan. 2, 1981)] (discussing the use of Guides); *see also Notice of Adoption of Guide 59 and of Amendments to Guides 5 and 16 of the Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933,* Release No. 33–5396 (Jun. 1, 1973) (discussing, in response to fuel shortages in 1974, the obligation to disclose any material impact that potential fuel shortages might have and adding a new paragraph relating to disclosure by companies engaged in the gathering, transmission, or distribution of natural gas).

[377] *See Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures,* Release No. 33–6231 (Sept. 2, 1980) [45 FR 63630 (Sept. 25, 1980)]; *see also* 17 CFR 229.303(a).

[378] *See* 17 CFR 229.303(b)(1)(i).

[379] *See* 17 CFR 229.303(b)(1)(ii)(B).

[380] *See* 17 CFR 229.303(b)(2)(ii).

[381] 17 CFR 229.303(b).

[382] *See Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] (''Release No. 33–6383'') (codifying the risk factor disclosure requirement as Item 503(c) of Regulation S–K); *see also* 17 CFR 229.105(a). Prior to 1982, the Commission stated in guidance that, if the securities to be offered are of a highly speculative nature, the registrant should provide ''a carefully organized series of short, concise paragraphs summarizing the principal factors that make the offering speculative.'' *See* Release No. 33–4666 (Feb. 7, 1964) [29 FR 2490 (Feb. 15, 1964)]. A guideline to disclose a summary of risk factors relating to an offering was first set forth by the Commission in 1968 and included consideration of five factors that may make an offering speculative or risky, including with respect to risks involving ''a registrant's business or proposed business.'' *See* Guide 6, in *Guides for the Preparation and Filing of Registration Statements,* Release No. 33–4936 (Dec. 9, 1968) [33 FR 18617 (Dec. 16, 1968)] (''Release No. 33–4936'').

[383] *See* Release No. 33–6383.

[384] *See Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments and Disclosure of Quantitative and Qualitative Information About Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments, and Derivative Commodity Instruments,* Release No. 33–7386 (Jan. 31, 1997) [62 FR 6044 (Feb. 10, 1997)] (''Release No. 33–7386'') (''In light of those losses and the substantial growth in the use of market risk sensitive instruments, the adequacy of existing disclosures about market risk emerged as an important financial reporting issue.''); *see also* 17 CFR 229.305.

[385] 17 CFR 229.305(a)(1).

[386] *See* 17 CFR 229.305(b).

[387] As early as the 1940s, the Commission issued stop order proceedings under Section 8(d) of the

Continued

In addition to risk-focused disclosures, over the decades, the Commission has also required registrants to provide information on a diverse range of topics that emerged as significant to investment or voting decisions, such as the extent of the board's role in the risk oversight of the registrant,[388] the effectiveness of a registrant's disclosure controls and procedures,[389] related-party transactions,[390] corporate governance,[391] and compensation discussion and analysis,[392] among many other topics, including on topics related to particular industries,[393] offering structures,[394] and types of transactions.[395] In all these instances, the Commission's exercise of its authority was guided by the baseline of the specific disclosures articulated by Congress. But, as Congress expressly authorized,[396] the Commission's exercise of its disclosure authority has not been narrowly limited to those statutorily prescribed disclosures—instead, it has been informed by both those disclosures and the need to protect investors.[397] Many of these disclosures have since become essential elements of the public company reporting regime that Congress established.

To ensure the transparency that Congress intended when it authorized the Commission to promulgate disclosure regulations in the public interest or to protect investors,[398] the Commission's regulations must—as they have over time—be updated to account for changing market conditions, new technologies, new transaction structures, and emergent risks. In this regard, we disagree with one commenter's assertion that the Commission's disclosure authority is ''limited to specific types of information closely related to the disclosing company's value and financial condition.'' [399] The commenter misstates the scope and nature of the Commission's authority. There is a wealth of information about a company apart from that which appears in the financial statements that is related to a company's value and financial condition, including the material risks (cybersecurity and otherwise) a company faces. Nor did Congress dictate that the Commission limit disclosures only to information that is ''closely related'' to a company's ''value and financial condition.'' By also empowering the Commission to require ''such other information . . . as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors,'' [400] Congress recognized that there is information that is vital for investors to understand in making informed investment decisions but does not directly relate to a company's value and financial condition.[401]

The narrow reading of the Commission's authority advocated by the commenter would foreclose many of these longstanding elements of disclosure that market participants have come to rely upon for investor protection and fair dealing of securities.[402] Moreover, Congress itself has amended, or required the Commission to amend, the Federal securities laws many times. But Congress has not restricted the Commission's disclosure authority; rather, Congress has typically sought to further expand and supplement that authority with additional mandated disclosures.

We also reject the commenter's suggestion that the final rules are an attempt to ''usurp the undelegated role of maintaining cyber safety in America.'' [403] The final rules are indifferent as to whether and to what degree a registrant may have identified and chosen to manage a cybersecurity risk. Rather, the final rules reflect the reality, as acknowledged by the same commenter, that ''[c]ybersecurity is . . . an area of growing importance to companies across the world.'' [404] When those companies seek to raise capital from investors in U.S. public markets, we believe it is appropriate that they share information about whether and, if so, how they are managing material cybersecurity risks so that investors can make informed investment and voting decisions consistent with their risk tolerance and investment objectives.

Finally, with respect to the commenter's contention that a broad reading of the Commission's disclosure authority could raise separation of powers concerns,[405] we note that a statutory delegation is constitutional as long as Congress lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.[406] In this instance, Congress has required that any new disclosure requirements be ''necessary or appropriate in the public interest or for the protection of investors,'' [407] which has guided the Commission's rulemaking authority for nearly a century. We therefore believe that the final rules are fully consistent with constitutional principles regarding separation of powers.

I. Compliance Dates

The final rules are effective September 5, 2023. With respect to Item 106 of Regulation S–K and item 16K of Form 20–F, all registrants must provide such disclosures beginning with annual reports for fiscal years ending on or after December 15, 2023. With respect to compliance with the incident disclosure requirements in Item 1.05 of Form 8–K and in Form 6–K, all registrants other than smaller reporting companies must begin complying on DECEMBER 18, 2023. As discussed above, smaller reporting companies are being given an additional 180 days from the non-smaller reporting company compliance date before they must begin complying with Item 1.05 of Form 8–K, on June 15, 2024.

Securities Act in which the Commission suspended the effectiveness of previously filed registration statements due, in part, to inadequate disclosure about speculative aspects of the registrant's business. *See* In the Matter of Doman Helicopters, Inc., 41 S.E.C. 431 (Mar. 27, 1963); In the Matter of Universal Camera Corp., 19 S.E.C. 648 (June 28, 1945); *see also* Release No. 33–4936.

[388] *See* 17 CFR 229.407.

[389] *See* 17 CFR 229.307.

[390] 17 CFR 229.404.

[391] 17 CFR 229.407.

[392] 17 CFR 229.402.

[393] *See* 17 CFR 229.1200–1208 (Disclosure by Registrants Engaged in Oil and Gas Activities); 17 CFR 1300–1305 (Disclosure by Registrants Engaged in Mining Operations); 17 CFR 1400–1406 (Disclosure by Bank and Savings and Loan Registrants).

[394] *See* 17 CFR Subpart 1100 (Asset-Backed Securities).

[395] *See* 17 CFR subpart 900 (Roll-Up Transactions); 17 CFR 229.1000–1016 (Mergers and Acquisitions).

[396] *See supra* notes 364 to 366 and accompanying text.

[397] For example, Item 303(b)(2) of Regulation S–K calls for information well beyond the basic profit and loss statement specified in Schedule A by requiring issuers to disclose any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income—and the extent to which income was so affected—so that investors can better understand the reported results of operations.

[398] *See supra* notes 368 to 370 and accompanying text.

[399] *See* letter from NRF.

[400] Securities Act Section 7(a).

[401] For example, Schedule A calls for information regarding, among other things: the names of the directors or persons performing similar functions, the disclosure of owners of record of more than 10% of any class of stock of an issuer; commissions paid to underwriters; the renumeration paid to directors and certain officers; and information about certain material contracts.

[402] *See* letter from NRF.

[403] *Id.*

[404] *Id.*

[405] *Id.*

[406] *Gundy* v. *U.S.,* 139 S. Ct. 2116, 2123 (plurality op.).

[407] *See* Securities Act Section 19(a) and Exchange Act Section 23(a); *accord Nat'l Res. Def. Council,* 606 F.2d at 1045, 1050–52.

With respect to compliance with the structured data requirements, as noted above, all registrants must tag disclosures required under the final rules in Inline XBRL beginning one year after the initial compliance date for any issuer for the related disclosure requirement. Specifically:

- For Item 106 of Regulation S–K and item 16K of Form 20–F, all registrants must begin tagging responsive disclosure in Inline XBRL beginning with annual reports for fiscal years ending on or after December 15, 2024; and
- For Item 1.05 of Form 8–K and Form 6–K all registrants must begin tagging responsive disclosure in Inline XBRL beginning on DECEMBER 18, 2024.

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act [408] and Section 3(f) of the Exchange Act [409] direct the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [410] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. The discussion below addresses the economic effects of the final rules, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.

Where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the final rules. In some cases, however, we are unable to quantify the potential economic effects because we lack information necessary to provide a reasonable estimate. For example, we lack the data to estimate any potential decrease in mispricing that might result from the rule, because we do not know how registrants' disclosures of cybersecurity risk and governance will change or which cybersecurity incidents that would go undisclosed under the current guidance will be disclosed under the final rules. Where we are unable to quantify the economic effects of the final rules, we provide a qualitative assessment of the effects, and of the impacts of the final rule on efficiency, competition, and capital formation. To the extent applicable, the views of commenters relevant to our analysis of the economic effects, costs, and benefits of these rules are included in the discussion below.

While cybersecurity incident disclosure has become more frequent since the issuance of the 2011 Staff Guidance and 2018 Interpretive Release, there is concern that variation persists in the timing, content, and format of registrants' existing cybersecurity disclosure, and that such variation may harm investors (as further discussed below).[411] When disclosures about cybersecurity breaches are made, they may not be timely or consistent. Because of the lack of consistency in when and how companies currently disclose incidents, it is difficult to assess quantitatively the timeliness of disclosures under current practices. According to Audit Analytics data, in 2021, it took on average of 42 days for companies to discover breaches, and then it took an average of 80 days and a median of 56 days for companies to disclose a breach after its discovery.[412] These data do not tell us when disclosure occurs relative to companies' materiality determinations. That said, the report notes that some breaches were disclosed for the first time to investors in periodic reports, the timing of which are unrelated to the timing of the incident or the company's assessment of the materiality of the incident. This implies at least some cybersecurity incident disclosures were not timely with respect to determination of materiality. Because cybersecurity incidents can significantly affect registrants' stock prices, delayed disclosure results in mispricing of securities, harming investors.[413] Incident disclosure practices, with respect to both location and content, currently vary across registrants. For example, some registrants disclose incidents through Form 10–K, others Form 8–K, and still others on a company website, or in a press release. Some disclosures do not discuss whether the cybersecurity incident had material impact on the company.[414] Additionally, evidence suggests registrants may be underreporting cybersecurity incidents.[415] More timely, informative, and standardized disclosure of material cybersecurity incidents may help investors to assess an incident's impact better.

While disclosures about cybersecurity risk management, strategy, and governance have been increasing at least since the issuance of the 2018 Interpretive Release, they are not currently provided by all registrants. Despite the increasing prevalence of references to cybersecurity risks in disclosures, however, registrants do not consistently or uniformly disclose information related to cybersecurity risk management, strategy, and governance.[416] Registrants currently make such disclosures in varying sections of a company's periodic and current reports, such as in risk factors, in management's discussion and analysis, in a description of business and legal proceedings, or in financial statement disclosures, and sometimes include them with other unrelated disclosures.[417] One commenter noted

[408] 15 U.S.C. 77b(b).

[409] 15 U.S.C. 78c(f).

[410] 15 U.S.C. 78w(a)(2).

[411] *See supra* Section I. *See also supra* note 18 and accompanying text; Eli Amir, Shai Levi, & Tsafrir Livne, *Do Firms Underreport Information on Cyber-Attacks? Evidence from Capital Markets,* 23 Rev. Acct. Stud. 1177 (2018).

[412] Audit Analytics, *Trends in Cybersecurity Breaches* (Apr. 2022), *available at https://www.auditanalytics.com/doc/AA_Trends_in_Cybersecurity_Report_April_2022.pdf* (''Audit Analytics'') (looking specifically at disclosures by companies with SEC filing requirements and stating that: ''[c]ybersecurity breaches can result in a litany of costs, such as investigations, legal fees, and remediation. There is also the risk of economic and reputational costs that can directly impact financial performance, such as reduced revenue due to lost sales.'').

[413] *See* Shinichi Kamiya, et al., *Risk Management, Firm Reputation, and the Impact of Successful Cyberattacks on Target Firms,* 139 J. Fin. Econ. 721 (2021).

[414] Based on staff analysis of the current and periodic reports in 2022 for companies identified by having been affected by a cybersecurity incident.

[415] *See* Bitdefender, supra note 18 and accompanying text.

[416] *See supra* Section II.C.1.b. and c.; *see also* letter from Better Markets.

[417] *See* Proposing Release at 16606 (Table 1. Incidence of Cybersecurity-Related Disclosures by 10–K Location).

that current disclosure is ''piecemeal'' in nature and that the varying content and placement make it difficult for investors and other market participants to locate and understand the cybersecurity risks that registrants face and their preparedness for an attack, and to make comparisons across registrants.[418]

As we discuss in more detail below, some commenters supported the proposed rule. Specifically, one commenter noted that markets responded negatively to delayed cybersecurity disclosures, suggesting that timeliness in disclosing incidents is valuable to investors.[419] Further, some academic commenters submitted papers that they authored finding that evidence suggests that companies experiencing data breaches subsequently experience higher borrowing costs.[420] On the other hand, other commenters contended that the proposed rules would hinder capital formation, particularly for small registrants,[421] or that a more cost-effective alternative to the proposed rules would be to look to existing rules to elicit relevant disclosures, as articulated by the 2011 Staff Guidance and the 2018 Interpretive Release.[422] Several commenters pointed out that the proposed disclosures on cybersecurity risk management, strategy, and governance might be overly prescriptive and would potentially provide a roadmap for threat actors, and that these rules could increase, not decrease costs.[423] In response to those comments, these provisions have been modified in the final rule, which should reduce the perceived risk of providing a roadmap for threat actors compared with the proposal.

B. Economic Baseline

1. Current Regulatory Framework

To assess the economic impact of the final rules, the Commission is using as its baseline the existing regulatory framework and market practice for cybersecurity disclosure. Although a number of Federal and State rules and regulations obligate registrants to disclose cybersecurity risks and incidents in certain circumstances, the Commission's regulations currently do not explicitly address cybersecurity.[424]

As noted in the Proposing Release, cybersecurity threats and incidents continue to increase in prevalence and seriousness, posing an ongoing and escalating risk to public registrants, investors, and other market participants.[425] The number of reported breaches disclosed by public companies has increased almost 600 percent over the last decade, from 28 in 2011 to 131 in 2020 and 188 in 2021.[426] Although estimating the total cost of cybersecurity incidents is difficult, as many events may be unreported, some estimates put the economy-wide total costs as high as trillions of dollars per year in the U.S. alone.[427] The U.S. Council of Economic Advisers estimated that in 2016 the total cost of cybersecurity incidents was between $57 billion and $109 billion, or between 0.31 and 0.58 percent of U.S. GDP in that year.[428] A more recent estimate suggests the average cost of a data breach in the U.S. is $9.44 million.[429] Executives, boards of directors, and investors remain focused on the emerging risk of cybersecurity. A 2022 survey of bank Chief Risk Officers found that they identified managing cybersecurity risk as the top strategic risk.[430] In 2022, a survey of audit committee members again identified cybersecurity as a top area of focus in the coming year.[431]

In 2011, the Division of Corporation Finance issued interpretive guidance providing the Division's views concerning operating registrants' disclosure obligations relating to cybersecurity risks and incidents.[432] This 2011 Staff Guidance provided an overview of existing disclosure obligations that may require a discussion of cybersecurity risks and cybersecurity incidents, along with examples of potential disclosures.[433] Building on the 2011 Staff Guidance, the Commission issued the 2018 Interpretive Release to assist operating companies in preparing disclosure about cybersecurity risks and incidents under existing disclosure rules.[434] In the 2018 Interpretive Release, the Commission reiterated that registrants must provide timely and ongoing information in periodic reports (Form 10–Q, Form 10–K, and Form 20–F) about material cybersecurity risks and incidents that trigger disclosure obligations.[435] Additionally, the 2018 Interpretive Release encouraged registrants to continue to use current reports (Form 8–K or Form 6–K) to disclose material information promptly, including disclosure pertaining to cybersecurity matters.[436] Further, the 2018 Interpretive Release noted that to the extent cybersecurity risks are material to a registrant's business, the Commission believes that the required disclosure of the registrant's risk oversight should include the nature of the board's role in overseeing the management of that cybersecurity risk.[437] The 2018 Interpretive Release also stated that a registrant's controls and procedures should enable it to, among other things, identify cybersecurity risks and incidents and make timely disclosures regarding such risks and incidents.[438] Finally, the 2018 Interpretive Release highlighted the importance of insider trading

---

[418] *See* letter from Better Markets.

[419] *See* letter from Prof. Choudhary.

[420] *See* letters from Profs. Huang & Wang; Prof. Sheneman.

[421] *See* letter from BIO.

[422] *See* letter from NRF.

[423] *See* letters from ABA; ACLI; APCIA; BIO; BPI et al.; Business Roundtable; Chamber; CSA; CTIA; EIC; Enbridge; FAH; Federated Hermes; GPA; ITI; ISA; Nareit; NAM; NMHC; NRA; NRF; SIFMA; Sen. Portman; TechNet; TransUnion; USTelecom; Virtu.

[424] *See* Proposing Release at 16593–94 for a detailed discussion of the existing regulatory framework.

[425] Unless otherwise noted, when we discuss the economic effects of the final rules on ''other market participants,'' we mean those market participants that typically provide services for investors and who rely on the information in companies' filings (such as financial analysts, investment advisers, and portfolio managers).

[426] Audit Analytics, *supra* note 412.

[427] See Cybersecurity & Infrastructure Sec. Agency, *Cost of a Cyber Incident: Systemic Review and Cross-Validation* (Oct. 26, 2020), *available at https://www.cisa.gov/sites/default/files/publications/CISA-OCE_Cost_of_Cyber_Incidents_Study-FINAL_508.pdf* (based on a literature review of publications discussing incidents that occurred in the United States or to U.S.-based companies).

[428] Council of Econ. Advisers, *The Cost of Malicious Cyber Activity to the U.S. Economy* (Feb. 2018), *available at https://trumpwhitehouse.archives.gov/articles/cea-report-cost-malicious-cyber-activity-u-s-economy/* (estimating total costs, rather than costs of only known and disclosed incidents).

[429] Ponemon Institute & IBM Security, *Cost of a Data Breach Report 2022* (July 2022), *available at https://www.ibm.com/downloads/cas/3R8N1DZJ* (estimating based on analysis of 550 organizations impacted by data breaches that occurred between Mar. 2021 and Mar. 2022).

[430] EY and Institute of International Finance, *12th Annual EY/IIF Global Bank Risk Management Survey,* at 14 (2022), *available at https://www.iif.com/portals/0/Files/content/32370132_ey-iif_global_bank_risk_management_survey_2022_final.pdf* (stating 58% of surveyed banks' Chief Risk Officers cite ''inability to manage cybersecurity risk'' as the top strategic risk). *See also* EY, *EY CEO Imperative Study* (July 2019), *available at https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/growth/ey-ceo-imperative-exec-summ-single-spread-final.pdf.*

[431] Center for Audit Qual. & Deloitte, *Audit Committee Practices Report: Priorities and Committee Composition* (Jan. 2023) *available at https://www.thecaq.org/audit-committee-practices-report-2023/. See also Center for Audit Qual.* & Deloitte, *Audit Committee Practices Report: Common Threads Across Audit Committees* (Jan. 2022), *available at https://www.thecaq.org/2022-ac-practices-report/.*

[432] *See* 2011 Staff Guidance.

[433] *Id.*

[434] *See* 2018 Interpretive Release.

[435] *Id.* at 8168–8170.

[436] *Id.* at 8168.

[437] *Id.* at 8170.

[438] *Id.* at 8171.

prohibitions and the need to refrain from making selective disclosures of cybersecurity risks or incidents.[439]

In keeping with existing obligations, companies are increasingly acknowledging cybersecurity risks in their disclosures. One analysis of disclosures made by Fortune 100 companies that filed 10-Ks and proxy statements found 95 percent of those companies disclosed a focus on cybersecurity risk in the risk oversight section of their proxy statements filed in the period ending in May 2022, up from 89 percent of filings in 2020 and 76 percent in 2018.[440] Disclosures of efforts to mitigate cybersecurity risk were found in 99 percent of proxy statements or Forms 10–K, up from 93 percent in 2020 and 85 percent in 2018.[441] The Fortune 100 list is composed of the highest-revenue companies in the United States. As discussed later in this economic analysis, we observed the overall rate of disclosure across not just the largest, but all filers, approximately 8,400, to be approximately 73 percent.[442] Further, one commenter noted that current disclosures are ''scattered and unpredictable'' rather than ''uniform,'' which ''diminishes their effectiveness,'' and so the final rule should improve investors' ability to find and compare disclosures.[443]

Registrants currently are and may continue to be subject to other cybersecurity incident disclosure requirements developed by various industry regulators and contractual counterparties. As discussed in Section II, CIRCIA was passed in March 2022 and requires CISA to develop and issue regulations on cybersecurity reporting. As set forth in CIRCIA, once those regulations are adopted, covered entities will have 72 hours to report covered cybersecurity incidents to CISA and will also be required to report a ransom payment as the result of a ransomware attack within 24 hours of the payment being made.[444] In addition, Federal contractors may be required to monitor and report cybersecurity incidents and breaches or face liability under the False Claims Act.[445] An FCC rule directs covered telecommunications providers on how and when to disclose breaches of certain customer data.[446] HIPAA requires covered entities and their business associates to provide notification following a breach of unsecured protected health information.[447] Similar rules require vendors of personal health records and related entities to report data breaches to affected individuals and the FTC.[448] All 50 states have data breach laws that require businesses to notify individuals of security breaches involving their personally identifiable information.[449] There are other rules that registrants must follow in international jurisdictions. For example, in the European Union, the General Data Protection Regulation mandates disclosure of cybersecurity breaches.[450]

These other cybersecurity incident disclosure requirements may cover some of the material incidents that registrants will need to disclose under the final rules. However, not all registrants are subject to each of these other incident disclosure requirements and the timeliness and public reporting elements of these requirements vary, making it difficult for investors and other market participants to be alerted to the breaches and to gain an adequate understanding of the impact of such incidents on a registrant.

Some registrants are also subject to other mandates regarding cybersecurity risk management, strategy, and governance. For instance, government contractors may be subject to the Federal Information Security Modernization Act, and use the NIST framework to manage information and privacy risks.[451] Certain financial institutions may be subject to the FTC's Standards for Safeguarding Customer Information Rule, requiring an information security program, including a qualified individual to oversee the security program, and the provision of periodic reports on the cybersecurity program to a company's board of directors or equivalent governing body.[452] Under HIPAA regulations, covered entities are subject to rules that require protection against reasonably anticipated threats to electronic protected health information.[453] International jurisdictions also have cybersecurity risk mitigation measures and governance requirements (see, for example, the GDPR).[454] These rules and regulations provide varying standards and requirements for disclosing cybersecurity risk management, strategy, and governance, and may not provide investors with public or clear and comparable disclosure regarding how a particular registrant manages its cybersecurity risk profile.

2. Affected Parties

The parties that are likely to be affected by the final rules include investors, registrants, other market participants that use the information provided in company filings (such as financial analysts, investment advisers, and portfolio managers), and external stakeholders such as consumers and other companies in the same industry as affected companies.

We expect the final rules to affect all registrants with relevant disclosure obligations on Forms 10–K, 20–F, 8–K, or 6–K. This includes (1) approximately 7,300 operating companies filing on domestic forms (of which, approximately 120 are business development companies) and (2) 1,174 FPIs filing on foreign forms, based on all companies that filed such forms or an amendment thereto during calendar

[439] *Id.* at 8171–8172.

[440] See EY Ctr for Bd Matters, *How Cyber Governance and Disclosures are Closing the Gaps in 2022* (Aug. 2022), *available at https://www.ey.com/en_us/board-matters/how-cyber-governance-and-disclosures-are-closing-the-gaps-in-2022.*

[441] *Id.*

[442] *See infra* note 456 (describing textual analysis) and accompanying text.

[443] *See* letter from Better Markets. Although uniformity should improve investors' ability to find and compare disclosures, within that structure the final rule allows customization to capture complexity and avoid unnecessarily simplifying issues for the sake of standardization.

[444] 6 U.S.C. 681b. *See also supra* notes 21 to 23 and accompanying text.

[445] See Dep't of Justice, Office of Pub. Affairs, *Justice News: Deputy Attorney General Lisa O. Monaco Announces New Civil Cyber-Fraud Initiative,* (Oct. 6, 2021), *available at https://www.justice.gov/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative; see, e.g.,* FAR 52.239–1 (requiring contractors to ''immediately'' notify the Federal Government if they become aware of ''new or unanticipated threats or hazards . . . or if existing safeguards have ceased to function'').

[446] *See* 47 CFR 64.2011; *see also supra* Section II.A.3.

[447] *See* 45 CFR 164.400 through 414 (Notification in the Case of Breach of Unsecured Protected Health Information).

[448] *See* 16 CFR 318 (Health Breach Notification Rule).

[449] Note that there are carve-outs to these rules, and not every company may fall under any particular rule. *See* Nat'l Conference of State Legislatures, Security Breach Notification Laws (updated Jan. 17, 2022), *available at https://www.ncsl.org/technology-and-communication/security-breach-notification-laws.*

[450] *See* Regulation (EU) 2016/679, of the European Parliament and the Council of 27 Apr. 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), arts. 33 (Notification of a personal data breach to the supervisory authority), 34 (Communication of a personal data breach to the data subject), 2016 O.J. (L 119) 1 (''GDPR'').

[451] *See* NIST, NIST Risk Management Framework (updated Jan. 31, 2022), *available at https://csrc.nist.gov/projects/risk-management/fisma-background.*

[452] *See* 16 CFR 314.

[453] *See* 45 CFR 164 (Security and Privacy); *see also supra* Section II.A.3.

[454] *See, e.g.,* GDPR, arts. 32 (Security of processing), 37 (Designation of the data protection officer).

year 2022.[455] Our textual analysis [456] of all calendar year 2022 Form 10–K filings and amendments reveals that approximately 73 percent of domestic filers made some kind of cybersecurity-related disclosures, whether of incidents, risk, or governance.

We also analyzed calendar year 2022 Form 8–K and Form 6–K filings. There were 71,505 Form 8–K filings in 2022, involving 7,416 filers, out of which 35 filings reported material cybersecurity incidents.[457] Similarly, there were 27,296 Form 6–K filings in 2022, involving 1,161 filers, out of which 22 filings reported material cybersecurity incidents.

C. Benefits and Costs of the Final Rules

The final rules will benefit investors, registrants, and other market participants, such as financial analysts, investment advisers, and portfolio managers, by providing more timely and informative disclosures relating to cybersecurity incidents and cybersecurity risk management, strategy, and governance, facilitating investor decision-making and reducing information asymmetry in the market. The final rules also will entail costs. A discussion of the anticipated economic costs and benefits of the final rules is set forth in more detail below. We first discuss benefits, including benefits to investors and other market participants. We subsequently discuss costs, including the cost of compliance with the final rules. We conclude with a discussion of indirect economic effects on investors, external stakeholders such as consumers, and companies in the same industry with registrants subject to this rule, or those facing similar cybersecurity threats.

1. Benefits

Existing shareholders, and those seeking to purchase shares in registrants subject to the final rules, will be the main beneficiaries of the enhanced disclosure of both cybersecurity incidents and cybersecurity risk management, strategy, and governance as a result of the final rules. Specifically, investors will benefit because: (1) more informative and timely disclosure will improve investor decision-making by allowing investors to better understand a registrant's material cybersecurity incidents, material cybersecurity risks, and ability to manage such risks, reducing information asymmetry and the mispricing of securities in the market; and (2) more uniform and comparable disclosures will lower search costs and information processing costs. Other market participants that rely on financial statement information to provide services to investors, such as financial analysts, investment advisers, and portfolio managers, will also benefit.

a. More Timely and Informative Disclosure

The final rules provide more timely and informative disclosures, relative to the current disclosure environment, which will allow investors to better understand registrants' cybersecurity incidents, risks, and ability to manage such risks as well as reduce mispricing of securities in the market. Timeliness benefits to investors will result from the requirement to disclose cybersecurity incidents within four business days of determining an incident was material, as well as the requirement to amend the disclosure to reflect material changes. Information benefits to investors will result from the disclosure of both (1) cybersecurity incidents and (2) cybersecurity risk management, strategy, and governance. Together, the timeliness and information benefits created by the final rules will reduce market mispricing and information asymmetry and potentially lower firms' cost of capital.

We anticipate Item 1.05, governing cybersecurity incident disclosure on Form 8–K, will lead to more timely disclosure to investors.[458] Currently, there is not a specific requirement for a registrant to disclose a cybersecurity incident to investors in a timely manner after its discovery and determination of material impact.[459] Item 1.05's requirement to disclose a material cybersecurity incident on Form 8–K within four business days after determining the incident is material will improve the overall timeliness of the disclosure offered to investors—disclosure that is relevant to the valuation of registrants' securities. It is well-documented in the academic literature that the market reacts negatively to announcements of cybersecurity incidents. For example, one study finds a statistically significant mean cumulative abnormal return of −0.84 percent in the three days following cyberattack announcements, which, according to the study, translates into an average value loss of $495 million per attack.[460] One commenter argued that the magnitude of stock market reaction to cybersecurity incidents from this study would not be considered significant by market participants, stating that ''if a stock had a historical standard deviation of 1 percent and moved 0.8 percent on news, most market participants would suggest that the news was either not significant or the market had priced in that news so the reaction was muted.'' [461] We note, however, that a cumulative abnormal return (CAR) of −0.84 percent refers not to the total return but to the return relative to how stocks in similar industries and with similar risk profiles moved; thus, indeed, a statistically significantly negative CAR represents a meaningful reaction and change to how the stock price would have moved that day absent the announcement of the cybersecurity incident. By allowing investors to make decisions based on more current, material, information, Item 1.05 will reduce mispricing of securities and information asymmetry in the market.

Information asymmetries due to timing could also be exploited by the malicious actors who caused a cybersecurity incident, those who could access and trade on material information stolen during a

[455] Estimates of affected companies here are based on the number of unique CIKs with at least one periodic report, current report, or an amendment to one of the two filed in calendar year 2022.

[456] In performing this analysis, staff executed computer program-based keyword (and combination of key words) searches. This analysis covered 8,405 Forms 10–K and 10–K/A available in Intelligize (a division of RELX Inc.) filed in calendar year 2022 by 7,486 companies as identified by unique CIK.

[457] The number of filers in our sample is larger than the number of estimated affected parties because, among other reasons, it includes 8–K filings by companies that have not yet filed their first annual report.

[458] For foreign issuers, the disclosure is made via Form 6–K.

[459] *See supra* Sections I and IV.B.1.

[460] *See* Shinichi Kamiya, et al., *supra* note 413, at 719–749. *See also* Lawrence A. Gordon, Martin P. Loeb, & Lei Zhou, *The Impact of Information Security Breaches: Has There Been a Downward Shift in Costs?,* 19 (1) J. of Comput. Sec. 33, 33–56 (2011) (finding ''the impact of the broad class of information security breaches on stock market returns of firms is significant''); Georgios Spanos & Lefteris Angelis, *The Impact of Information Security Events to the Stock Market: A Systematic Literature Review,* 58 Comput. & Sec. 216–229 (2016) (documenting that the majority (75.6%) of the studies the paper reviewed report statistical significance of the impact of security events to the stock prices of companies). *But see* Katherine Campbell, et al., *The Economic Cost of Publicly Announced Information Security Breaches: Empirical Evidence From the Stock Market,* 11 (3) J. of Comput. Sec. 432, 431–448 (2003) (while finding limited evidence of an overall negative stock market reaction to public announcements of information security breaches, they also find ''the nature of the breach affects this result,'' and ''a highly significant negative market reaction for information security breaches involving unauthorized access to confidential data, but no significant reaction when the breach does not involve confidential information;'' they thus conclude that ''stock market participants appear to discriminate across types of breaches when assessing their economic impact on affected firms'').

[461] *See* letter from BIO.

cybersecurity incident, or those who learn about the incident before public disclosure, causing further harm to investors who trade unknowingly against those with inside information.[462] Malicious actors may trade ahead of an announcement of a data breach that they caused or pilfer material information to trade on ahead of company announcements. Trading on undisclosed cybersecurity information is particularly pernicious, because profits generated from this type of trading provide incentives for malicious actors to ''create'' more incidents and proprietary information to trade on, further harming the shareholders of impacted companies.[463] Employees or related third-party vendors of a company experiencing a cybersecurity incident may also learn of the incident and trade against investors in the absence of disclosure. More timely disclosure as a result of Item 1.05 will reduce mispricing by reducing windows of information asymmetry in connection with a material cybersecurity incident, thereby reducing opportunities to exploit the mispricing, enhancing investor protection.

A commenter noted that there is risk the rule could, under certain conditions, aid stock manipulation efforts by malicious actors, offsetting these benefits.[464] One commenter suggested that mandated disclosure timing could make public cybersecurity incident disclosure dates more predictable, and thus trading strategies based on the accompanying negative stock price reaction more consistent, to the extent malicious actors can monitor or control discovery of breaches they cause and correctly anticipate materiality determination timing. Their ability to do this is unclear, but we note that if the final rules increase the precision of strategies by attackers that involve shorting the stock of their targets, that would reduce the benefit of the final rules.

Item 1.05 allows registrants to delay filing for up to 30 days if the Attorney General determines that the incident disclosure would pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing. The delay may be extended up to an additional 30 days if the Attorney General determines disclosure continues to pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing. In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security and notifies the Commission of such determination in writing. Beyond the final 60-day delay, if the Attorney General indicates that further delay is necessary, the Commission will consider additional requests for delay and may grant such relief through Commission exemptive order. These delay periods and possible exemptive relief would curb the timeliness benefits discussed above but would reduce the costs of premature disclosure such as alerting malicious actors targeting critical infrastructure that their activities have been discovered.

By requiring all material cybersecurity incidents to be disclosed, Item 1.05 will also provide investors more informative disclosure by increasing material cybersecurity incident disclosure.[465] There are currently reasons that registrants do not disclose cybersecurity incidents. For example, a registrant's managers may be reluctant to release information that they expect or anticipate will cause their stock price to suffer.[466] Thus an agency problem prevents investors from receiving this useful information. In addition, registrants may consider only the benefits and costs that accrue to them when deciding whether to disclose an incident. As discussed in Section IV.C.3, incident disclosure can create indirect economic effects that accrue to parties other than the company itself. Companies focused on direct economic benefits, however, may not factor in this full range of effects resulting from disclosing cybersecurity incidents, resulting in less reporting and less information released to the market. The mandatory disclosure in Item 1.05 should thus lead to more incidents being disclosed, reducing mispricing of securities and information asymmetry in the market as stock prices will more accurately reflect registrants having experienced a cybersecurity incident.

Item 1.05 will also improve the informativeness of the content of cybersecurity incident disclosures. In 2022, when registrants filed a Form 8–K to report an incident, the Form 8–K did not necessarily state whether the incident was material, and in some cases, the Form 8–K stated that the incident was immaterial.[467] Item 1.05 will require registrants to describe in an 8–K filing the material aspects of the nature, scope, and timing of a material cybersecurity incident and the material impact or reasonably likely material impact on the registrant, including on its financial condition and results of operations. The disclosure must also identify any information called for in Item 1.05(a) that is not determined or is unavailable at the time of the required filing. Registrants will then need to disclose this information in a Form 8–K amendment containing such information within four business days after the information is determined or becomes available. Item 1.05 is thus expected to elicit more pertinent information to aid investor decision-making. Additionally, the materiality requirement should minimize immaterial incident disclosure that might divert investor attention, which should reduce mispricing of securities. Numerous commenters on the Proposing Release agreed that more informative incident disclosure would be useful for investors.[468]

Regulation S–K Items 106(b) and (c) of the final rules provide further benefits by requiring registrants to disclose, in their annual reports on Form 10–K, information about their cybersecurity risk management, strategy, and governance. The final rules require disclosure regarding a registrant's processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats, as well as disclosure of the registrant's board of directors' oversight of risks from cybersecurity threats and management's role in assessing and managing material risks from cybersecurity threats.[469] There are currently no disclosure requirements on Forms 10–K or 10–Q that explicitly refer to cybersecurity risks or governance, and thus Item 106 will benefit investors by eliciting relevant information about how registrants are managing their material cybersecurity risks.

[462] *See* Joshua Mitts & Eric Talley, *Informed Trading and Cybersecurity Breaches,* 9 Harv. Bus. L. Rev. 1 (2019) (''In many respects, then, the cyberhacker plays a role in creating and imposing a unique harm on the targeted company—one that (in our view) is qualitatively different from 'exogenous' information shocks serendipitously observed by an information trader. Allowing a coordinated hacker-trader team to capture these arbitrage gains would implicitly subsidize the very harm-creating activity that is being 'discovered' in the first instance.'').

[463] *Id.*

[464] *See* letter from ISA.

[465] *See* Amir, Levi, & Levine, *supra* note 411.

[466] *See, e.g.,* Kamiya, et al., *supra* note 413, at 719–749.

[467] Based on staff analysis of the 10,941 current and periodic reports in 2022 for companies available in Intelligize and identified as having been affected by a cybersecurity incident using a keyword search.

[468] *See, e.g.,* letters from Better Markets; CalPERS; PWC; Prof. Perullo.

[469] *See supra* Sections II.B and C. For foreign issuers, the disclosure is made via Form 20–F.

One commenter took issue with the usefulness of the proposed disclosures, arguing, for example, that the particular requirement to disclose whether a registrant engages assessors, consultants, auditors, or other third parties in connection with any cybersecurity risk assessment program was unnecessary because there was no evidence that such third parties improved a registrant's cyber risk management, and some companies have internal cybersecurity risk management capabilities.[470] Some, however, have noted that the use of independent third-party advisors may be ''vital to enhancing cyber resiliency'' by validating that the risk management program is meeting its objectives.[471] As discussed in Section II.C.1.c., it may be important for investors to know a registrant's level of in-house versus outsourced cybersecurity capacity. Another commenter suggested that the requirement to disclose governance and risk management practices would be of limited value to investors, while being administratively burdensome.[472] Other commenters said that the required disclosures about cybersecurity governance and risk management were too granular to be useful and suggested that the specific disclosures be replaced with a more high-level explanation of management's and the board's roles in cybersecurity risk management and governance.[473] One such commenter stated that the proposed disclosures would create pressures to provide boilerplate responses to the specific items that would need to be disclosed instead of providing a robust discussion of the way a registrant would manage cybersecurity risk management and governance.[474] Another commenter stated that granular disclosures ''may result in overly detailed filings that have little utility to investors.'' [475] These commenters suggested that the specific disclosures should be replaced with a more high-level explanation of management's and the board's roles in cybersecurity risk management and governance.

In response to these comments, the Commission is not adopting certain proposed disclosure requirements, such as disclosure of whether the registrant has a designated chief information security officer. However, Items 106(b) and (c) still require risk, strategy and governance disclosures as we continue to believe disclosures of cybersecurity risk oversight and processes, as well as management's role and relevant expertise, are important to investors.

Improved timeliness and informativeness of cybersecurity disclosures may provide further benefit by lowering companies' cost of capital.[476] As detailed above, the final rules should reduce information asymmetry and mispricing of securities. In an asymmetric information environment, investors are less willing to hold shares, reducing liquidity. Registrants may respond by issuing shares at a discount, increasing their cost of capital. By providing more and more credible disclosure, however, companies can reduce the risk of adverse selection faced by investors and the discount they demand, ultimately increasing liquidity and decreasing the company's cost of capital.[477] Investors benefit when the companies they are invested in enjoy higher liquidity. Item 1.05 enables companies to provide more credible disclosure because currently, investors do not know whether an absence of incident disclosure means no incidents have occurred, or one has but the company has not yet chosen to reveal it. By requiring all material incidents to be reported, Item 1.05 supplies investors greater assurance that, indeed, barring extraordinary circumstances, no disclosure means the company has not been aware for more than four business days of a material incident having occurred. Similarly, Item 106 should also generate more credible disclosure. Currently, voluntary cybersecurity risk management, strategy, and governance disclosures lack standardization and consistency, reducing their comparability and usefulness for investors. Without set topics that must be addressed, companies may disclose only the strongest aspects of their cybersecurity processes, if they disclose at all. By clarifying what registrants must disclose with respect to their cybersecurity risk management, strategy, and governance, Item 106 will reduce information asymmetry and provide investors and other market participants more certainty and easier comparability of registrants' vulnerability to and ability to manage cybersecurity breaches, reducing adverse selection and increasing liquidity. Thus, the final rules could decrease cost of capital across registrants and increase company value, benefiting investors.

One commenter argued that smaller registrants are less likely than larger registrants to experience cybersecurity incidents and that cyberattacks are not material for smaller registrants.[478] This

[470] *See* letter from NRF.

[471] *See* Harvard Law School Forum on Corporate Governance Blog, posted by Steve W. Klemash, Jamie C. Smith, and Chuck Seets, *What Companies are Disclosing About Cybersecurity Risk and Oversight,* (posted Aug. 25, 2020), *available at https://corpgov.law.harvard.edu/2020/08/25/what-companies-are-disclosing-about-cybersecurity-risk-and-oversight/.*

[472] *See* letter from SIMFA.

[473] *See* letters from ABA; AGA/INGAA; EEI; Nareit; NYSE.

[474] *See* letter from ABA.

[475] *See* letter from NYSE.

[476] *See* Leuz & Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000) (''A brief sketch of the economic theory is as follows. Information asymmetries create costs by introducing adverse selection into transactions between buyers and sellers of firm shares. In real institutional settings, adverse selection is typically manifest in reduced levels of liquidity for firm shares (*e.g.,* Copeland and Galai [1983], Kyle [1985], and Glosten and Milgrom [1985]). To overcome the reluctance of potential investors to hold firm shares in illiquid markets, firms must issue capital at a discount. Discounting results in fewer proceeds to the firm and hence higher costs of capital. A commitment to increased levels of disclosure reduces the possibility of information asymmetries arising either between the firm and its shareholders or among potential buyers and sellers of firm shares. This, in turn, should reduce the discount at which firm shares are sold, and hence lower the costs of issuing capital (*e.g.,* Diamond and Verrecchia [1991] and Baiman and Verrecchia [1996]).'').

[477] *See* Douglas W. Diamond & Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. Fin. 1325, 1325–1359 (1991) (finding that revealing public information to reduce information asymmetry can reduce a company's cost of capital through increased liquidity). *See also* Christian Leuz & Robert E. Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000) (providing empirical evidence that increased disclosure lowers the information asymmetry component of the cost of capital in a sample of German companies); *see also* Christian Leuz & Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54 J. Acct. Res. 525 (2016) (providing a comprehensive survey of the literature on the economic effect of disclosure). Although disclosure could be beneficial for the company, several conditions must be met for companies to voluntarily disclose all their private information. *See* Anne Beyer, et al., *The Financial Reporting Environment: Review Of The Recent Literature,* 50 J. Acct. & Econ. 296, 296–343 (2010) (discussing conditions under which companies voluntarily disclose all their private information, and these conditions include ''(1) disclosures are costless; (2) investors know that companies have, in fact, private information; (3) all investors interpret the companies' disclosure in the same way and companies know how investors will interpret that disclosure; (4) managers want to maximize their companies' share prices; (5) companies can credibly disclose their private information; and (6) companies cannot commit ex-ante to a specific disclosure policy''). Increased reporting could also help determine the effect of investment on company value. *See* Lawrence A. Gordon, et al., *The Impact of Information Sharing on Cybersecurity Underinvestment: A Real Options Perspective,* 34 (5) J. Acct. & Pub. Policy 509, 509–519 (2015) (arguing that ''information sharing could reduce the tendency by firms to defer cybersecurity investments'').

[478] *See* comment letter from BIO. The letter argues that the Commission, when citing the study by Kamiya, et al. (2021) in the Proposing Release, ''ignored and omitted'' the fact that the mean market capitalization of impacted companies in this study was $58.9 billion, much higher than the average for small companies, and thus ''cyberattacks mainly affect large companies and are not material for smaller companies.'' We observe

could imply that the degree of cybersecurity-driven adverse selection faced by investors in small registrants might be less severe. If so, the potential benefit from improvement in liquidity and cost of capital due to the timeliness and information benefits from the final rules might be smaller for small registrants and their investors. The research this commenter cited to support this assertion found larger companies were more susceptible than smaller companies to a particular category of cybersecurity incidents—those involving personal information lost through hacking by an outside party—which composed less than one-quarter of all cyber incidents in the sample (1,580 out of 6,382).[479] It is possible that malicious strategies that target personal information are particularly suited to larger, well-known companies, and thus the research may overstate the degree to which large companies are more susceptible to cybersecurity incidents generally. These strategies explicitly harm companies' customers, and customer ill will is potentially more newsworthy and consequential for a larger, well-known company as compared to a smaller one. In contrast, ransomware attacks that target non-personal, internal company operations such as an information technology network, for example, are less concerned with causing reputational loss and thus may have an optimal target profile that favors smaller firms as much as larger firms. Additionally, smaller companies may have fewer resources and weaker processes in place to prevent cybersecurity attacks.[480] Hence, it is not clear that smaller companies experience fewer material cybersecurity incidents generally. Others have noted that small companies are frequently targeted victims of cyberattacks, potentially leading to dissolution of the business.[481] Thus, overall, we maintain that cybersecurity attacks are material for smaller reporting companies and that the final rules will serve to benefit them and their investors.

Overall, Form 8–K Item 1.05 and Regulation S–K Item 106 provide for timely, informative, and up-to-date disclosure of cybersecurity incidents, as well as disclosure that may provide insight into whether a registrant is prepared for risks from cybersecurity threats and has adequate cybersecurity risk management, strategy, and governance measures in place to reduce the likelihood of future incidents, reducing the likelihood of delayed or incomplete disclosure and benefiting investors and the market.

We believe enhanced information, timing, and completeness of disclosures as a result of Form 8–K Item 1.05 and Regulation S–K Item 106 will benefit not only investors but also other market participants that rely on registrant disclosures to provide services to investors. They, too, will be able to better evaluate registrants' cybersecurity preparations and risks and thus provide better recommendations. We note that the potential benefit of these amendments could be reduced because some registrants already provide relevant disclosures. That said, we expect this same information will become more useful due to added context from, and easier comparisons with, the increased number of other registrants now providing these disclosures.

We are unable to quantify the potential benefit to investors and other market participants as a result of the increase in disclosure and improvement in pricing under the final rules. Such estimation requires information about the fundamental value of securities and the extent of the mispricing. We do not have access to such information and therefore cannot provide a reasonable estimate. One commenter suggested we use existing cyber disclosure models to ''empirically determine'' the current degree of market mispricing, but did not suggest what data the Commission could use to do so.[482] The Commission cannot estimate the effects of undisclosed cybersecurity incidents that are creating market mispricing, as the relevant information was never released and the market was unable to react.

b. Greater Uniformity and Comparability

The final rules requiring disclosure about cybersecurity incidents and cybersecurity risk management, strategy, and governance should also lead to more uniform and comparable disclosures, in terms of both content and location, benefiting investors by lowering their search and information processing costs. Currently, registrants do not always use Form 8–K to report cybersecurity incidents. Even among registrants that do, reporting practices vary widely.[483] Some provide a discussion of materiality, the estimated costs of an incident, or the remedial steps taken as a result of an incident, while others do not provide such disclosure or provide much less detail. Disclosures related to risk management, strategy, and governance also vary significantly across registrants—such information could be disclosed in places such as the risk factors section, the management's discussion and analysis section, or not at all. For both types of disclosures, the final rules specify the topics that registrants should disclose. As a result, both incident disclosure and risk management, strategy, and governance disclosure should become more uniform across registrants, making them easier for investors and other market participants to compare. The final rules also specify the disclosure locations (*e.g.,* Item 1C of Form 10–K), benefiting investors and other market participants further by reducing the time, cost, and effort it takes them to search for and retrieve information (as pointed out by commenters[484]).

We note that to the extent that the disclosures related to cybersecurity risk management, strategy, and governance become too uniform or ''boilerplate,'' the benefit of comparability may be diminished. However, we believe that Item 106 requires sufficient specificity, tailored to the registrant's facts and circumstances, to help mitigate any tendency towards boilerplate disclosures. Item 106 also provides a non-exclusive list of information that registrants should disclose, as applicable, which should help in this regard.

The requirement to tag the cybersecurity disclosure in Inline XBRL will likely augment the informational and comparability benefits by making the disclosures more easily retrievable and usable for aggregation, comparison, filtering, and other analysis. XBRL requirements for public operating company financial statement disclosures have been observed to mitigate information asymmetry by reducing information processing costs, thereby making the disclosures easier to access and analyze.[485] While these

that an average market capitalization of impacted companies of $58.9 billion would generally indicate that companies both larger and smaller than that size were impacted by cyberattacks.

[479] *See* Kamiya, et al., *supra* note 413.

[480] *See* letter from Tenable.

[481] *See* Testimony of Dr. Jane LeClair, Chief Operating Officer, National Cybersecurity Institute at Excelsior College, before the U.S. House of Representatives Committee on Small Business (Apr. 22, 2015), *available at https://docs.house.gov/meetings/SM/SM00/20150422/103276/HHRG-114-SM00-20150422-SD003-U4.pdf* (describing the cybersecurity risks small businesses face and noting ''fifty percent of SMB's have been the victims of cyberattack and over 60 percent of those attacked go out of business'').

[482] *See* letter from ISA.

[483] *See* Proposing Release at 16594.

[484] *See, e.g.,* letters from Better Markets; CalPERS.

[485] *See, e.g.,* J.Z. Chen, et al., *Information processing costs and corporate tax avoidance: Evidence from the SEC's XBRL mandate,* 40 J. of Acct. and Pub. Pol'y 2 (finding XBRL reporting

Continued

observations are specific to operating company financial statement disclosures and not to disclosures outside the financial statements, such as the cybersecurity disclosures, they suggest that the Inline XBRL requirements should directly or indirectly (*i.e.,* through information intermediaries such as financial media, data aggregators, and academic researchers) provide investors with increased insight into cybersecurity-related information at specific companies and across companies, industries, and time periods.[486] Also, unlike XBRL financial statements (including footnotes), which consist of tagged quantitative and narrative disclosures, the cybersecurity disclosures consist largely of tagged narrative disclosures.[487] Tagging narrative disclosures can facilitate analytical benefits such as automatic comparison or redlining of these disclosures against prior periods and the performance of targeted artificial intelligence or machine learning assessments (tonality, sentiment, risk words, etc.) of specific cybersecurity disclosures rather than the entire unstructured document.[488]

In addition, by formalizing the disclosure requirements related to cybersecurity incidents and cybersecurity risk management, strategy, and governance, the final rules could reduce compliance costs for those registrants that are currently providing disclosure about these topics. The compliance costs would be reduced to the extent that those registrants may be currently over-disclosing information out of caution, to increase the perceived credibility of their disclosures, or to signal to investors that they are diligent with regard to cybersecurity. For instance, the staff has observed that some registrants provide Form 8–K filings even when they do not anticipate the incident will have a material impact on their business operations or financial results.[489] By specifying that only material incidents require disclosure, the final rules should ease some of these concerns and reduce costs to the extent those costs currently exist.[490] Investors will benefit to the extent the registrants they invest in enjoy lower compliance costs.

2. Costs

We also recognize that enhanced cybersecurity disclosure would result in costs to registrants, borne by investors. These costs include potential increases in registrants' vulnerability to cybersecurity incidents and compliance costs. We discuss these costs below.

First, the disclosure about cybersecurity incidents and cybersecurity risk management, strategy, and governance could potentially increase the vulnerability of registrants. Since the issuance of the 2011 Staff Guidance, concerns have been raised that providing detailed disclosures of cybersecurity incidents could, potentially, provide a road map for future attacks, and, if the underlying security issues are not completely resolved, could exacerbate the ongoing attack.[491] The concern is that malicious actors could use the disclosures to potentially gain insights into a registrant's practices on cybersecurity. As a result, the final incident disclosure rules could potentially impose costs on registrants and their investors, if, for example, additional threat actors steal more data or hamper breach resolution.

The final rules have been modified from the Proposing Release to mitigate disclosure of details that could aid threat actors, while remaining informative for investors. Form 8–K Item 1.05 will require registrants to timely disclose material cybersecurity incidents, describe the material aspects of the nature, scope, and timing of the incident, and, importantly, describe the material impact or reasonably likely material impact of the incident on the registrant. Focusing on the material impact or reasonably likely material impact of the incident rather than the specific or technical details of the incident should reduce the likelihood of providing a road map that threat actors can exploit for future attacks, and should reduce the risks and costs stemming from threat actors acting in this manner.[492]

Similar concerns were raised by commenters about the required risk management, strategy, and governance disclosure.[493] Items 106(b) and (c) require registrants to provide specified disclosure regarding their cybersecurity risk management processes and cybersecurity governance by the management and board. The required disclosure could provide malicious actors information about which registrants have weak processes related to cybersecurity risk management and allow such malicious actors to determine their targets accordingly.

However, academic research so far has not provided evidence that more detailed cybersecurity risk disclosures necessarily lead to more attacks. For example, one study finds that measures for specificity (*e.g.,* the uniqueness of the disclosure) do not have a

decreases likelihood of company tax avoidance because ''XBRL reporting reduces the cost of IRS monitoring in terms of information processing, which dampens managerial incentives to engage in tax avoidance behavior''). *See also* P.A. Griffin, et al., *The SEC's XBRL Mandate and Credit Risk: Evidence on a Link between Credit Default Swap Pricing and XBRL Disclosure,* 2014 American Accounting Association Annual Meeting (2014) (finding XBRL reporting enables better outside monitoring of companies by creditors, leading to a reduction in company default risk); E. Blankespoor, *The Impact of Information Processing Costs on Firm Disclosure Choice: Evidence from the XBRL Mandate,* 57 J. of Acc. Res. 919, 919–967 (2019) (finding ''firms increase their quantitative footnote disclosures upon implementation of XBRL detailed tagging requirements designed to reduce information users' processing costs,'' and ''both regulatory and non-regulatory market participants play a role in monitoring firm disclosures,'' suggesting ''that the processing costs of market participants can be significant enough to impact firms' disclosure decisions'').

[486] *See, e.g.,* N. Trentmann, *Companies Adjust Earnings for Covid–19 Costs, but Are They Still a One-Time Expense?,* Wall St. J. (2020) (citing an XBRL research software provider as a source for the analysis described in the article). *See also Bloomberg Lists BSE XBRL Data, XBRL.org* (2018); R. Hoitash, and U. Hoitash, *Measuring Accounting Reporting Complexity with XBRL,* 93 Account. Rev. 259 (2018).

[487] The cybersecurity disclosure requirements do not expressly require the disclosure of any quantitative values; if a company includes any quantitative values that are nested within the required discussion (*e.g.,* disclosing the number of days until containment of a cybersecurity incident), those values will be individually detail tagged, in addition to the block text tagging of the narrative disclosures.

[488] To illustrate, without Inline XBRL, using the search term ''remediation'' to search through the text of all companies' filings over a certain period of time, so as to analyze the trends in companies' disclosures related to cybersecurity incident remediation efforts during that period, could return many narrative disclosures outside of the cybersecurity incident discussion (*e.g.,* disclosures related to potential environmental liabilities in the risk factors section). Inline XBRL, however, enables a user to search for the term ''remediation'' exclusively within the required cybersecurity disclosures, thereby likely reducing the number of irrelevant results.

[489] Based on staff analysis of the 10,941 current and periodic reports in 2022 for companies available in Intelligize and identified as having been affected by a cybersecurity incident using a keyword search.

[490] We note that registrants may still over-disclose due to uncertainty over when a cybersecurity incident crosses the threshold of materiality. This may impact how fully costs from immaterial incident disclosure are reduced.

[491] *See, e.g.,* Roland L. Trope & Sarah Jane Hughes, *The SEC Staff's Cybersecurity Disclosure Guidance: Will It Help Investors or Cyber-Thieves More,* 2011 Bus. L. Today 2, 1–4 (2011).

[492] Instruction 4 to Item 1.05 provides that a ''registrant need not disclose specific or technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.''

[493] *See* letters from ABA; ACLI; APCIA; BIO; BPI et al.; Business Roundtable; Chamber; CSA; CTIA; EIC; Enbridge; FAH; Federated Hermes; GPA; ITI; ISA; Nareit; NAM; NMHC; NRA; NRF; SIFMA; Sen. Portman; TechNet; TransUnion; USTelecom; Virtu; *see also supra* note 201 and accompanying text.

statistically significant relation with subsequent cybersecurity incidents.[494] Another study finds that cybersecurity risk factor disclosures that involve terms about processes are less likely to be related to future breach announcements than disclosures that employ more general language.[495] On the other hand, we note that the final rules will require more details of cybersecurity processes than what is explicitly required under the current rules, and the uniformity of the final rules might also make it easier for malicious actors to identify registrants with relatively weaker processes. Therefore, these academic findings might not be generalizable to the effects of the final rules.[496] However, we also note that we have streamlined the disclosure obligations for Items 106 (b) and (c), in response to commenters' concerns, to require a more principles-based discussion of a registrant's processes instead of detailed disclosures on a specific set of items. This change should help ease concerns that the required cybersecurity risk management, strategy, and governance disclosures will help malicious actors choose targets. In addition, the potential costs resulting from the disclosure requirements might be partially mitigated to the extent that registrants decide to enhance their cybersecurity risk management in anticipation of the increased disclosure. This possibility is discussed below under Indirect Economic Effects.

The final rules will also impose compliance costs. Registrants, and thus their investors, will incur one-time and ongoing costs to fulfill the new disclosure requirements under Item 106 of Regulation S–K. These costs will include costs to gather the information and prepare the disclosures. Registrants will also incur compliance costs to fulfill the disclosure requirements related to Form 8–K (Form 6–K for FPIs) incident disclosure.[497] These costs include one-time costs to implement or revise their incident disclosure practices, so that any registrant that determines it has experienced a material cybersecurity incident will disclose such incident with the required information within four business days. Registrants may also incur ongoing costs to disclose in a Form 8–K report any material changes or updates relating to previously disclosed incidents, and we expect these costs to be higher for registrants with more incidents to disclose. The costs will be mitigated for registrants whose current disclosure practices match or are similar to those that are in the final rules. One commenter suggested that companies could incur costs to reconcile their existing cybersecurity activities and NIST-based best practices with the requirements of the final rules[498] but, as discussed in Section II.C.3.c, the final rules are not in conflict with NIST and we do not anticipate that significant reconciliation will be needed.

The compliance costs will also include costs attributable to the Inline XBRL tagging requirements. Many commenters supported the XBRL tagging requirement,[499] while one commenter suggested that it would be burdensome to add tagging given the time-sensitive nature of the disclosure requirements.[500] Various preparation solutions have been developed and used by operating companies to fulfill XBRL requirements, and some evidence suggests that, for smaller companies, XBRL compliance costs have decreased over time.[501] The incremental compliance costs associated with Inline XBRL tagging of cybersecurity disclosures will also be mitigated by the fact that most companies that will be subject to the requirements are already subject to other Inline XBRL requirements for other disclosures in Commission filings, including financial statement and cover page disclosures in certain periodic reports and registration statements.[502] Such companies may be able to leverage existing Inline XBRL preparation processes and expertise in complying with the cybersecurity disclosure tagging requirements. Moreover, the one-year XBRL compliance period extension could further assuage concerns about the transition for registrants to comply with the new requirements.[503]

Some commenters contended that the Proposing Release failed to consider the costs of the proposed rules adequately.[504] We are generally unable to quantify costs related to the final rules due to a lack of data. For example, we are unable to quantify the impact of any increased vulnerability to existing or new threat actors arising from the required incident or risk management, strategy, or governance disclosures. Moreover, costs related to preparing cyber-related disclosures are generally private information known only to the issuing firm, hence such data are not readily available to the Commission. There is also likely considerable variation in these costs depending on a given firm's size, industry, complexity of operations, and other characteristics, which makes comprehensive estimates difficult to obtain. We note that the Commission has provided certain estimates for purposes of compliance with the Paperwork Reduction Act of 1995, as further discussed in Section V below. Those estimates, while useful to understanding the collection of information burden associated with the final rules, do not purport to reflect the full costs associated with making the required disclosures.

One commenter provided a numerical cost estimate, stating the initial costs of complying with the proposed rules would be $317.5 million to $523.4 million ($38,690 to $69,151 per regulated company), and future annual costs would be $184.8 million to $308.1 million ($22,300 to $37,500 per regulated company).[505] We cannot directly evaluate the accuracy of these

[494] *See* He Li, Won Gyun No, & Tawei Wang, *SEC's Cybersecurity Disclosure Guidance and Disclosed Cybersecurity Risk Factors,* 30 Int'l. J. of Acct. Info. Sys. 40–55 (2018) (''while Ferraro (2013) criticizes that the SEC did little to resolve the concern about publicly revealing too much information [that] could provide potential hackers with a roadmap for successful attacks, we find no evidence supporting such claim'').

[495] *See* Tawei Wang, Karthik N. Kannan, & Jackie Rees Ulmer, *The Association Between the Disclosure and the Realization of Information Security Risk Factors,* 24.2 Info. Sys. Res. 201, 201–218 (2013).

[496] We note that the papers we cited above study the effect of voluntary disclosure and the 2011 Staff Guidance, which could also reduce the generalizability of these studies to the mandatory disclosures under the final rules.

[497] We note that the compliance costs related to Form 6–K filings will be mitigated, because a condition of the form is that the information is disclosed or required to be disclosed elsewhere.

[498] *See* letter from SIFMA.

[499] *See* letters from E&Y; CAQ; PWC; NACD; AICPA; XBRL.

[500] *See* letter from NYC Bar.

[501] An AICPA survey of 1,032 reporting companies with $75 million or less in market capitalization in 2018 found an average cost of $5,850 per year, a median cost of $2,500 per year, and a maximum cost of $51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. *See* AICPA, *XBRL Costs for Small Companies Have Declined 45% since 2014* (2018), *available at https://us.aicpa.org/content/dam/aicpa/interestareas/frc/accountingfinancialreporting/xbrl/downloadabledocuments/xbrl-costs-for-small-companies.pdf. See also* Letter from Nasdaq, Inc. (Mar. 21, 2019) (responding to *Request for Comment on Earnings Releases and Quarterly Reports,* Release No. 33–10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)]) (stating that a 2018 NASDAQ survey of 151 listed companies found an average XBRL compliance cost of $20,000 per quarter, a median XBRL compliance cost of $7,500 per quarter, and a maximum XBRL compliance cost of $350,000 per quarter).

[502] *See* 17 CFR 229.601(b)(101) and 17 CFR 232.405 (for requirements related to tagging financial statements, including footnotes and schedules in Inline XBRL). *See* 17 CFR 229.601(b)(104) and 17 CFR 232.406 (for requirements related to tagging cover page disclosures in Inline XBRL).

[503] *See supra* Section II.I.

[504] *See, e.g.,* letters from Chamber and SIFMA.

[505] *See* letter from Chamber.

estimates because the commenter did not provide any explanation for how they were derived. We believe, however, these estimates likely significantly overstate the costs of the final rules.

First, the commenter overestimates the number of registrants who are likely to bear the full costs of new disclosures. Converting the total and per company cost estimates to registrant counts implies the commenter assumed these costs would be borne by approximately 8,000 companies, which would be nearly every registrant.[506] As stated in Section IV.B.2 above, however, 73 percent of domestic filers in 2022 already made cybersecurity-related disclosures in Form 10–K filings and amendments, and 35 Form 8–K filings disclosed material cybersecurity incidents.[507] While the degree to which registrants' existing disclosures already may be in line with the requirements of the final rules varies—some registrants may need to make significant changes while others may not, especially given the guidance from the 2018 Interpretive Release—most registrants should not bear the full costs of compliance. In addition, while cybersecurity incident disclosure is expected to increase as a result of Item 1.05, we do not expect that most companies will need to report in any given year. Extrapolating from the current numbers of incidents reported—for example, public companies disclosed 188 reported breaches in 2021 [508]—we expect that the overwhelming majority of registrants will not experience a material breach and will not need to disclose cybersecurity incidents and incur the ongoing associated costs.[509] They may, however, revisit their disclosure controls initially, to ensure they are capturing what the rule requires.

Second, we have made changes from the proposed rules that would also reduce costs as compared with the proposal. Some of these changes concerned aspects of the proposed rules that the commenter noted would be burdensome. For example, the commenter states that ''potential material incidents in the aggregate would be difficult to identify and operationally challenging to track.'' [510] The commenter also states ''the SEC underestimates the burdens related to tracking 'several small but continuous cyberattacks against a company,' which may or may not prove to be material.'' [511] These comments refer to proposed Item 106(d)(2), which would have required disclosure when a series of previously undisclosed individually immaterial cybersecurity incidents become material in the aggregate. In response to comments, we are not adopting this aspect of the proposal and instead have added ''a series of related unauthorized occurrences'' to the definition of ''cybersecurity incident,'' which may help address this concern about the burden of the proposal. The comment letter also stated that ''cybersecurity talent is scar[c]e globally. From a personnel standpoint, it's unclear where companies would get the so-called cybersecurity experts that the proposed regulation would mandate. There is a well-documented lack of cybersecurity talent for the public and private sectors that would unquestionably affect companies' recruitment of board cybersecurity experts.'' [512] We are not adopting proposed 407(j) about the cybersecurity expertise, if any, of a registrant's board members, which may have factored into the commenter's cost estimates. Additionally, the proposal would not have mandated recruitment of cybersecurity experts, only disclosure of their presence. Additional streamlining of requirements in the final rules (*e.g.,* reduced granularity of cybersecurity incident disclosure requirements) should further reduce costs from what might have been estimated using the Proposing Release.

Another commenter stated that the Commission's calculation of costs and benefits does not adequately address the impact of different but overlapping disclosure and reporting requirements that may escalate burdens and costs.[513] We acknowledge the possibility that to the extent different information has to be reported pursuant to different regulations, laws, or other requirements, there could be a greater cost because of the demands to keep track of and manage the multiple different disclosure regimes. However, to the extent that certain other existing requirements may involve monitoring cybersecurity incidents or assessing an incident's impact on the registrant, the registrant may be able to leverage existing disclosures to reduce the burden of complying with the final rules. Additionally, as noted in Section II.A.3 those other regulations generally serve different purposes than the final rules, and we believe that the benefits of the final rules justify the costs.

One commenter raised a concern that the costs of the rules reached the threshold of an ''economically significant rulemaking'' under the Unfunded Mandate Reform Act of 1995 (''UMRA'') and the Small Business Regulatory Enforcement Fairness Act, thus requiring an ''enhanced economic analysis.'' [514] The requirement to issue an analysis under the UMRA does not apply to rules issued by independent regulatory agencies.[515]

The compliance costs of the final rules could be disproportionately burdensome to smaller registrants, as some of these costs may have a fixed component that does not scale with the size of the registrant.[516] Also, smaller registrants may have fewer resources with which to implement these changes.[517] One commenter suggested this could lead some small companies seeking to conduct an initial public offering to reconsider.[518] Commenters also noted that smaller companies may not yet have a mature reporting regime and organizational structure and would benefit from an onramp to compliance.[519] We are not adopting some proposed requirements (*e.g.,* disclosing whether the board includes a cybersecurity expert), and thus the cost burden of the final rules should not be as high as initially proposed. We also are delaying compliance for incident disclosure for smaller reporting companies by providing an additional phase-in period of 180 days after the non-smaller reporting company compliance date for smaller reporting companies, which will delay compliance with these requirements for 270 days from effectiveness of the rules.[520] To the extent smaller reporting

[506] $317.5 million divided by $38,690 per registrant equals 8,206 registrants; $523.4 million divided by $69,151 per registrant equals 7,569 registrants; $184.8 million divided by $22,300 per registrant equals 8,287 registrants; $308.1 million divided by $37,500 per registrant equals 8,216 registrants. In Section IV.B.2, *supra,* we find the number of affected parties to include approximately 7,300 operating companies filing on domestic forms and 1,174 FPIs filing on foreign forms.

[507] *See supra* notes 456 and 457 and accompanying text.

[508] *See supra* note 426 and accompanying text.

[509] This conclusion is based on relative quantities. Note that 188 is very small relative to the total number of registrants, 8,474, from Section IV.B.2 (188 divided by 8,474 is roughly 2%).

[510] *See* letter from Chamber.

[511] *Id.*

[512] *Id.*

[513] See letter from SIFMA.

[514] *See* letter from Chamber.

[515] *See* 2 U.S.C. 658 (''The term 'agency' has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.''). *See also* Congressional Research Service, *Unfunded Mandates Reform Act: History, Impact, and Issues* (July 17, 2020), *available at https://sgp.fas.org/crs/misc/R40957.pdf* (noting ''[UMRA] does not apply to duties stemming from participation in voluntary federal programs [or] rules issued by independent regulatory agencies'').

[516] *See infra* Section VI.

[517] *See, e.g.,* letter from SBA.

[518] *See* letter from BIO.

[519] *See, e.g.,* letter from BIO.

[520] *See supra* Section II.I.

companies are less likely than larger companies to have incident disclosure processes in place, they could benefit from additional time to comply. An extended compliance date may also permit smaller reporting companies to benefit from seeing how larger companies implement these disclosures. Investors in these smaller registrants could benefit from higher disclosure quality afforded by the delay, although some benefits, such as the reduction in asymmetric information and mispricing, would also be delayed.

3. Indirect Economic Effects

While the final rules only require disclosures—not changes to risk management practices—the requirement to disclose and the disclosures themselves could result in certain indirect benefits and costs. In anticipating investor reactions to the required disclosures, for example, registrants might devote more resources to cybersecurity governance and risk management in order to be able to disclose those efforts. Although not the purpose of this rule, registrants devoting resources to cybersecurity governance and risk management could reduce both their susceptibility to a cybersecurity attack, reducing the likelihood of future incidents, as well as the degree of harm suffered from an incident, benefiting registrants and investors. The choice to dedicate these resources would also represent an indirect cost of the final rules, to the extent registrants do not already have governance and risk management measures in place. As with compliance costs, the cost of improving cybersecurity governance and risk management could be proportionally higher for smaller companies if these registrants have fewer resources to implement these changes, and to the extent these costs do not scale with registrant size.

In addition, the requirement to tag the cybersecurity disclosure in Inline XBRL could have indirect effects on registrants. As discussed in Section III.C.1.a.(ii), XBRL requirements for public operating company financial statement disclosures have been observed to reduce information processing cost. This reduction in information processing cost has been observed to facilitate the monitoring of registrants by other market participants, and, as a result, to influence registrants' behavior, including their disclosure choices.[521]

The requirement in Item 1.05 that registrants timely disclose material cybersecurity incidents could also indirectly affect consumers, and external stakeholders such as other registrants in the same industry and those facing similar cybersecurity threats. Cybersecurity incidents can harm not only the company that suffers the incident but also other businesses and consumers. For example, a cybersecurity breach at one company, such as a gas pipeline, or a power company, may cause a major disruption or shutdown of a critical infrastructure industry, resulting in broad losses throughout the economy.[522] Timely disclosure of cybersecurity incidents required by Item 1.05 could increase awareness by those external stakeholders and companies in the same industry that the malicious activities are occurring, giving them more time to mitigate any potential damage.

To the extent that Item 1.05 increases incident disclosure, consumers may learn about a particular cybersecurity breach and therefore take appropriate actions to limit potential economic harm that they may incur from the breach. For example, there is evidence that increased disclosure of cybersecurity incidents by companies can reduce the risk of identity theft for individuals.[523] Also, consumers may be able to make better informed decisions about which companies to entrust with their personal information.

As discussed above, to the extent that registrants may decide to enhance their cybersecurity risk management in anticipation of the increased disclosure, that could reduce registrants' susceptibility to and damage incurred from a cybersecurity attack. This reduced likelihood of and vulnerability to future incidents could reduce the negative externalities of those incidents, leading to positive spillover effects and a reduction in overall costs to society from these attacks.

However, the magnitude of this and the other indirect effects discussed above would depend upon factors outside of the specific disclosures provided in response to the final rule, and therefore it is difficult to assess with certainty the likelihood or extent of these effects.

D. Effects on Efficiency, Competition, and Capital Formation

We believe the final rules should have positive effects on market efficiency. As discussed above, the final rules should improve the timeliness and informativeness of cybersecurity incident and risk disclosure. As a result of the disclosure required by the final rules, investors and other market participants should better understand the cybersecurity threats registrants are facing, their potential impact, and registrants' ability to respond to and manage risks. Investors and other market participants should thereby better evaluate registrants' securities and make more informed decisions. As a result, the required disclosures should reduce information asymmetry and mispricing in the market, improving market efficiency. More efficient prices should improve capital formation by increasing overall public trust in markets, leading to greater investor participation and market liquidity.

The final rules also could promote competition among registrants with respect to improvement in both their cybersecurity risk management and transparency in communicating their cybersecurity processes. To the extent investors view strong cybersecurity risk management, strategy, and governance favorably, registrants disclosing more robust processes, more clearly, could benefit from greater interest from investors, leading to higher market liquidity relative to companies that do not. Customers may also be more likely to entrust their business to companies that protect their data. Registrants that to date have invested less in cybersecurity preparation could thus be incentivized to invest more, to the benefit of investors and customers, in order to become more competitive. To the extent that increased compliance costs resulting from the final rules prevent smaller companies from entering the market, as a commenter suggested,[524] the final rules could reduce the ability of smaller companies to compete and thereby reduce competition overall.

[521] *See supra* note 485.

[522] See Lawrence A. Gordon, et al., *Externalities and the Magnitude of Cyber Security Underinvestment by Private Sector Firms: A Modification of the Gordon-Loeb Model,* 6 J. Info. Sec. 24, 25 (2015) (''Firms in the private sector of many countries own a large share of critical infrastructure assets. Hence, cybersecurity breaches in private sector firms could cause a major disruption of a critical infrastructure industry (*e.g.,* delivery of electricity), resulting in massive losses throughout the economy, putting the defense of the nation at risk.''). *See also* Collin Eaton and Dustin Volz, *U.S. Pipeline Cyberattack Forces Closure,* Wall St. J. (May 8, 2021), *available at https://www.wsj.com/articles/cyberattack-forces-closure-of-largest-u-s-refined-fuel-pipeline-11620479737.*

[523] *See* Sasha Romanosky, Rahul Telang, and Alessandro Acquisti, *Do Data Breach Disclosure Laws Reduce Identity Theft?*, 30 (2) J. of Pol'y. Analysis and Mgmt. 272, 256–286 (2011) (finding that the adoption of State-level data breach disclosure laws reduced identity theft by 6.1%).

[524] *See* letter from BIO.

E. Reasonable Alternatives

1. Website Disclosure

As an alternative to Form 8–K disclosure of material cybersecurity incidents, we considered providing registrants with the option of disclosing this information instead through company websites, if the company disclosed its intention to do so in its most recent annual report, and subject to information availability and retention requirements. While this approach may be less costly for the company because it may involve fewer compliance costs, disclosures made on company websites would not be located in a central depository, such as the EDGAR system,[525] and would not be in the same place as other registrants' disclosures of material cybersecurity incidents, nor would they be organized into the standardized sections found in Form 8–K and could thus be less uniform. Even if we required registrants to announce the disclosure, or to alert the Commission to it, the information would still be more difficult for investors and market participants to locate and less uniform than Form 8–K.

The lack of a central repository, and a lack of uniformity of website disclosures, could increase the costs for investors and other market participants to search for and process the information to compare cybersecurity risks across registrants. Additionally, such disclosure might not be preserved on the company's website for as long as it would be on the EDGAR system when the disclosure is filed with the Commission, because registrants may not keep historical information available on their websites indefinitely and it could be difficult to determine whether the website information had moved or changed. Therefore, this approach would be less beneficial to investors, other market participants, and the overall efficiency of the market.

2. Disclosure Through Periodic Reports

We also considered requiring disclosure of material cybersecurity incidents through quarterly or annual reports, as proposed, instead of Form 8–K. Reporting material cybersecurity incidents at the end of the quarter or year would allow registrants more time to assess the financial impact of such incidents. The resulting disclosure might be more specific or informative for investors and other market participants to value the securities and make more informed decisions. The compliance costs would be less under this alternative, because registrants would not have to file as frequently. And, it might further reduce the risk that disclosure could provide timely information to attackers.

However, this alternative also would lead to less timely reporting on material cybersecurity incidents. As a result, the market would not be able to incorporate the information related to cybersecurity risk into securities prices in as timely a manner, and investors and other market participants would not be able to make as informed decisions as they could under the requirements of Item 1.05. Additionally, as previously discussed, less timely reporting could adversely impact external stakeholders, such as other registrants in the same industry and those facing similar cybersecurity threats, and consumers whose data were compromised.

Relatedly, we proposed requiring registrants to disclose material changes and additions to previously reported cybersecurity incidents on Forms 10–K and 10–Q instead of on an amended Form 8–K. However, as discussed above, we believe using Form 8–K would be more timely and consistent;[526] all disclosures concerning material cybersecurity incidents, whether new or containing information not determined or unavailable initially, will be disclosed on the same form.

3. Exempt Smaller Reporting Companies

We also considered exempting smaller reporting companies from the final rules.[527] Exempting smaller reporting companies from the disclosure requirements of the final rules would avoid compliance costs for smaller companies, including those compliance costs that could disproportionately affect smaller companies.[528] As noted earlier, however, we are not adopting some proposed requirements (*e.g.,* disclosing whether the board includes a cybersecurity expert) and modifying others (*e.g.,* requiring a description of cybersecurity ''processes'' instead of more formal ''policies and procedures''), and thus the cost burden of the final rules should not be as high as initially proposed. This should mitigate some of the concerns raised by commenters and would also reduce the potential value of an exemption. Moreover, an exemption would remove the benefit to investors of informative, timely, uniform, and comparable disclosure with regard to smaller companies. And although one commenter argued for an exemption based on a perception that smaller companies are less likely to experience cybersecurity incidents,[529] for the reasons explained in Section IV.C.1.b, we believe that smaller companies are still at risk for material cybersecurity incidents. This aligns with comments we received opposing an exemption for smaller reporting companies.[530]

Lastly, one commenter that argued for an exemption cited the Proposing Release, which noted a potential for increased cost of capital for registrants that do not have cybersecurity programs once disclosures are mandated; the commenter stated that these would disproportionately be smaller registrants.[531] We have reconsidered the argument that registrants without robust cybersecurity processes in place might face a higher cost of capital and as a result would be priced unfavorably, and no longer believe it to be accurate. It is indeed possible that companies that reveal what investors consider to be less robust cybersecurity risk management, strategy, and governance processes may experience a decline in stock price. However, because the risk of cybersecurity attacks should be idiosyncratic, this decline would likely be due to investors updating their expectations of future cash flows for this firm to incorporate higher likelihood of a future incident—moderating the decline should future incidents occur—not an increase in fundamental market risk and thus cost of capital. In addition, to the extent investors already rationally anticipate that smaller registrants or registrants that have not previously disclosed such information have less robust policies, there may be less or no stock price decline as a result of Item 106, as these disclosures would merely confirm expectations. Thus, increases in cost of capital should not be prevalent in this regard and should not be a reason to exempt small firms from the final rules.

V. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules and forms that will be affected by the final rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction

[525] EDGAR, the Electronic Data Gathering, Analysis, and Retrieval system, is the primary system for companies and others submitting documents under the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, and the Investment Company Act. EDGAR's public database can be used to research a public company's financial information and operations.

[526] *See supra* Section II.B.3.

[527] *See supra* Section II.G.2.

[528] *See supra* Section II.G.2.

[529] *See* letter from BIO.

[530] *See, e.g.,* letters from Cybersecurity Coalition; Tenable.

[531] *See* letter from BIO.

Act (''PRA'').[532] The Commission published a notice requesting comment on changes to these collections of information in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[533]

The hours and costs associated with preparing, filing, and sending the forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the affected collections of information are: [534]

- ''Form 8–K'' (OMB Control No. 3235–0060);
- ''Form 6–K'' (OMB Control No. 3235–0116);
- ''Form 10–K'' (OMB Control No. 3235–0063); and
- ''Form 20–F'' (OMB Control No. 3235–0288).

The Commission adopted all of the existing regulations and forms pursuant to the Securities Act and the Exchange Act. The regulations and forms set forth disclosure requirements for current reports and periodic reports filed by registrants to help shareholders make informed voting and investment decisions.

A description of the final amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the final amendments can be found in Section IV above.

B. Summary of Comment Letters and Revisions to PRA Estimates

In the Proposing Release, the Commission requested comment on the PRA burden hour and cost estimates and the analysis used to derive the estimates.[535] While a number of parties commented on the potential costs of the proposed rules, only one commenter spoke specifically to the PRA analysis, arguing that the proposal ''cannot be justified under the Paperwork Reduction Act'' because of an ''unreasonable'' number of separate disclosures and because ''the amount of information the Proposal would require to be produced is unwarranted in light of other, existing regulations.'' [536] The commenter further alleged that the Proposing Release's ''calculation of costs and benefits is skewed'' because ''[d]ifferent but overlapping disclosure and reporting requirements do not correlate with lower burdens on information providers, but rather, escalated burdens and costs.''

While we acknowledge the commenter's concerns about costs of the proposal, for the reasons discussed in Section II.H and elsewhere throughout this release, we believe the information required by the final rules is necessary and appropriate in the public interest and for the protection of investors. Further, a discussion of the economic effects of the final amendments, including consideration of comments that expressed concern about the expected costs associated with the proposed rules, can be found in Section IV above. With regard to the calculation of paperwork burdens, we note that both the Proposing Release's PRA analysis and our PRA analysis of the final amendments here estimate the incremental burden of each new or revised disclosure requirement individually and fully comport with the requirements of the PRA. Our estimates reflect the modifications to the proposed rules that we are adopting in response to commenter concerns, including streamlining some of the proposed rule's elements to address concerns regarding the level of detail required and the anticipated costs of compliance.

C. Effects of the Amendments on the Collections of Information

The following PRA Table 1 summarizes the estimated effects of the final amendments on the paperwork burdens associated with the affected collections of information listed in Section V.A.

PRA Table 1—Estimated Paperwork Burden of Final Amendments

Final amendments and effects	Affected forms	Estimated burden increase	Number of estimated affected responses *
Form 8–K:			
• Add Item 1.05 requiring disclosure of material cybersecurity incidents within four business days following determination of materiality.	Form 8–K	9 hour increase in compliance burden per form.	200 Filings.
Form 6–K:			
• Add ''cybersecurity incident'' to the list in General Instruction B of information required to be furnished on Form 6–K.	Form 6–K	9 hour increase in compliance burden per form.	20 Filings.
Regulation S–K Item 106:			
• Add Item 106(b) requiring disclosure regarding cybersecurity risk management and strategy.	Form 10–K and	Form 10–K: 10 hour increase in compliance burden per form.	8,292 Filings.
• Add Item 106(c) requiring disclosure regarding cybersecurity governance.	Form 20–F	Form 20–F: 10 hour increase in compliance burden per form.	729 Filings.

* The OMB PRA filing inventories represent a three-year average. Averages may not align with the actual number of filings in any given year.

[532] 44 U.S.C. 3501 *et seq.*

[533] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[534] The Proposing Release also listed ''Schedule 14A'' (OMB Control No. 3235–0059), ''Schedule 14C'' (OMB Control No. 3235–0057), and ''Form 10–Q'' (OMB Control No. 3235–0070) as affected collections of information. However, under the final rules, these schedules and form are no longer affected.

[535] Proposing Release at 16616–16617.

[536] *See* letter from SIFMA.

The estimated burden increases for Forms 8–K, 10–K, and 20–F reflect changes from the estimates provided in the Proposing Release. There, the Commission estimated that the average incremental burden for an issuer to prepare the Form 8–K Item 1.05 disclosure would be 10 hours. The proposed estimate included the time and cost of preparing the disclosure, as well as tagging the data in XBRL. The changes we are making to Item 1.05 in the final rules should generally reduce the associated burden by an incremental amount in most cases. We therefore estimate that Form 8–K Item 1.05 will have a burden of 9 hours, on par with the average burdens of existing Form 8–K items, which is 9.21 hours.

In the Proposing Release, the Commission estimated that the average incremental burden for preparing Form 10–K stemming from proposed Item 106 would be 15 hours. Similarly, the Commission estimated that proposed Item 106 would result in an average incremental burden for preparing Form 20–F of 16.5 hours. The proposed estimates included the time and cost of preparing the disclosure, as well as tagging the data in XBRL. We estimate the changes we are making to Item 106 in the final rules should generally reduce the associated burden by one-third due to the elimination of many of the proposed disclosure items; accordingly, we have reduced the estimated burden to 10 hours from 15 hours for Form 10–K, and to 10 hours from 16.5 hours for Form 20–F.[537]

We have not modified the estimated number of estimated affected responses for Form 8–K and Form 6–K from what was proposed. As noted in the Proposing Release, not every filing of these forms would include responsive disclosures. Rather, these disclosures would be required only when a registrant has made the determination that it has experienced a material cybersecurity incident. Further, in the case of Form 6–K, the registrant would only have to provide the disclosure if it is required to disclose such information elsewhere.

D. Incremental and Aggregate Burden and Cost Estimates for the Final Amendments

Below we estimate the incremental and aggregate increase in paperwork burden as a result of the final amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents and from year to year based on a number of factors, including the nature of their business.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the final amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. PRA Table 2 below sets forth the percentage estimates we typically use for the burden allocation for each collection of information. We also estimate that the average cost of retaining outside professionals is $600 per hour.[538]

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED COLLECTIONS OF INFORMATION

Collection of information	Internal (percent)	Outside professionals (percent)
Form 10–K, Form 6–K, and Form 8–K	75	25
Form 20–F	25	75

PRA Table 3 below illustrates the incremental change to the total annual compliance burden of affected collections of information, in hours and in costs, as a result of the final amendments.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Collection of information	Number of estimated affected responses	Burden hour increase per response	Change in burden hours	Change in company hours	Change in professional hours	Change in professional costs
	(A)*	(B)	(C) = (A) × (B)**	(D) = (C) × 0.75 or .25	(E) = (C) × 0.25 or .75	(F) = (E) × $600
8–K	200	9	1,800	1,350	450	$270,000
6–K	20	9	180	135	45	27,000
10–K	8,292	10	82,920	62,190	20,730	12,438,000
20–F	729	10	7,290	1,822.50	5,467.50	3,280,500

*The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average.

**The estimated changes in Columns (C), (D), and (E) are rounded to the nearest whole number.

The following PRA Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

[537] Note that, in the proposal, a portion of the burden for companies reporting on Form 10–K was allocated to Schedule 14A, as a result of certain disclosure items being proposed to be included in Rule 407 of Regulation S–K. By contrast, since registrants reporting on Form 20–F do not have an analogous form to Schedule 14A, the comparable burden to Schedule 14A was attributable to Form 20–F. Since we are not adopting Item 407 as proposed, and we do not expect any disclosures on Schedule 14A, the estimates for Form 10–K and Form 20–F are now aligned.

[538] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour. At the proposing stage, we used an estimated cost of $400 per hour. We are increasing this cost estimate to $600 per hour to adjust the estimate for inflation from Aug. 2006.

PRA TABLE 4—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

Form	Current burden			Program change			Revised burden		
	Current annual responses	Current burden hours	Current cost burden	Change in number of affected responses	Change in company hours	Change in professional costs	Annual responses	Burden hours	Cost burden
	(A)	(B)	(C)	(D)	(E) †	(F) ‡	(G) = (A) + (D)	(H) = (B) + (E)	(I) = (C) + (F)
Form 8–K	118,387	818,158	$108,674,430	200	1,350	$270,000	118,587	819,508	$108,944,430
Form 6–K	34,794	227,031	30,270,780	20	135	27,000	34,814	227,166	30,297,780
Form 10–K	8,292	13,988,770	1,835,588,919		62,190	12,438,000	8,292	14,050,960	1,848,026,919
Form 20–F	729	478,983	576,490,625		1,822.50	3,280,500	729	480,805.50	579,771,125

† From Column (D) in PRA Table 3.
‡ From Column (F) in PRA Table 3.

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[539] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 604 of the RFA.[540] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release.[541]

A. Need for, and Objectives of, the Final Amendments

The purpose of the final amendments is to ensure investors and other market participants receive timely, decision-useful information about registrants' material cybersecurity incidents, and periodic information on registrants' approaches to cybersecurity risk management, strategy, and governance that is standardized and comparable across registrants. The need for, and objectives of, the final rules are described in Sections I and II above. We discuss the economic impact and potential alternatives to the amendments in Section IV, and the estimated compliance costs and burdens of the amendments under the PRA in Section V.

B. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on any aspect of the IRFA, and particularly on the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis, how the proposed amendments could further lower the burden on small entities, and how to quantify the impact of the proposed amendments.

We received one comment letter on the IRFA, from the U.S. Small Business Administration's Office of Advocacy (''Advocacy'').[542] Advocacy's letter expressed concern that ''the IRFA does not adequately describe the regulated small entities and potential impacts on those entities.'' [543] In the Proposing Release, the Commission estimated that the proposed amendments would apply to 660 issuers and 9 business development companies that may be considered small entities.[544] Advocacy's comment letter stated that this estimate did ''not provide additional information, such as the North American Industry Classification System (''NAICS'') classifications of the affected entities'' and did not ''break down the affected entities into smaller size groups (*e.g.,* based on total assets).'' [545] It also stated that the IRFA did not ''adequately analyze the relative impact of costs to small entities.'' [546] In this vein, it suggested that emerging growth companies (''EGCs'') may face particular challenges complying with the proposed rules.[547] In particular, Advocacy's comment letter stated that ''[e]merging growth companies may have little or no revenue to afford the additional cost burden of the proposed rules and may not have access to the cybersecurity expertise necessary to comply with the new disclosure requirements.'' [548]

The comment letter from Advocacy also addressed the discussion of alternatives within the IRFA and the Commission's explanation of why it did not ultimately propose such alternatives. Advocacy stated that ''[t]he RFA requires that an IRFA provide significant, feasible alternatives that accomplish an agency's objectives,'' and stated that the IRFA did not satisfy this requirement because it listed ''broad categories of potential alternatives to the proposed rules but [did] not analyze any specific alternative that was considered by the SEC,'' and because it did not ''contain a description of significant alternatives which accomplish the stated SEC objectives and which minimize the significant economic impact of the proposal on small entities.''

1. Estimate of Affected Small Entities and Impact to Those Entities

With respect to the adequacy of the Proposing Release's estimate of affected small entities, the RFA requires ''a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.'' [549] Advocacy's published guidance recommends agencies use NAICS classifications to help in ''identifying the industry, governmental and nonprofit sectors they intend to regulate.'' [550] Here, given that the rulemaking applies to and impacts all public company registrants, regardless of industry or sector, we do not believe that further breakout of such registrants by industry classification is necessary or would otherwise be helpful to such entities understanding the impact of the

539 5 U.S.C. 553.

540 5 U.S.C. 604.

541 Proposing Release at 16617.

542 *See* letter from U.S. Small Business Administration Office of Advocacy. We also received some comments that, while not specifically addressed to the IRFA, did concern the impact of the proposed rules on smaller reporting companies. *See* letters from BDO; BIO; CSA; Cybersecurity Coalition; NACD; NASAA; Nasdaq; NDIA; Prof. Perullo; Tenable. We have addressed those comments in Section II.G.2, *supra,* and incorporate those responses here as applicable to our RFA analysis. We also note the recommendations for all Commission rulemakings from the Office of the Advocate for Small Business Capital Formation. *See* 2022 OASB Annual Report.

543 *Id.*

544 Proposing Release at 16617.

545 *See* letter from Advocacy.

546 *Id.*

547 *Id.*

548 *Id.*

549 5 U.S.C. 603(b)(3).

550 U.S. Small Business Administration Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Aug. 2017), at 18, *available at https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

proposed or final rules. This is not a case in which small entities in certain industries and sectors would be affected more than others, as cybersecurity risks exist across industries.[551] For the same reasons we are not breaking down the affected entities into smaller size groups (*e.g.,* based on total assets) as recommended by Advocacy. Given the nature of the final rules, we believe that our estimate of the number of small entities to which the final rules will apply adequately describes and estimates the small entities that will be affected.[552]

With respect to Advocacy's suggestion that the proposed rule may be ''particularly problematic'' for EGCs, we have discussed in Section IV.C.2 above the anticipated costs of the final rules, including their impact on EGCs. We also note that the category of EGC is not the same as the category of ''small entity'' for purposes of the RFA, and indeed EGC status is not a reliable indicator of whether a registrant is a small entity.[553] While EGC status does include a revenue component, it importantly considers whether the issuer is *seasoned,* meaning, whether it is a new registrant (rather than a registrant with a longer public reporting history). Accordingly, while many EGCs are small entities, there are many that are not. Likewise, many small entities are not EGCs. For purposes of the FRFA, our focus is on the impact on small entities, regardless of whether or not they are EGCs.

We disagree with the statement in the Advocacy comment letter that ''SEC expects that the costs associated with the proposed amendments to be similar for large and small entities.'' The Commission explained in the IRFA that the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size, and that therefore, the Commission expected that ''the *nature* of any benefits and costs associated with the proposed amendments to be similar for large and small entities'' (emphasis added).[554] The analysis with respect to the *nature* of the costs (and benefits) of the proposed rules detailed in the Economic Analysis of the Proposing Release was referenced in the IRFA to help small entities understand such impacts, not to imply that small entities face the same degree of costs as large entities. Indeed, the Commission went on to state in both the IRFA and the Economic Analysis of the Proposing Release that, while it was unable to project the economic impacts on small entities with precision, it recognized that ''the costs of the proposed amendments borne by the affected entities could have a proportionally greater effect on small entities, as they may be less able to bear such costs relative to larger entities.'' [555] Additionally, in Section IV, above, we discuss the economic effects, including costs, of the final amendments across all entities. We recognize that to the extent the costs are generally uniform across all entities, they would have a relatively greater burden on smaller entities. That said, as discussed both above and below, to help mitigate that relatively greater burden and to respond to comment letters including the letter from Advocacy, we have extended the compliance date for smaller reporting companies so as to provide additional transition time and allow them to benefit from the experience of larger companies. Accordingly, we believe that both this FRFA and our prior IRFA adequately describe and analyze the relative impact of costs to small entities.

2. Consideration of Alternatives

The IRFA's discussion of significant alternatives, and our discussion of alternatives below, satisfy the RFA. The relevant RFA requirement provides that an IRFA ''shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' [556] In the Proposing Release, the Commission discussed each of the types of significant alternatives noted in Section 603 of the RFA and concluded that none of these alternatives would accomplish the stated objectives of the rulemaking while minimizing any significant impact on small entities. In addition, Section III.E of the Proposing Release discussed reasonable alternatives to the proposed rules and their economic impacts. Similarly, in addition to the discussion in Section VI.E below, in Section IV.E of this release we also discuss reasonable alternatives of the final rules and their economic impacts.

While not commenting on the alternatives raised in the IRFA specifically, two commenters stated that the final rules should exempt smaller businesses. One of these commenters stated that small companies in the biotechnology industry ''do not have the capacity, nor the business need, to have institutional structures related to the management, planning, oversight, and maintenance of cybersecurity related systems and suppliers. These companies should not have to hire extra employees specifically for the purposes of implementing cybersecurity related programs.'' [557] The other commenter noted that, with respect to the proposed requirement to require disclosure about the cybersecurity expertise of board members, small companies ''have limited resources to begin with, and may find it more difficult than large companies to identify board members with requisite cyber expertise given that there already is a lack of talent in this area.'' [558]

With respect to the first of these commenters, we note that neither the proposed nor the final rules require any company to ''implement new management structures'' or otherwise adopt or change ''institutional structures related to the management, planning, oversight, and maintenance of cybersecurity related systems and suppliers.'' [559] The final rules instead call for disclosure of a registrant's processes, *if any,* for assessing, identifying, and managing material cybersecurity risks. To the extent that a registrant does not have such processes, the final rules do not impose any additional costs. With respect to the second of these commenters, we note that, consistent with commenter feedback and for the reasons discussed above, we have not adopted the proposed requirement related to disclosure of board cybersecurity expertise.

Finally, we note that many commenters explicitly opposed exempting smaller businesses from the proposed rules,[560] in part because they may face equal [561] or greater [562]

[551] A breakout would be relevant where, for example, the Commission finds that small entities generally would not be affected by a rule but small entities in a particular industry would be affected.

[552] *See infra* Section VI.C.

[553] An EGC is defined as a company that has total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year and, as of Dec. 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an initial public offering, unless one of the following occurs: its total annual gross revenues are $1.235 billion or more; it has issued more than $1 billion in non-convertible debt in the past three years; or it becomes a ''large accelerated filer,'' as defined in Exchange Act Rule 12b–2.

[554] Proposing Release at 16617 (emphasis added).

[555] Proposing Release at 16617–16618. *See also id.* at 16613 (''smaller companies might incur a cost that is disproportionally high, compared to larger companies under the proposed rules'').

[556] 5 U.S.C. 603(c).

[557] *See* letter from BIO.

[558] *See* letter from NDIA.

[559] The quoted language is from the BIO letter.

[560] *See* letters from CSA; Cybersecurity Coalition; NASAA; Prof. Perullo; Tenable.

[561] *See* letter from Cybersecurity Coalition.

[562] *See* letters from NASAA and Tenable.

cybersecurity risk than larger companies, or because investors' relative share in a smaller company may be higher, such that small companies' cybersecurity risk ''may actually embody the most pressing cybersecurity risk to an investor.'' [563] We agree with these analyses,[564] and accordingly are not exempting small entities from the final rules. However, as discussed above, in response to concerns about the impact of the rules on smaller companies and in order to provide smaller reporting companies with additional time to prepare to comply with the incident disclosure requirements, we are providing such registrants with an additional 180 days from the non-smaller reporting company compliance date before they must comply with the new Form 8–K requirement.

C. Small Entities Subject to the Final Amendments

The final amendments would apply to registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [565] For purposes of the RFA, under our rules, a registrant, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[566] An investment company, including a business development company,[567] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[568] We estimate that, as of December 31, 2022, there were approximately 800 issuers and 10 business development companies that may be considered small entities that would be subject to the final amendments.

D. Projected Reporting, Recordkeeping, and other Compliance Requirements

Per the final rules, registrants will be required to report material cybersecurity incidents on Form 8–K and Form 6–K for FPIs, and will be required to describe in their annual reports on Forms 10–K and 20–F certain aspects of their cybersecurity risk management, strategy, and governance, if any. The final amendments are described in more detail in Section II above. These requirements generally will apply to small entities to the same extent as other entities, irrespective of size or industry classification, although we are adopting a later compliance date for smaller reporting companies in response to concerns raised by commenters. We continue to expect that the nature of any benefits and costs associated with the amendments to be similar for large and small entities, and so we refer to the discussion of the amendments' economic effects on all affected parties, including small entities, in Section IV above. Also consistent with the discussion in Sections II and IV above, we acknowledge that, in particular to the extent that a smaller entity would be required to provide disclosure under the final rules, it may face costs that are proportionally greater as they may be less able to bear such costs relative to larger entities. However, as discussed in in Section IV, we anticipate that the economic benefits and costs likely could vary widely among small entities based on a number of factors, such as the nature and conduct of their businesses, including whether the company actively manages material cybersecurity risks, which makes it difficult to project the economic impact on small entities with precision. To the extent that the disclosure requirements have a greater effect on small registrants relative to large registrants, they could result in adverse effects on competition. The fixed component of the legal costs of preparing the disclosure would be a primary contributing factor. Compliance with certain provisions of the final amendments may require the use of professional skills, including legal, accounting, and technical skills.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Accordingly, we considered the following alternatives:

- Exempting small entities from all or part of the requirements;
- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

The rules are intended to better inform investors about cybersecurity incidents and, if any, the cybersecurity risk management, strategy, and governance of registrants of all types and sizes that are subject to the Exchange Act reporting requirements. We explain above in Sections II and IV that current requirements and guidance are not yielding uniform, comparable disclosure sufficient to meet investors' needs. The disclosure that does exist is scattered in various parts of registrants' filings, making it difficult for investors to locate, analyze, and compare across registrants. Staff has also observed that smaller reporting companies generally provide less cybersecurity disclosure as compared to larger registrants, and commenters agreed that there is a need for cybersecurity disclosure from small companies.[569]

Given the current disclosure landscape, exempting small entities or otherwise clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities would frustrate the rulemaking's goal of providing investors with more uniform and timely disclosure about material cybersecurity incidents and about cybersecurity risk management, strategy, and governance practices across all registrants. That said, as discussed in Section II above, we have consolidated and simplified the disclosure requirements for all entities, which should ease small entities' compliance as well. Further, as noted above, smaller companies may face equal or greater cybersecurity risk than

[563] *See* letter from Prof. Perullo.

[564] We note that one commenter stated its conclusion that ''cyberattacks mainly affect larger companies.'' *See* letter from BIO. The basis of the commenter's assertion is that mean market capitalization of impacted companies in the relevant study cited in the Proposing Release is $58.9 billion (Kamiya, et al. (2021)), which it notes is much higher than the average for small companies, and thus concludes that ''cyberattacks mainly affect large companies and are *not* material for smaller companies.'' As noted in Section IV, *supra,* an average market capitalization of $58.9 billion does not preclude the existence of numerous companies much smaller (and larger) than that amount. *See supra* note 478. The commenter additionally notes that the relevant study states that ''firms are more likely to experience cyberattacks when they are larger.'' To the extent that smaller entities face fewer cyber incidents, that would result in a less frequent need to analyze whether disclosure of such incidents is required under the final rules. However, even if smaller entities are less likely to experience a cyberattack, this would not negate the analysis that such attacks, when they do occur, are more likely to be material for the reasons discussed above.

[565] 5 U.S.C. 601(6).

[566] *See* 17 CFR 240.0–10(a) [Exchange Act Rule 0–10(a)].

[567] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53 through 64].

[568] 17 CFR 270.0–10(a).

[569] *See supra* notes 339 to 342 and accompanying text.

larger companies, making the disclosures important for investors in these companies.

On the other hand, we believe the rulemaking's goals can be achieved by providing smaller reporting companies with additional time to come into compliance. Therefore, we are delaying smaller reporting companies' required compliance date with the Form 8–K incident disclosure requirement by an additional 180 days from the non-smaller reporting company compliance date. This delay will benefit smaller reporting companies both by giving them extra time to establish disclosure controls and procedures and by allowing them to observe and learn from best practices as they develop among larger registrants.

Similarly, the final rules incorporate a combination of performance and design standards with respect to all subject entities, including small entities, in order to balance the objectives and compliance burdens of the rules. While the final rules do use design standards to promote uniform compliance requirements for all registrants and to address the concerns underlying the amendments, which apply to entities of all size, they also incorporate elements of performance standards to give registrants sufficient flexibility to craft meaningful disclosure that is tailored to their particular facts and circumstances. For example, the final rules require a registrant to describe its ''processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes.'' The rule also provides a non-exclusive list of disclosure items that a registrant should include in providing responsive disclosure to this performance standard; this design element provides registrants with additional guidance with respect to the type of disclosure topics that could be covered and promotes consistency.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 7 and 19(a) of the Securities Act and Sections 3(b), 12, 13, 15, and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 232, 239, 240, and 249

Reporting and record keeping requirements, Securities.

Text of Amendments

For the reasons set forth in the preamble, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78*o,* 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Add § 229.106 to read as follows:

§ 229.106 (Item 106) Cybersecurity.

(a) *Definitions.* For purposes of this section:

Cybersecurity incident means an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

Cybersecurity threat means any potential unauthorized occurrence on or conducted through a registrant's information systems that may result in adverse effects on the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

Information systems means electronic information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

(b) *Risk management and strategy.* (1) Describe the registrant's processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:

(i) Whether and how any such processes have been integrated into the registrant's overall risk management system or processes;

(ii) Whether the registrant engages assessors, consultants, auditors, or other third parties in connection with any such processes; and

(iii) Whether the registrant has processes to oversee and identify such risks from cybersecurity threats associated with its use of any third-party service provider.

(2) Describe whether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the registrant, including its business strategy, results of operations, or financial condition and if so, how.

(c) *Governance.* (1) Describe the board of directors' oversight of risks from cybersecurity threats. If applicable, identify any board committee or subcommittee responsible for the oversight of risks from cybersecurity threats and describe the processes by which the board or such committee is informed about such risks.

(2) Describe management's role in assessing and managing the registrant's material risks from cybersecurity threats. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:

(i) Whether and which management positions or committees are responsible for assessing and managing such risks, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;

(ii) The processes by which such persons or committees are informed about and monitor the prevention, detection, mitigation, and remediation of cybersecurity incidents; and

(iii) Whether such persons or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Instruction 1 to Item 106(c): In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (c) of this section, the term ''board of directors'' means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (c) of this Item, the term ''board of directors'' means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

Instruction 2 to Item 106(c): Relevant expertise of management in Item 106(c)(2)(i) may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

(d) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

■ 3. Amend § 229.601 by revising paragraph (b)(101)(i)(C)(*1*) as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(101) * * *

(i) * * *

(C) * * *

(*1*) Only when:

(*i*) The Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle. In such case, the Interactive Data File will be required only as to such revised financial statements regardless of whether the Form 8–K contains other financial statements; or

(*ii*) The Form 8–K includes disclosure required to be provided in an Interactive Data File pursuant to Item 1.05(b) of Form 8–K; and

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 4. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 5. Amend § 232.405 by adding paragraph (b)(4)(v) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(4) * * *

(v) Any disclosure provided in response to: § 229.106 of this chapter (Item 106 of Regulation S–K); Item 1.05 of § 249.308 of this chapter (Item 1.05 of Form 8–K); and Item 16K of § 249.220f of this chapter (Item 16K of Form 20–F).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: *15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37,* and sec. 71003 and sec. 84001, *Pub. L. 114–94*, 129 Stat. 1321, unless otherwise noted.

* * * * *

■ 7. Amend § 239.13 by revising paragraph (a)(3)(ii) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(3) * * *

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, 6.03, or 6.05 of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) § 240.12b–25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section; and

* * * * *

■ 8. Amend Form S–3 (referenced in § 239.13) by adding General Instruction I.A.3(b).

Note: Form S–3 is attached as Appendix A to this document. Form S–3 will not appear in the Code of Federal Regulations.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The authority citation for part 240 continues to read, in part, as follows:

Authority: *15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11,* 7201 *et seq.,* and 8302; *7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350;* and *Pub. L. 111–203,* 939A, 124 Stat. 1376 (2010); and *Pub. L. 112–106*, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.15d–11 is also issued under secs. 3(a) and 306(a), *Pub. L. 107–204*, 116 Stat. 745.

* * * * *

■ 10. Amend § 240.13a–11 by revising paragraph (c) to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

■ 11. Amend § 240.15d–11 by revising paragraph (c) to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) No failure to file a report on Form 8–K that is required solely pursuant to Item 1.01, 1.02, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a), 5.02(e), or 6.03 of Form 8–K shall be deemed to be a violation of 15 U.S.C. 78j(b) and § 240.10b–5.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for part 249 continues to read, in part, as follows:

Authority: *15 U.S.C. 78a et seq.* and 7201 *et seq.; 12 U.S.C. 5461 et seq.*; *18 U.S.C. 1350*; Sec. 953(b) *Pub. L. 111–203*, 124 Stat. 1904; Sec. 102(a)(3) *Pub. L. 112–106*, 126 Stat. 309 (2012), Sec. 107 *Pub. L. 112–106*, 126 Stat. 313 (2012), Sec. 72001 *Pub. L. 114–94*, 129 Stat. 1312 (2015), and secs. 2 and 3 *Pub. L. 116–222*, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, *Pub. L. 107–204*, 116 Stat. 745, and secs. 2 and 3, *Pub. L. 116–222*, 134 Stat. 1063.

* * * * *

Section 249.308 is also issued under *15 U.S.C. 80a–29* and *80a–37.*

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Public Law 107–204, 116 Stat. 745.

* * * * *

■ 13. Revise Form 20–F (referenced in § 249.220f) by adding Item 16K.

Note: Form 20–F is attached as Appendix B to this document. Form 20–F will not appear in the Code of Federal Regulations.

■ 14. Amend Form 6–K (referenced in § 249.306) by adding, in the second paragraph of General Instruction B, the phrase ''material cybersecurity incident;'' before the phrase ''and any

other information which the registrant deems of material importance to security holders.''

■ 15. Revise Form 8–K (referenced in § 249.308) by:
■ a. Revising General Instruction B.1.;
■ b. Revising General Instruction G.1.; and
■ c. Adding Item 1.05.

Note: Form 8–K is attached as Appendix C to this document. Form 8–K will not appear in the Code of Federal Regulations.

■ 16. Revise Form 10–K (referenced in § 249.310) by:
■ a. Revising General Instruction J(1)(b); and
■ b. Adding Item 1C to Part I.

Note: Form 10–K is attached as Appendix D to this document. Form 10–K will not appear in the Code of Federal Regulations.

* * * * *

By the Commission.

Dated: July 26, 2023.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form S–3

FORM S–3

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

A. Registrant Requirements

* * * * *

3. * * *

(b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 1.04, 1.05, 2.03, 2.04, 2.05, 2.06, 4.02(a) or 5.02(e) of Form 8–K (§ 249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule.

* * * * *

Appendix B—Form 20–F

FORM 20–F

* * * * *

PART II

* * * * *

Item 16K. Cybersecurity

(a) Definitions. For purposes of this section:

(1) *Cybersecurity incident* means an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

(2) *Cybersecurity threat* means any potential unauthorized occurrence on or conducted through a registrant's information systems that may result in adverse effects on the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

(3) *Information systems* means electronic information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

(b) Risk management and strategy. (1) Describe the registrant's processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:

(i) Whether and how any such processes have been integrated into the registrant's overall risk management system or processes;

(ii) Whether the registrant engages assessors, consultants, auditors, or other third parties in connection with any such processes; and

(iii) Whether the registrant has processes to oversee and identify such risks from cybersecurity threats associated with its use of any third-party service provider.

(2) Describe whether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the registrant, including its business strategy, results of operations, or financial condition and if so, how.

(c) *Governance.* (1) Describe the board of directors' oversight of risks from cybersecurity threats. If applicable, identify any board committee or subcommittee responsible for the oversight of risks from cybersecurity threats and describe the processes by which the board or such committee is informed about such risks.

(2) Describe management's role in assessing and managing the registrant's material risks from cybersecurity threats. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:

(i) Whether and which management positions or committees are responsible for assessing and managing such risks, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;

(ii) The processes by which such persons or committees are informed about and monitor the prevention, detection, mitigation, and remediation of cybersecurity incidents; and

(iii) Whether such persons or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.

Instructions to Item 16K(c)

1. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (c) of this Item, the term ''board of directors'' means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3) of this chapter, for purposes of paragraph (c) of this Item, the term ''board of directors'' means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

2. Relevant expertise of management in paragraph (c)(2)(i) of this Item may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

(d) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

Instruction to Item 16K. Item 16K applies only to annual reports, and does not apply to registration statements on Form 20–F.

* * * * *

Appendix C—Form 8–K

FORM 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed or furnished, as applicable, upon the occurrence of any one or more of the events specified in the items in Sections 1 through 6 and 9 of this form. Unless otherwise specified, a report is to be filed or furnished within four business days after occurrence of the event. If the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the four business day period shall begin to run on, and include, the first business day thereafter. A registrant either furnishing a report on this form under Item 7.01 (Regulation FD Disclosure) or electing to file a report on this form under Item 8.01 (Other Events) solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing, as applicable, in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)), including the deadline for furnishing or filing such report. A report pursuant to Item 5.08 is to be filed within four business days after the registrant determines the anticipated meeting date. A report pursuant to Item 1.05 is to be filed within four business days after the registrant determines that it has experienced a material cybersecurity incident.

* * * * *

G. Use of This Form by Asset-Backed Issuers

* * * * *

1. * * *

(a) Item 1.05, Cybersecurity Incidents;

(b) Item 2.01, Completion of Acquisition or Disposition of Assets;

(c) Item 2.02, Results of Operations and Financial Condition;

(d) Item 2.03, Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant;

(e) Item 2.05, Costs Associated with Exit or Disposal Activities;

(f) Item 2.06, Material Impairments;

(g) Item 3.01, Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing;

(h) Item 3.02, Unregistered Sales of Equity Securities;

(i) Item 4.01, Changes in Registrant's Certifying Accountant;

(j) Item 4.02, Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review;

(k) Item 5.01, Changes in Control of Registrant;

(*l*) Item 5.02, Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers;

(m) Item 5.04, Temporary Suspension of Trading Under Registrant's Employee Benefit Plans; and

(n) Item 5.05, Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

Section 1—Registrant's Business and Operations

* * * * *

Item 1.05 Material Cybersecurity Incidents

(a) If the registrant experiences a cybersecurity incident that is determined by the registrant to be material, describe the material aspects of the nature, scope, and timing of the incident, and the material impact or reasonably likely material impact on the registrant, including its financial condition and results of operations.

(b) A registrant shall provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.

(c) Notwithstanding General Instruction B.1. to Form 8–K, if the United States Attorney General determines that disclosure required by paragraph (a) of this Item 1.05 poses a substantial risk to national security or public safety, and notifies the Commission of such determination in writing, the registrant may delay providing the disclosure required by this Item 1.05 for a time period specified by the Attorney General, up to 30 days following the date when the disclosure required by this Item 1.05 was otherwise required to be provided. Disclosure may be delayed for an additional period of up to 30 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security or public safety and notifies the Commission of such determination in writing. In extraordinary circumstances, disclosure may be delayed for a final additional period of up to 60 days if the Attorney General determines that disclosure continues to pose a substantial risk to national security and notifies the Commission of such determination in writing. Beyond the final 60-day delay under this paragraph, if the Attorney General indicates that further delay is necessary, the Commission will consider additional requests for delay and may grant such relief through Commission exemptive order.

(d) Notwithstanding General Instruction B.1. to Form 8–K, if a registrant that is subject to 47 CFR 64.2011 is required to delay disclosing a data breach pursuant to such rule, it may delay providing the disclosure required by this Item 1.05 for such period that is applicable under 47 CFR 64.2011(b)(1) and in no event for more than seven business days after notification required under such provision has been made, so long as the registrant notifies the Commission in correspondence submitted to the EDGAR system no later than the date when the disclosure required by this Item 1.05 was otherwise required to be provided.

Instructions to Item 1.05

1. A registrant's materiality determination regarding a cybersecurity incident must be made without unreasonable delay after discovery of the incident.

2. To the extent that the information called for in Item 1.05(a) is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8–K filing under this Item 1.05 containing such information within four business days after the registrant, without unreasonable delay, determines such information or within four business days after such information becomes available.

3. The definition of the term ''cybersecurity incident'' in 229.106(a) [Item 106(a) of Regulation S–K] applies to this Item.

4. A registrant need not disclose specific or technical information about its planned response to the incident or its cybersecurity systems, related networks and devices, or potential system vulnerabilities in such detail as would impede the registrant's response or remediation of the incident.

* * * * *

Appendix D—Form 10–K

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of This Form by Asset-Backed Issuers

* * * * *

(1) * * *

(b) Item 1A, Risk Factors and Item 1C, Cybersecurity;

* * * * *

Part I

* * * * *

Item 1C Cybersecurity

(a) Furnish the information required by Item 106 of Regulation S–K (229.106 of this chapter).

* * * * *

[FR Doc. 2023–16194 Filed 8–3–23; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 88 Friday,
No. 149 August 4, 2023

Part III

Department of Justice

28 CFR Part 35
Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities; Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 144; AG Order No. 5729–2023]

RIN 1190–AA79

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (''Department'') is proposing to revise the regulation implementing title II of the Americans with Disabilities Act (''ADA'') in order to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by State and local Government entities to the public through the web and mobile apps.

DATES: Written comments must be postmarked, and electronic comments must be submitted, on or before October 3, 2023. Commenters should be aware that the electronic Federal Docket Management System (''FDMS'') will accept comments submitted prior to midnight Eastern Time on the last day of the comment period. Written comments postmarked on or before the last day are considered timely even though they may be received after the end of the comment period. Late comments are highly disfavored. The Department is not required to consider late comments.

ADDRESSES: You may submit comments, identified by RIN 1190–AA79 (or Docket ID No. 144), by any one of the following methods:

- *Federal eRulemaking Website: www.regulations.gov.* Follow the website's instructions for submitting comments.
- *Regular U.S. Mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 440528, Somerville, MA 02144.
- *Overnight, Courier, or Hand Delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or 1–833–610–1264 (TTY). You may obtain copies of this NPRM in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) or 1–833–610–1264 (TTY). A link to this NPRM is also available on *www.ada.gov.*

Electronic Submission of Comments and Posting of Public Comments

Interested persons are invited to participate in this rulemaking by submitting written comments on all aspects of this rule via one of the methods and by the deadline stated above. When submitting comments, please include ''RIN 1190–AA79'' in the subject field. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing this rule will reference a specific portion of the rule or respond to a specific question, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifiable information (''PII'') (such as your name and address). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible *https://www.regulations.gov/* site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Proposed Rule and Need for the Rule

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a State or local government entity.[1] The Department uses the phrases ''State and local government entities'' and ''public entities'' interchangeably throughout this Notice of Proposed Rulemaking (''NPRM'') to refer to ''public entities'' as defined in 42 U.S.C. 12131(1) that are covered under part A of title II of the ADA. The Department has consistently made clear that the title II nondiscrimination provision applies to *all* services, programs, and activities of public entities, including those provided via the web. It also includes those provided via mobile applications (''apps''), which, as discussed in the proposed definition, are software applications that are designed to be downloaded and run on mobile devices such as smartphones and tablets. In this NPRM, the Department proposes technical standards for web content and mobile app accessibility to give public entities greater clarity in exactly how to meet their ADA obligations and to help ensure equal access to public entities' services, programs, and activities (also referred to as ''government services'') for people with disabilities.

Public entities are increasingly providing the public access to government services through their web content and mobile apps. For example, government websites and mobile apps often allow the public to obtain information or correspond with local officials without having to wait in line or be placed on hold. Members of the public can also pay fines, apply for State benefits, renew State-issued identification, register to vote, file taxes, request copies of vital records, and complete numerous other tasks via government websites. Individuals can often perform many of these same functions on mobile apps. Additionally, as discussed further, web- and mobile app-based access to these programs and activities has become especially critical since the start of the COVID–19 pandemic. Often, however, State and local government entities' web- and mobile app-based services are not designed accessibly and as a result are not equally available to individuals with disabilities.

[1] 42 U.S.C. 12132.

It is critical to ensure that people with disabilities can access important web content and mobile apps quickly, easily, independently, and equally. Just as steps can exclude people who use wheelchairs, inaccessible web content can exclude people with a range of disabilities from accessing government services. For example, access to voting information, up-to-date health and safety resources, and mass transit schedules and fare information may depend on having access to websites and mobile apps. With accessible web content and mobile apps, people with disabilities can access government services independently and in some cases with more privacy. By allowing people with disabilities to engage more fully with their governments, accessible web content and mobile apps also promote the equal enjoyment of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, petitioning, and due process of law.

Accordingly, the Department is proposing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide equal access to all of their services, programs, and activities that are provided via the web and mobile apps. The Department believes the requirements described in this rule are necessary to ensure ''equality of opportunity, full participation, independent living, and economic self-sufficiency'' for individuals with disabilities, as set forth in the ADA.[2]

B. Legal Authority

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability.[3] Title II of the ADA, which this rule addresses, applies to State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local government entities regardless of whether the entities receive Federal financial assistance.[4] Part A of title II protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Section 204(a) of the ADA directs the Attorney General to issue regulations implementing part A of title II but exempts matters within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.[5]

The Department of Justice is the only Federal agency with authority to issue regulations under title II, part A, of the ADA regarding the accessibility of State and local government entities' web content and mobile apps. In addition, under Executive Order 12250, the Department of Justice is responsible for ensuring consistency and effectiveness in the implementation of section 504 across the Federal Government (aside from provisions relating to equal employment). Given Congress's intent for parity between section 504 and title II of the ADA, the Department must also ensure that any interpretations of section 504 are consistent with title II (and vice versa).[6] The Department, therefore, also has a lead role in coordinating interpretations of section 504 (again, aside from provisions relating to equal employment), including its application to websites and mobile apps, across the Federal Government.

C. Overview of Key Provisions of This Proposed Regulation

In this NPRM, the Department proposes to add a new subpart H to the title II ADA regulation, 28 CFR part 35, that will set forth technical requirements for ensuring that web content that State and local government entities make available to members of the public or use to offer services, programs, and activities to members of the public is readily accessible to and usable by individuals with disabilities. Web content is information or sensory experience that is communicated to the user by a web browser or other software. This includes text, images, sounds, videos, controls, animations, navigation menus, and documents. Examples of sensory experiences include content like visual works of art or musical performances.[7] Proposed subpart H also sets forth technical requirements for ensuring the accessibility of mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.

The Department proposes to adopt an internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines (''WCAG'') 2.1[8] published in June 2018, *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/H2GG-WJVK*], as the technical standard for web content and mobile app accessibility under title II of the ADA. As will be explained in more detail, the Department is proposing to require that public entities comply with the WCAG 2.1 Level AA success criteria and conformance requirements. The applicable technical standard will be referred to hereinafter as ''WCAG 2.1.'' The applicable conformance level will be referred to hereinafter as ''Level AA.'' To the extent there are differences between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail. As noted below, WCAG 2.1 Level AA is not restated in full in this rule but is instead incorporated by reference.

In recognition of the challenges that small public entities may face with respect to resources for implementing the proposed new requirements, the Department is proposing to stagger the compliance dates for public entities according to their total population. Total population refers to the size of the public entity's population according to the U.S. Census Bureau or, if the public entity does not have a specific population but belongs to another jurisdiction that does, the population of the jurisdiction to which the entity belongs. This NPRM proposes that a public entity with a total population of 50,000 or more must ensure that web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public, comply with WCAG 2.1 Level AA success criteria and conformance requirements two years after the publication of the final rule. A public entity with a total population of less than 50,000 would have three years to comply with these requirements. In addition, all special district governments would have three years to comply with these requirements.

[2] 42 U.S.C. 12101(a)(7).

[3] 42 U.S.C. 12101–12213.

[4] 42 U.S.C. 12131–65.

[5] *See* 42 U.S.C. 12134. Section 229(a) and section 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C. 12149, 12164.

[6] Memorandum for Federal Agency Civil Rights Directors and General Counsels from the Office of the Assistant Attorney General, Civil Rights Division, Department of Justice, *https://www.justice.gov/crt/file/1466601/download* [*https://perma.cc/YN3G-J7F9*].

[7] *See* W3C®, Web Content Accessibility Guidelines 2.1 (June 5, 2018), *https://www.w3.org/TR/WCAG21/#dfn-specific-sensory-experience* [*https://perma.cc/5554-T2R2*].

[8] Copyright © 2017 2018 W3C® (MIT, ERCIM, Keio, Beihang). This document includes material copied from or derived from *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/H2GG-WJVK*].

TABLE 1—COMPLIANCE DATES FOR WCAG 2.1 LEVEL AA

Public entity size	Compliance date
Fewer than 50,000 persons/Special district governments	Three years after publication of the final rule.
50,000 or more persons	Two years after publication of the final rule.

In addition, the Department is proposing to create an exception from the web accessibility requirements for certain categories of web content, which are described in detail in the section-by-section analysis.

If web content is excepted, that means that the public entity does not need to make the content conform to WCAG 2.1 Level AA, unless there is an applicable limitation to the exception. The proposed limitations describe situations in which the otherwise excepted content must conform to WCAG 2.1 Level AA.

As will be explained more fully, the Department is proposing seven exceptions with some limitations: (1) archived web content; (2) preexisting conventional electronic documents; (3) web content posted by third parties on a public entity's website; (4) third-party web content linked from a public entity's website; (5) course content on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution; (6) class or course content on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school; and (7) conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured. The proposed exception for preexisting conventional electronic documents would also apply to conventional electronic documents available through mobile apps. As discussed further, if one of these exceptions applies without a limitation, then the public entity's excepted web content or mobile app would not need to comply with the proposed rule's accessibility requirements. However, each exception is limited in some way. If a limitation applies to an exception, then the public entity would need to ensure that its web content or mobile app complies with the proposed rule's accessibility requirements. The Department is proposing these exceptions—with certain limitations explained in detail later in this NPRM—because it believes that requiring public entities to make the particular content described in these categories accessible under all circumstances could be too burdensome at this time. In addition, requiring accessibility in all circumstances may divert important resources from providing access to key web content and mobile apps that public entities make available or use to offer services, programs, and activities. However, upon request from a specific individual, a public entity may have to provide web content or content in mobile apps to that individual in an accessible format to comply with the entity's existing obligations under other regulatory provisions implementing title II of the ADA, even if an exception applies without a limitation. For example, archived town meeting minutes from 2011 might be excepted from the requirement to comply with WCAG 2.1 Level AA. But, if a person with low vision, for example, requests an accessible version, then the town would still need to consider the person's request under its existing effective communication obligations in 28 CFR 35.160. The way that the town does this could vary based on the facts. For example, in some circumstances, providing a large print version of the minutes might satisfy the town's obligations, and in other circumstances it might need to provide an electronic version that partially complies with WCAG.

The NPRM also proposes to make clear the limited circumstances in which ''conforming alternate versions'' of web pages, as defined in WCAG 2.1, can be used as a means of achieving accessibility. A conforming alternate version is a separate web page that is accessible, up to date, contains the same information and functionality as the inaccessible web page, and can be reached via a conforming page or an accessibility-supported mechanism. The Department understands that, in practice, it can be difficult to maintain conforming alternate versions because it is often challenging to keep two different versions of web content up to date. For this reason and others discussed later, conforming alternate versions are permissible only when it is not possible to make websites and web content directly accessible due to technical or legal limitations. Also, the NPRM would allow a public entity flexibility to show that its use of other designs, methods, or techniques as alternatives to WCAG 2.1 Level AA provides substantially equivalent or greater accessibility and usability. Additionally, the NPRM proposes that compliance with WCAG 2.1 Level AA is not required under the ADA to the extent that such compliance imposes undue financial and administrative burdens or results in a fundamental alteration of the services, programs, or activities of the public entity. More information about these proposals is provided in the section-by-section analysis.

D. Summary of Costs and Benefits

To estimate the potential costs and benefits associated with this proposed rule, the Department conducted a Preliminary Regulatory Impact Analysis (''PRIA''). The purpose of the PRIA is to inform the public about how the proposed rule creates costs and benefits to society, taking into account both quantitative and qualitative costs and benefits. A more detailed summary of the PRIA is included in section VI of this preamble. The results of the Department's economic analysis indicate that monetized benefits of this rulemaking far exceed the costs. Further, the proposed rule will benefit individuals with disabilities uniquely and in their day-to-day lives in many ways that could not be quantified due to unavailable data. Table 2 below shows a high-level overview of the Department's monetized findings. Non-monetized costs and benefits are discussed in the text.

The Department calculated a variety of estimated costs, including: (1) one-time costs for familiarization with the requirements of the rule; (2) initial testing and remediation costs for government websites; (3) operating and maintenance (''O&M'') costs for government websites; (4) initial testing and remediation costs for mobile apps; (5) O&M costs for mobile apps; (6) school course remediation costs; and (7) initial testing and remediation costs for third-party websites that provide services on behalf of State and local governments. School course content, despite primarily being hosted on websites, is estimated as a separate remediation cost due to its unique structure and content, and because it is primarily on password-protected pages

and therefore unobservable to the Department. The remediation costs include both time and software components. Annualized costs are calculated over a 10-year period that includes both the three-year implementation period and the seven years post-implementation. Annualized costs over this 10-year period are estimated at $2.8 billion assuming a 3 percent discount rate or $2.9 billion assuming a 7 percent discount rate. This includes $15.8 billion in implementation costs accruing during the first three years (the implementation period), undiscounted, and $1.8 billion in annual O&M costs during the next seven years. All values are presented in 2021 dollars as 2022 data were not yet available.

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department compares the costs to revenues for public entities. Because the costs for each government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[9]

Benefits of this rulemaking will accrue particularly to individuals with certain types of disabilities. For purposes of the PRIA, the Department has determined that WCAG 2.1 Level AA primarily benefits individuals with vision, hearing, cognitive, and manual dexterity disabilities because the WCAG 2.1 standards are intended to address barriers that often impede access for people with these disability types.[10] The Department quantified benefits to individuals with these four types of disabilities. Individuals with other types of disabilities may also benefit but, due to data limitations and uncertainties, benefits to these individuals are not directly quantified. Additionally, because accessibly designed web content and mobile apps are easier for everyone to use, benefits will also accrue to people without relevant disabilities [11] who access State and local government entities' web content and mobile apps.

The Department monetized benefits for people with vision, hearing, cognitive, and manual dexterity disabilities as well as people without these disabilities. These benefits included time savings for current users of State and local government entities' web content; time savings for those who switch from other modes of accessing State and local government entities' services, programs, or activities (*e.g.,* phone or in person) to web access or begin to participate in these services, programs, or activities for the first time; time savings for current mobile app users; time savings for students and their parents; and earnings from additional educational attainment. Annual benefits, beginning once the rule is fully implemented, total $11.4 billion. Benefits annualized over a 10-year period that includes both three years of implementation and seven years post-implementation total $9.3 billion per year, assuming a 3 percent discount rate, and $8.9 billion per year, assuming a 7 percent discount rate.

There are many additional benefits that have not been monetized due to a lack of data availability. Benefits that cannot be monetized are discussed qualitatively in the PRIA. These qualitative benefits are central to this proposed rule's potential impact. They include concepts at the core of any civil rights law, such as equality and dignity. Other benefits to individuals include increased independence, increased flexibility, increased privacy, reduced frustration, decreased reliance on companions, and increased program participation. This proposed rule will also benefit governments through increased certainty about what constitutes accessible web content, potential reduction in litigation, and a larger labor market pool.

Comparing annualized costs and benefits, the monetized benefits to society of this rulemaking far outweigh the costs. Net annualized benefits over the first 10 years after publication of this proposed rule total $6.5 billion per year using a 3 percent discount rate and $6.0 billion per year using a 7 percent discount rate (Table 2). Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and benefits tend to have a delay before beginning to accrue. Moreover, the Department expects the net annualized benefit estimate is an underestimate, as it does not include the significant qualitative benefits that the Department was unable to monetize. For a complete comparison of costs and benefits, please see Section 1.2, Summary of Benefits and Costs, in the corresponding PRIA.

TABLE 2—10-YEAR AVERAGE ANNUALIZED COMPARISON OF COSTS AND BENEFITS

Benefit type	3% Discount rate	7% Discount rate
Average annualized costs (millions)	$2,846.6	$2,947.9
Average annualized benefits (millions)	9,316.3	8,937.2
Net benefits (millions)	6,469.7	5,989.3
Cost-to-benefit ratio	0.3	0.3

[9] As a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*]; *see also* EPA, *EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act* 24 (Nov. 2006), *https://www.epa.gov/sites/default/files/2015-06/documents/guidance-regflexact.pdf* [*https://perma.cc/9XFZ-3EVA*] (providing an illustrative example of a hypothetical analysis under the RFA in which, for certain small entities, economic impact of ''[l]ess than 1% for all affected small entities'' may be ''presumed'' to have ''no significant economic impact on a substantial number of small entities'').

[10] *See* W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*]; W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/29PG-YX3N*].

[11] Throughout this proposed rule, the Department uses the phrase ''individuals without relevant disabilities'' to refer to individuals without vision, hearing, cognitive, or manual dexterity disabilities. Individuals without these disabilities may have other types of disabilities, or they may be individuals without disabilities, but to simplify the discussion in this proposed rule, ''individuals without relevant disabilities'' will be used to mean individuals without one of these four types of disabilities.

II. Relationship to Other Laws

Title II of the ADA and the Department of Justice's implementing regulation state that except as otherwise provided, the ADA shall not be construed to apply a lesser standard than title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or its accompanying regulations.[12] They further state that the ADA does not invalidate or limit the remedies, rights, and procedures of any other laws that provide greater or equal protection for people with disabilities or people associated with them.[13]

The Department recognizes that entities subject to title II of the ADA may also be subject to other statutes that prohibit discrimination on the basis of disability. Compliance with the Department's title II regulation does not necessarily ensure compliance with other statutes and their implementing regulations. Title II entities are also obligated to fulfill the ADA's title I requirements in their capacity as employers, and those requirements are distinct from the obligations under this rule.

Education is another context in which entities have obligations to comply with other laws imposing affirmative obligations regarding individuals with disabilities. The Department of Education's regulations implementing the Individuals with Disabilities Education Act (''IDEA'') and section 504 of the Rehabilitation Act provide longstanding, affirmative obligations on covered schools to identify children with disabilities, and both require covered schools to provide a Free Appropriate Public Education (''FAPE'').[14] This rulemaking would build on, and would not supplant, those preexisting requirements. A public entity must continue to meet all of its existing obligations under other laws. A discussion of how this rule adds to the existing educational legal environment is included under the preamble discussion of the relevant educational exception.

III. Background

A. ADA Statutory and Regulatory History

The ADA broadly protects the rights of individuals with disabilities in important areas of everyday life, such as in employment, access to State and local government entities' services, places of public accommodation, and transportation. The ADA also requires newly designed and constructed or altered State and local government entities' facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities.[15] Section 204(a) of title II and section 306(b) of title III direct the Attorney General to promulgate regulations to carry out the provisions of titles II and III, other than certain provisions dealing specifically with transportation.[16] Title II, part A, applies to State and local government entities and protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

On July 26, 1991, the Department issued its final rules implementing title II and title III, which are codified at 28 CFR part 35 (title II) and part 36 (title III), and include the ADA Standards for Accessible Design (''ADA Standards'').[17] At that time, the web was in its infancy and was thus not used by State and local government entities as a means of providing services or information to the public. Thus, web content was not mentioned in the Department's title II regulation. Only a few years later, however, as web content of general interest became available, public entities began using web content to provide information to the public.

B. History of the Department's Title II Web-Related Interpretation and Guidance

The Department first articulated its interpretation that the ADA applies to websites of covered entities in 1996.[18] Under title II, this includes ensuring that individuals with disabilities are not, by reason of such disability, excluded from participation in or denied the benefits of the services, programs, and activities offered by State and local government entities, including those offered via the web, such as education services, voting, town meetings, vaccine registration, tax filing systems, and applications for benefits.[19] The Department has since reiterated this interpretation in a variety of online contexts.[20] Title II of the ADA also applies when public entities use mobile apps to offer their services, programs, and activities.

Many public entities now regularly offer many of their services, programs, and activities through web content and mobile apps, and the Department describes in detail the ways in which public entities have been doing so later in this section. To ensure equal access to such services, programs, and activities, the Department is undertaking this rulemaking to provide public entities with more specific information about how to meet their nondiscrimination obligations in the web and mobile app contexts.

As with many other statutes, the ADA's requirements are broad and its implementing regulations do not include specific standards for every obligation under the statute. This has been the case in the context of web accessibility under the ADA. Because the Department has not adopted specific technical requirements for web content through rulemaking, public entities have not had specific direction on how to comply with the ADA's general requirements of nondiscrimination and effective communication. However, public entities still must comply with these ADA obligations with respect to their web content and mobile apps, including before this rule's effective date.

[12] 42 U.S.C. 12201(a); 28 CFR 35.103(a).

[13] 42 U.S.C. 12201(b); 28 CFR 35.103(b).

[14] *See* 20 U.S.C. 1412; 34 CFR 104.32–104.33.

[15] 42 U.S.C. 12101 *et seq.*

[16] 42 U.S.C. 12134, 12186(b).

[17] Title III prohibits discrimination on the basis of disability in the full and equal enjoyment of places of public accommodation (privately operated entities whose operations affect commerce and fall within at least one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreational facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (facilities intended for nonresidential use by a private entity and whose operations affect commerce, such as factories, warehouses, or office buildings)—to comply with the ADA Standards. 42 U.S.C. 12181–89.

[18] *See* Letter for Tom Harkin, U.S. Senator, from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice (Sept. 9, 1996), *https://www.justice.gov/crt/foia/file/666366/download* [*https://perma.cc/56ZB-WTHA*].

[19] *See* 42 U.S.C. 12132.

[20] *See* U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/WH9E-VTCY*]; Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States* v. *The Regents of the Univ. of Cal.* (Nov. 20, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley* v. *Miami Univ.* (Oct. 17, 2016), *https://www.ada.gov/miami_university_cd.html* [*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (effective Jan. 30, 2015), *https://www.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*].

The Department has consistently heard from members of the public—especially public entities and people with disabilities—that there is a need for additional information on how to specifically comply with the ADA in this context. In June 2003, the Department published a document titled ''Accessibility of State and Local Government websites to People with Disabilities'' (*https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*]), which provides tips for State and local government entities on ways they can make their websites accessible so that they can better ensure that people with disabilities have equal access to the services, programs, and activities that are provided through those websites.

In March 2022, the Department released additional guidance addressing web accessibility for people with disabilities.[21] This technical assistance expanded on the Department's previous ADA guidance by providing practical tips and resources for making websites accessible for both title II and title III entities. It also reiterated the Department's longstanding interpretation that the ADA applies to all services, programs, and activities of covered entities, including when they are offered via the web.

The Department's 2003 guidance on State and local government entities' websites noted that ''an agency with an inaccessible website may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line,'' while also acknowledging that this is unlikely to provide an equal degree of access.[22] The Department's March 2022 guidance did not include 24/7 staffed telephone lines as an alternative to accessible websites. Given the way the modern web has developed, the Department no longer believes 24/7 staffed telephone lines can realistically provide equal access to people with disabilities. Websites—and often mobile apps—allow the public to get information or request a service within just a few minutes. Getting the same information or requesting the same service using a staffed telephone line takes more steps and may result in wait times or difficulty getting the information. For example, State and local government entities' websites may allow members of the public to quickly review large quantities of information, like information about how to register for government services, information on pending government ordinances, or instructions about how to apply for a government benefit. Members of the public can then use government websites to promptly act on that information by, for example, registering for programs or activities, submitting comments on pending government ordinances, or filling out an application for a government benefit. A member of the public could not realistically accomplish these tasks efficiently over the phone. Additionally, a person with a disability who cannot use an inaccessible online tax form might have to call to request assistance with filling out either online or mailed forms, which could involve significant delay, added costs, and may require providing private information such as banking details or Social Security numbers over the phone without the benefit of certain security features available for online transactions. Finally, calling a staffed telephone line lacks the privacy of looking up information on a website. A caller needing public safety resources, for example, might be unable to access a private location to ask for help on the phone, whereas an accessible website would allow users to privately locate resources. For these reasons, the Department does not now believe that a staffed telephone line—even if it is offered 24/7—provides equal access in the way that an accessible website can.

C. The Department's Previous Web Accessibility-Related Rulemaking Efforts

The Department has previously pursued rulemaking efforts regarding website accessibility under title II. On July 26, 2010, the Department's advance notice of proposed rulemaking (''ANPRM'') titled ''Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations'' was published in the **Federal Register**.[23] The ANPRM announced that the Department was considering revising the regulations implementing titles II and III of the ADA to establish specific requirements for State and local government entities and public accommodations to make their websites accessible to individuals with disabilities. In the ANPRM, the Department sought information regarding what standards, if any, it should adopt for web accessibility; whether the Department should adopt coverage limitations for certain entities, like small businesses; and what resources and services are available to make existing websites accessible to individuals with disabilities. The Department also requested comments on the costs of making websites accessible; whether there are effective and reasonable alternatives to make websites accessible that the Department should consider permitting; and when any web accessibility requirements adopted by the Department should become effective. The Department received approximately 400 public comments addressing issues germane to both titles II and III in response to this ANPRM. The Department later announced that it decided to pursue separate rulemakings addressing website accessibility under titles II and III.[24]

On May 9, 2016, the Department followed up on its 2010 ANPRM with a detailed Supplemental ANPRM that was published in the **Federal Register**. The Supplemental ANPRM solicited public comment about a variety of issues regarding establishing technical standards for web access under title II.[25] The Department received more than 200 public comments in response to the title II Supplemental ANPRM.

On December 26, 2017, the Department published a Notice in the **Federal Register** withdrawing four rulemaking actions, including the titles II and III web rulemakings, stating that it was evaluating whether promulgating specific web accessibility standards through regulations was necessary and appropriate to ensure compliance with the ADA.[26] The Department has also previously stated that it would continue to review its entire regulatory landscape and associated agenda, pursuant to the regulatory reform provisions of Executive Order 13771 and Executive Order 13777.[27] Those Executive Orders

[21] U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, ADA.gov* (Mar. 18, 2022), *https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/874V-JK5Z*].

[22] U.S. Dep't of Just., *Accessibility of State and Local Government websites to People with Disabilities, ADA.gov* (June 2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*].

[23] 75 FR 43460 (July 26, 2010).

[24] *See* Department of Justice—Fall 2015 Statement of Regulatory Priorities, *http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201510/Statement_1100.html* [*https://perma.cc/YF2L-FTSK*].

[25] Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 81 FR 28658 (May 9, 2016).

[26] Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 FR 60932 (Dec. 26, 2017).

[27] *See* Letter for Charles E. Grassley, U.S. Senator, from Stephen E. Boyd, Assistant Attorney General, Civil Rights Division, Department of Justice (Oct. 11, 2018), *https://www.grassley.senate.gov/imo/media/doc/2018-10-11%20DOJ%20to%20Grassley%20-%20ADA%20website%20Accessibility.pdf* [*https://perma.cc/8JHS-FK2Q*].

were revoked by Executive Order 13992 in early 2021.

The Department is now reengaging in efforts to promulgate regulations establishing technical standards for web accessibility for public entities. Accordingly, the Department has begun this distinct rulemaking effort to address web access under title II of the ADA.

D. Need for Department Action

1. Use of Web Content by Title II Entities

Public entities regularly use the web to disseminate information and offer programs and services to the public. Public entities use a variety of websites to streamline their programs and services. Members of the public routinely make online service requests—from requesting streetlight repairs and bulk trash pickups to reporting broken parking meters—and can often check the status of a service request online. Public entities' websites also offer the opportunity for people to renew their vehicle registrations, submit complaints, purchase event permits, and pay traffic fines and property taxes, making some of these otherwise time-consuming tasks relatively easy and expanding their availability beyond regular business hours. Moreover, applications for many Federal benefits, such as unemployment benefits and food stamps, are available through State websites.

People also rely on public entities' websites to engage in civic participation, particularly when more individuals prefer or need to stay at home in light of changes to preferences and behavior resulting from the COVID–19 pandemic. The Department believes that although many public health measures addressing the COVID–19 pandemic are no longer in place, there have been durable changes to State and local government entities' operations and public preferences that necessitate greater access to online services, programs, and activities.

People can now frequently watch local public hearings, read minutes from community meetings, or take part in live chats with government officials on the websites of State and local government entities. Many public entities allow voters to begin the voter registration process and obtain candidate information on their websites. Individuals interested in running for local public offices can often find pertinent information concerning candidate qualifications and filing requirements on these websites as well. The websites of public entities also include information about a range of issues of concern to the community and about how people can get involved in community efforts to improve the administration of government services.

Many public entities use online resources to promote access to public benefits. People can use websites of public entities to file for unemployment or other benefits and find and apply for job openings. Access to these online functions became even more crucial during the COVID–19 pandemic, when millions of Americans lost their jobs and government services were often not available in person.[28] As noted previously, the Department believes that although many of these services have become available in person again as COVID–19 public health measures have ended, State and local government entities will continue to offer these services online due to durable shifts in preferences and expectations resulting from the pandemic. For example, through the websites of State and local government entities, business owners can register their businesses, apply for occupational and professional licenses, bid on contracts to provide products and services to public entities, and obtain information about laws and regulations with which they must comply. The websites of many State and local government entities also allow members of the public to research and verify business licenses online and report unsavory business practices. Access to these online services can be particularly important for any services that have not resumed in-person availability.

Public entities are also using websites as an integral part of public education. Public schools at all levels, including public colleges and universities, offer programs, reading material, and classroom instruction through websites. Access to these sites became even more critical during the COVID–19 pandemic, when, at one point, all U.S. public school buildings were closed.[29] Web access is essential, and, during part of the COVID–19 pandemic, it was often the only way for State and local government entities to provide students with educational services, programs, and activities like public school classes and exams. As noted previously, the Department believes durable changes to preferences and behavior due to the COVID–19 pandemic will result in many educational activities continuing to be offered online. Most public colleges and universities rely heavily on websites and other online technologies in the application process for prospective students; for housing eligibility and on-campus living assignments; course registration, assignments, and discussion groups; and for a wide variety of administrative and logistical functions in which students and staff must participate. Similarly, in many public elementary and secondary school settings, communications via the web are how teachers and administrators communicate grades, assignments, and administrative matters to parents and students.

As noted previously, access to the web has become increasingly important as a result of the COVID–19 pandemic, which shut down workplaces, schools, and in-person services, and has forced millions of Americans to stay home for extended periods.[30] In response, the American public has turned to the web for work, activities, and learning.[31] In fact, a study conducted in April 2021 found that 90 percent of adults say the web ''has been at least important to them personally during the pandemic.'' [32] Fifty-eight percent say it has been *essential*.[33] Web access can be particularly important for those who live in rural communities and need to travel long distances to reach certain physical locations like schools and libraries.[34]

Currently, a large number of Americans interact with public entities remotely and many State and local government entities provide vital information and services for the general public online, including information on recreational and educational programs, school closings, State travel restrictions,

[28] *See* Rakesh Kochhar & Jesse Bennet, *U.S. Labor Market Inches Back from the Covid–19 Shock, but Recovery is Far from Complete,* Pew Research Center (Apr. 14, 2021), *https://www.pewresearch.org/fact-tank/2021/04/14/u-s-labor-market-inches-back-from-the-covid-19-shock-but-recovery-is-far-from-complete/* [*https://perma.cc/29E5-LMXM*].

[29] *See The Coronavirus Spring: The Historic Closing of U.S. Schools (A Timeline),* Education Week (July 1, 2020), *https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07* [*https://perma.cc/47E8-FJ3U*].

[30] *See* Colleen McClain et al., *The internet and the Pandemic,* Pew Research Center (Sep. 1, 2021), *https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/* [*https://perma.cc/4WVA-FQ9P*].

[31] *See* Kerry Dobransky & Eszter Hargittai, *Piercing the Pandemic Social Bubble: Disability and Social Media Use About COVID–19,* American Behavioral Scientist (Mar. 29, 2021), *https://doi.org/10.1177/00027642211003146.* A Perma archive link was unavailable for this citation.

[32] McClain et al., *The internet and the Pandemic,* at 3.

[33] *Id.*

[34] John Lai & Nicole O. Widmar, *Revisiting the Digital Divide in the COVID–19 Era,* 43 Applied Econ. Perspectives and Pol'y 458 (2020), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7675734/* [*https://perma.cc/Y75D-XWCT*].

food assistance and employment, guidance for health care providers, and workplace safety.[35] Access to such web-based information and services, while important for everyone during the pandemic, took on heightened importance for people with disabilities, many of whom face a greater risk of COVID–19 exposure, serious illness, and death.[36]

According to the CDC, some people with disabilities ''might be more likely to get infected or have severe illness because of underlying medical conditions, congregate living settings, or systemic health and social inequities. All people with serious underlying chronic medical conditions like chronic lung disease, a serious heart condition, or a weakened immune system seem to be more likely to get severely ill from COVID–19.'' [37] A report by the National Council on Disability indicated that COVID–19 has a disproportionately negative impact on people with disabilities' access to healthcare, education, and employment, among other areas, making remote access to these opportunities via the web even more important.[38]

Individuals with disabilities can often be denied equal access to many services, programs, and activities because many public entities' web content is not fully accessible. Thus, there is a digital divide between the ability of people with certain types of disabilities and people without those disabilities to access the services, programs, and activities of their State and local government entities.

2. Use of Mobile Applications by Title II Entities

The Department is also proposing that public entities make their mobile apps accessible under proposed § 35.200 because public entities also use mobile apps to offer their services, programs, and activities to the public. As discussed, a mobile app is a software application that runs on mobile devices. Mobile apps are distinct from a website that can be accessed by a mobile device because, in part, mobile apps are not directly accessible on the web—they are often downloaded on a mobile device.[39] A mobile website, on the other hand, is a website that is designed so that it can be accessed by a mobile device similarly to how it can be accessed on a desktop computer.[40]

Public entities use mobile apps to provide services and reach the public in various ways. For example, during the COVID–19 pandemic, when many State and local government entities' offices were closed, public entities used mobile apps to inform people about benefits and resources, to provide updates about the pandemic, and as a means to show proof of vaccination status, among other things.[41] Also, using a public entity's mobile app, residents are able to submit nonemergency service requests, such as cleaning graffiti or repairing a street light outage, and track the status of these requests. Public entities' apps take advantage of common features of mobile devices, such as camera and Global Positioning System (''GPS'') functions, so individuals can provide public entities with a precise description and location of issues.[42] These may include issues such as potholes, physical barriers created by illegal dumping or parking, or curb ramps that need to be fixed to ensure accessibility for some people with disabilities.[43] Some public transit authorities have transit apps that use a mobile device's GPS function to provide bus riders with the location of nearby bus stops and real-time arrival and departure times.[44] In addition, public entities are also using mobile apps to assist with emergency planning for natural disasters like wildfires; provide information about local schools; and promote tourism, civic culture, and community initiatives.[45]

3. Barriers to Web and Mobile App Accessibility

Millions of individuals in the United States have disabilities that can affect their use of the web and mobile apps. Many of these individuals use assistive technology to enable them to navigate websites or access information contained on those sites. For example, individuals who are unable to use their hands may use speech recognition software to navigate a website, while individuals who are blind may rely on a screen reader to convert the visual information on a website into speech. Many websites and mobile apps fail to incorporate or activate features that enable users with certain types of disabilities to access all of the information or elements on the website or app. For instance, individuals who are deaf may be unable to access information in web videos and other multimedia presentations that do not have captions. Individuals with low vision may be unable to read websites or mobile apps that do not allow text to be resized or do not provide enough contrast. Individuals with limited manual dexterity or vision disabilities who use assistive technology that enables them to interact with websites may be unable to access sites that do not support keyboard alternatives for mouse commands. These same individuals, along with individuals with cognitive and vision disabilities, often encounter difficulty using portions of websites that require timed responses from users but do not give users the opportunity to indicate that they need more time to respond.

Individuals who are blind or have low vision often confront significant barriers to accessing websites and mobile apps. For example, a study from the University of Washington analyzed approximately 10,000 mobile apps and found that many are highly inaccessible to people with disabilities.[46] The study found that 23 percent of the mobile apps reviewed did not provide content description of images for most of their image-based buttons. As a result, the functionality of those buttons is not accessible for people who use screen

[35] *See, e.g., Coronavirus Disease 2019 (COVID–19) Outbreak, Maryland.gov, https://coronavirus.maryland.gov/* [*https://perma.cc/NAW4-6KP4*]; *Covid19.CA, California.gov, https://covid19.ca.gov/* [*https://perma.cc/BL9C-WTJP*]; *Washington State Coronavirus Response,* Washington State, *https://coronavirus.wa.gov/* [*https://perma.cc/KLA4-KY53*].

[36] *See* Hannah Eichner, *The Time is Now to Vaccinate High-Risk People with Disabilities,* National Health Law Program (Mar. 15, 2021), *https://healthlaw.org/the-time-is-now-to-vaccinate-high-risk-people-with-disabilities/* [*https://perma.cc/8CM8-9UC4*].

[37] *See People with Disabilities,* Centers for Disease Control and Prevention, *https://www.cdc.gov/ncbddd/humandevelopment/covid-19/people-with-disabilities.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fpeople-with-disabilities.html* [*https://perma.cc/WZ7U-2EQE*].

[38] *See 2021 Progress Report: The Impact of COVID–19 on People with Disabilities*, National Council on Disability (Oct. 29, 2021), *https://ncd.gov/progressreport/2021/2021-progress-report* [*https://perma.cc/96L7-XMKZ*].

[39] Mona Bushnell, *What Is the Difference Between an App and a Mobile website?,* Business News Daily (updated Aug. 2, 2022), *https://www.businessnewsdaily.com/6783-mobile-website-vs-mobile-app.html* [*https://perma.cc/9LKC-GUEM*].

[40] *Id.*

[41] *See, e.g., COVID–19 Virginia Resources,* Virginia Department of Social Services, *https://apps.apple.com/us/app/covid-19-virginia-resources/id1507112717* [*https://perma.cc/LP6N-WC9K*]; Chandra Steele, *Does My State Have a COVID–19 Vaccine App,* PC Mag (updated Feb. 10, 2022), *https://www.pcmag.com/how-to/does-my-state-have-a-covid-19-vaccine-app* [*https://perma.cc/H338-MCWC*].

[42] *See Using Mobile Apps in Government,* IBM Ctr. for the Bus. of Gov't, at 11 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].

[43] *Id.* at 32.

[44] *Id.* at 31.

[45] *Id.* at 8.

[46] *See Large-Scale Analysis Finds Many Mobile Apps Are Inaccessible,* University of Washington CREATE, *https://create.uw.edu/initiatives/large-scale-analysis-finds-many-mobile-apps-are-inaccessible/* [*https://perma.cc/442K-SBCG*].

readers.[47] Additionally, other mobile apps may be inaccessible if they do not allow text resizing, which can provide larger text for persons with vision disabilities.[48]

Furthermore, many websites provide information visually, without features that allow screen readers or other assistive technology to retrieve information on the website so it can be presented in an accessible manner. A common barrier to website accessibility is an image or photograph without corresponding text describing the image. A screen reader or similar assistive technology cannot ''read'' an image, leaving individuals who are blind with no way of independently knowing what information the image conveys (*e.g.,* a simple icon or a detailed graph). Similarly, if websites lack navigational headings or links that facilitate navigation using a screen reader, it will be difficult or impossible for a someone using a screen reader to understand.[49] Additionally, these websites may fail to present tables in a way that allows the information in the table to be interpreted by someone who is using a screen reader.[50] Web-based forms, which are an essential part of accessing government services, are often inaccessible to individuals with disabilities who use screen readers. For example, field elements on forms, which are the empty boxes on forms that hold specific pieces of information, such as a last name or telephone number, may lack clear labels that can be read by assistive technology. Inaccessible form fields make it difficult for persons using screen readers to fill out online forms, pay fees and fines, submit donations, or otherwise participate in government services, programs, or activities using a website. Some governmental entities use inaccessible third-party websites to accept online payments, while others request public input through their own inaccessible websites. These barriers greatly impede the ability of individuals with disabilities to access the services, programs, and activities offered by public entities on the web. In many instances, removing certain website barriers is neither difficult nor especially costly. For example, the addition of invisible attributes known as alt text or alt tags to an image helps orient an individual using a screen reader and allows them to gain access to the information on the website. Alt text can be added to the coding of a website without any specialized equipment.[51] Similarly, adding headings, which facilitate page navigation for those using screen readers, can often be done easily as well.[52]

4. Voluntary Compliance With Technical Standards for Web Accessibility Has Been Insufficient in Providing Access

The web has changed significantly and its use has become far more prevalent since Congress enacted the ADA in 1990 and the Department subsequently promulgated its first ADA regulations. Neither the ADA nor the Department's regulations specifically addressed public entities' use of websites and mobile apps to provide their services, programs, and activities. Congress contemplated, however, that the Department would apply title II, part A of the statute in a manner that evolved over time and it delegated authority to the Attorney General to promulgate regulations to carry out the ADA mandate under title II, part A.[53] Consistent with this approach, the Department stated in the preamble to the original 1991 ADA regulations that the regulations should be interpreted to keep pace with developing technologies.[54]

Since 1996, the Department has consistently taken the position that the ADA applies to the web content of State and local government entities. This interpretation comes from title II's application to ''all services, programs, and activities provided or made available by public entities.'' [55] The Department has affirmed the application of the statute to websites in multiple technical assistance documents over the past two decades.[56] Further, the Department has repeatedly enforced this obligation and worked with State and local government entities to make their websites accessible, such as through Project Civic Access, an initiative to promote local governments' compliance with the ADA by eliminating physical and communication barriers impeding full participation by people with disabilities in community life.[57]

A variety of voluntary standards and structures have been developed for the web through nonprofit organizations using multinational collaborative efforts. For example, domain names are issued and administered through the internet Corporation for Assigned Names and Numbers (''ICANN''), the internet Society (''ISOC'') publishes computer security policies and procedures for websites, and the World Wide Web Consortium (''W3C®'') develops a variety of technical standards and guidelines ranging from issues related to mobile devices and privacy to internationalization of technology. In the area of accessibility, the Web Accessibility Initiative (''WAI'') of the W3C® created the Web Content Accessibility Guidelines (''WCAG'').

Many organizations, however, have indicated that voluntary compliance with these accessibility guidelines has not resulted in equal access for people with disabilities; accordingly, they have urged the Department to take regulatory action to ensure web and mobile app accessibility.[58] The National Council on Disability, an independent Federal agency that advises the President, Congress, and other agencies about programs, policies, practices, and procedures affecting people with disabilities, has similarly emphasized the need for regulatory action on this issue.[59] The Department has also heard

[47] *Id.*

[48] *See* Chase DiBenedetto, *4 ways mobile apps could be a lot more accessible,* Mashable (Dec. 9, 2021), *https://mashable.com/article/mobile-apps-accessibility-fixes* [*https://perma.cc/WC6M-2EUL*].

[49] *See, e.g.,* W3C®, *Easy Checks—A First Review of Web Accessibility,* (updated Jan. 31, 2023), *https://www.w3.org/WAI/test-evaluate/preliminary/* [*https://perma.cc/N4DZ-3ZB8*].

[50] W3C®, *Tables Tutorial* (updated Feb. 16, 2023), *https://www.w3.org/WAI/tutorials/tables/* [*https://perma.cc/FMG2-33C4*].

[51] W3C®, *Images Tutorial* (Feb. 08, 2022), *https://www.w3.org/WAI/tutorials/images/* [*https://perma.cc/G6TL-W7ZC*].

[52] W3C®, *Providing Descriptive Headings* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Techniques/general/G130.html* [*https://perma.cc/XWM5-LL6S*].

[53] *See* H.R. Rep. No. 101–485, pt. 2, at 108 (1990); 42 U.S.C. 12134(a).

[54] 28 CFR part 36, app. B.

[55] *See* 28 CFR 35.102.

[56] U.S. Dep't of Just., *Accessibility of State and Local Government websites to People with Disabilities* (2003), *https://www.ada.gov/websites2.htm* [*https://perma.cc/Z7JT-USAN*]; U.S. Dep't of Just., *Chapter 5: website Accessibility Under Title II of the ADA, ADA Best Practices Tool Kit for State and Local Governments, Ada.gov* (May 7, 2007), *https://www.ada.gov/pcatoolkit/chap5toolkit.htm* [*https://perma.cc/VM3M-AHDJ*]; U.S. Dep't of Just., *Guidance on Web Accessibility and the ADA, Ada.gov* (Mar. 18, 2022), *https://https://www.ada.gov/resources/web-guidance/* [*https://perma.cc/874V-JK5Z*].

[57] U.S. Dep't of Just., *Project Civic Access, Ada.gov, https://www.ada.gov/civicac.htm* [*https://perma.cc/B6WV-4HLQ*].

[58] *See, e.g.,* Letter for U.S. Dep't of Just. from American Council of the Blind et al. (Feb. 28, 2022), *https://acb.org/accessibility-standards-joint-letter-2-28-22* [*https://perma.cc/R77M-VPH9*] (citing research showing persistent barriers in digital accessibility); Letter for U.S. Dep't of Just. from Consortium for Citizens with Disabilities (Mar. 23, 2022), *https://www.c-c-d.org/fichiers/CCD-Web-Accessibility-Letter-to-DOJ-03232022.pdf* [*https://perma.cc/Q7YB-UNKV*].

[59] National Council on Disability, *The Need for Federal Legislation and Regulation Prohibiting Telecommunications and Information Services Discrimination* (Dec. 19, 2006), *https://www.ncd.gov/publications/2006/Dec282006* [*https://perma.cc/7HW5-NF7P*] (discussing how competitive market forces have not proven sufficient to provide individuals with disabilities access to telecommunications and information

from State and local government entities and businesses asking for clarity on the ADA's requirements for websites through regulatory efforts.[60]

In light of the long regulatory history and the ADA's current general requirement to make all services, programs, and activities accessible, the Department expects that public entities have made strides to make their web content accessible since the 2010 ANPRM was published. However, despite the availability of voluntary web and mobile app accessibility standards; the Department's clearly stated position that all services, programs, and activities of public entities, including those available on websites, must be accessible; and case law supporting that position, individuals with disabilities continue to struggle to obtain access to the websites of public entities.[61] As a result, the Department has brought enforcement actions to address web access, resulting in a significant number of settlement agreements with State and local government entities.[62]

Moreover, other Federal agencies have also taken enforcement action against public entities regarding the lack of access for people with disabilities to websites. In December 2017, for example, the U.S. Department of Education entered into a resolution agreement with the Alaska Department of Education and Early Development after it found the entity had violated Federal statutes, including title II of the ADA, by denying people with disabilities an equal opportunity to participate in Alaska Department of Education and Early Development's services, programs, and activities, due to website inaccessibility.[63] Similarly, the U.S. Department of Housing and Urban Development took action against the City of Los Angeles, and its subrecipient housing providers, to ensure that it maintained an accessible housing website concerning housing opportunities.[64]

The Department believes that adopting technical standards for web and mobile app accessibility will provide clarity to public entities regarding how to make the services, programs, and activities they offer the public via the web and mobile apps accessible. Adopting specific technical standards for web and mobile app accessibility will also provide individuals with disabilities with consistent and predictable access to the web content and mobile apps of public entities.

IV. Section-by-Section Analysis

This section details the Department's proposed changes to the title II regulation, including the reasoning behind the proposals, and poses questions for public comment.

Subpart A—General

§ 35.104 Definitions

''Archived Web Content''

The Department proposes to add a definition for ''archived web content'' to proposed § 35.104. The proposed definition defines ''archived web content'' as ''web content that (1) is maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived.'' The definition is meant to capture web content that, while outdated or superfluous, is maintained unaltered in a dedicated area on a public entity's website for historical, reference, or other similar purposes, and the term is used in the proposed exceptions set forth in § 35.201. Throughout this rule, a public entity's ''website'' is intended to include not only the websites hosted by the public entity, but also websites operated on behalf of a public entity by a third party. For example, public entities sometimes use vendors to create and host their web content. Such content would also be covered by this rule.

''Conventional Electronic Documents''

The Department proposes to add a definition for ''conventional electronic documents'' to proposed § 35.104. The proposal defines ''conventional electronic documents'' as ''web content or content in mobile apps that is in the following electronic file formats: portable document formats ('PDFs'), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats.'' The definition thus provides an exhaustive list of electronic file formats that constitute conventional electronic documents. Examples of conventional electronic documents include: Adobe PDF files (*i.e.,* portable document formats), Microsoft Word files (*i.e.,* word processor files), Apple Keynote or Microsoft PowerPoint files (*i.e.,* presentation files), Microsoft Excel files (*i.e.,* spreadsheet files), and FileMaker Pro or Microsoft Access files (*i.e.,* database files).

The term ''conventional electronic documents'' is intended to describe those documents created or saved as an electronic file that are commonly available on public entities' websites

---

services); *see also, e.g.,* National Council on Disability, *National Disability Policy: A Progress Report* (Oct. 7, 2016), *https://ncd.gov/progressreport/2016/progress-report-october-2016* [*https://perma.cc/J82G-6UU8*] (urging the Department to adopt a web accessibility regulation).

[60] *See, e.g.,* Letter for U.S. Dep't of Just. from Nat'l Ass'n of Realtors (Dec. 13, 2017), *https://www.narfocus.com/billdatabase/clientfiles/172/3/3058.pdf* [*https://perma.cc/Z93F-K88P*].

[61] *See, e.g., Meyer* v. *Walthall,* 528 F. Supp. 3d 928, 959 (S.D. Ind. 2021) (''[T]he Court finds that Defendants' websites constitute services or activities within the purview of Title II and section 504, requiring Defendants to provide effective access to qualified individuals with a disability.''); *Price* v. *City of Ocala, Fla.,* 375 F. Supp. 3d 1264, 1271 (M.D. Fla. 2019) (''Title II undoubtedly applies to websites . . . .''); *Payan* v. *Los Angeles Cmty. Coll. Dist.,* No. 2:17–CV–01697–SVW–SK, 2019 WL 9047062, at *12 (C.D. Cal. Apr. 23, 2019) (''[T]he ability to sign up for classes on the website and to view important enrollment information is itself a 'service' warranting protection under Title II and section 504.''); *Eason* v. *New York State Bd. of Elections,* No. 16–CV–4292 (KBF), 2017 WL 6514837, at *1 (S.D.N.Y. Dec. 20, 2017) (stating, in a case involving a State's website, that ''Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act . . . , long ago provided that the disabled are entitled to meaningful access to a public entity's programs and services. Just as buildings have architecture that can prevent meaningful access, so too can software.''); *Hindel* v. *Husted,* No. 2:15–CV–3061, 2017 WL 432839, at *5 (S.D. Ohio Feb. 1, 2017) (''The Court finds that Plaintiffs have sufficiently established that Secretary Husted's website violates Title II of the ADA because it is not formatted in a way that is accessible to all individuals, especially blind individuals like the Individual Plaintiffs whose screen access software cannot be used on the website.'').

[62] *See, e.g.,* Settlement Agreement Between the United States of America and the Champaign-Urbana Mass Transit District (Dec. 14, 2021), *https://www.ada.gov/champaign-urbana_sa.pdf* [*https://perma.cc/VZU2-E6FZ*]; Consent Decree, *United States* v. *The Regents of the Univ. of Cal.* (Nov. 20, 2022), *https://www.justice.gov/opa/press-release/file/1553291/download* [*https://perma.cc/9AMQ-GPP3*]; Consent Decree, *Dudley* v. *Miami Univ.* (Oct. 13, 2016), *https://www.ada.gov/miami_university_cd.html* [*https://perma.cc/T3FX-G7RZ*]; Settlement Agreement Between the United States of America and the City and County of Denver, Colorado Under the Americans with Disabilities Act (Jan. 8, 2018), *https://www.ada.gov/denver_pca/denver_sa.html* [*https://perma.cc/U7VE-MBSG*]; Settlement Agreement Between the United States of America and Nueces County, Texas Under the Americans with Disabilities Act (effective Jan. 30, 2015), *https://www.ada.gov/nueces_co_tx_pca/nueces_co_tx_sa.html* [*https://perma.cc/TX66-WQY7*]; Settlement Agreement Between the United States of America, Louisiana Tech University, and the Board of Supervisors for the University of Louisiana System Under the Americans with Disabilities Act (July 22, 2013), *https://www.ada.gov/louisiana-tech.htm* [*https://perma.cc/78ES-4FQR*].

[63] *In re Alaska Dep't of Educ. and Early Dev.,* OCR Reference No. 10161093 (U.S. Dep't of Educ. Dec. 11, 2017) (resolution agreement), *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b.pdf* [*https://perma.cc/DUS4-HVZJ*], superseded by *https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/10161093-b1.pdf* [*https://perma.cc/BVL6-Y59M*] (U.S. Dep't of Educ. Mar. 28, 2018) (revised resolution agreement).

[64] *See* Voluntary Compliance Agreement Between the U.S. Department of Housing and Urban Development and the City of Los Angeles, California (Aug. 2, 2019), *https://www.hud.gov/sites/dfiles/Main/documents/HUD-City-of-Los-Angeles-VCA.pdf* [*https://perma.cc/X5RN-AJ5K*].

and mobile apps in either an electronic form or as printed output. The term is intended to capture documents where the version posted by the public entity is not open for editing by the public. For example, if a public entity maintains a Word version of a flyer on its website, that would be a conventional electronic document. A third party could technically download and edit that Word document, but their edits would not impact the ''official'' posted version. Similarly, a Google Docs file that does not allow others to edit or add comments in the posted document would be a conventional electronic document. The term ''conventional electronic documents'' is used in proposed § 35.201(b) to provide an exception for certain electronic documents created by or for a public entity that are available on a public entity's website before the compliance date of this rule and in proposed § 35.201(g) to provide an exception for certain individualized, password-protected documents, and is addressed in more detail in the discussion regarding proposed §§ 35.201(b) and (g).

''Mobile Applications (Apps)''

Mobile apps are software applications that are downloaded and designed to run on mobile devices such as smartphones and tablets. For the purposes of this part, mobile apps include, for example, native apps built for a particular platform (*e.g.,* Apple iOS, Google Android, among others) or device and hybrid apps using web components inside native apps.

''Special District Government''

The Department proposes to add a definition for a ''special district government.'' The term ''special district government'' is used in proposed § 35.200(b) and is defined in proposed § 35.104 to mean ''a public entity—other than a county, municipality, or township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates.'' Because special district governments do not have populations calculated by the United States Census Bureau, their population sizes are unknown. A special district government may include, for example, a mosquito abatement district, utility district, transit authority, water and sewer board, zoning district, or other similar governmental entities that may operate with administrative and fiscal independence.

''Total Population''

The Department proposes to add a definition for ''total population.'' The term ''total population'' means ''the population estimate for a public entity as calculated by the United States Census Bureau in the most recent decennial Census or, if a public entity is an independent school district, the population estimate as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates.''

As mentioned previously, proposed § 35.200 generally proposes different compliance dates according to a public entity's size. The term ''total population'' is generally used in proposed § 35.200 to refer to the size of a public entity's population as calculated by the U.S. Census Bureau in the most recent decennial Census. If a public entity does not have a specific population calculated by the U.S. Census Bureau, but belongs to another jurisdiction that does, the population of the entity is determined by the population of the jurisdiction to which the entity belongs. For example, the total population of a county library is the population of the county to which the library belongs. However, because the decennial Census does not include population estimates for public entities that are independent school districts, the term ''total population'' with regard to independent school districts refers to population estimates in the most recent Small Area Income and Poverty Estimates, which includes population estimates for these entities.

''WCAG 2.1''

The Department proposes to add a definition of ''WCAG 2.1.'' The term ''WCAG 2.1'' refers to the 2018 version of the voluntary guidelines for web accessibility, known as the Web Content Accessibility Guidelines 2.1 (''WCAG''). The W3C®, the principal international organization involved in developing standards for the web, published WCAG 2.1 in June 2018, and it is available at *https://www.w3.org/TR/WCAG21/.* WCAG 2.1 is discussed in more detail in proposed § 35.200 below.

''Web Content''

The Department proposes to add a definition for ''web content'' under proposed § 35.104 that is based on the WCAG 2.1 definition but is slightly less technical and intended to be more easily understood by the public generally. The Department's proposal defines ''web content'' as ''information or sensory experience—including the encoding that defines the content's structure, presentation, and interactions—that is communicated to the user by a web browser or other software. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.'' WCAG 2.1 defines web content as ''information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions.'' [65]

The definition of ''web content'' attempts to describe the different types of information and experiences available on the web. The Department's NPRM proposes to cover the accessibility of public entities' web content available on public entities' websites and web pages regardless of whether the web content is viewed on desktop computers, laptops, smartphones, or other devices.

The definition of ''web content'' also includes the encoding used to create the structure, presentation, or interactions of the information or experiences on web pages that range in complexity from, for example, pages with only textual information to pages where users can complete transactions. Examples of languages used to create web pages include Hypertext Markup Language (''HTML''), Cascading Style Sheets (''CSS''), Python, SQL, PHP, and JavaScript.

The Department poses questions for feedback about its proposed approach. Comments on all aspects of this proposed rule, including these proposed definitions, are invited. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 1: The Department's definition of ''conventional electronic documents'' consists of an exhaustive list of specific file types. Should the Department instead craft a more flexible definition that generally describes the types of documents that are covered or otherwise change the proposed definition, such as by including other file types (e.g., images or movies), or removing some of the listed file types?

Question 2: Are there refinements to the definition of ''web content'' the Department should consider? Consider,

[65] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#glossary* [*https://perma.cc/YB57-ZB8C*].

for example, WCAG 2.1's definition of ''*web content*'' *as* ''*information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation, and interactions.*''

Subpart H—Web and Mobile Accessibility

The Department is proposing to create a new subpart to its title II regulation. Subpart H would address the accessibility of public entities' web content and mobile apps.

§ 35.200 Requirements for Web and Mobile Accessibility

General

Proposed § 35.200 sets forth specific requirements for the accessibility of web content and mobile apps of public entities. Proposed § 35.200(a) requires a public entity to ''ensure the following are readily accessible to and usable by individuals with disabilities: (1) web content that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public; and (2) mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.'' As detailed below, the remainder of proposed § 35.200 sets forth the specific standards that public entities would be required to meet to make their web content and mobile apps accessible and the proposed timelines for compliance.

Background on Accessibility Standards for Websites and Web Content

Since 1994, the W3C® has been the principal international organization involved in developing protocols and guidelines for the web.[66] The W3C® develops a variety of voluntary technical standards and guidelines, including ones relating to privacy, internationalization of technology, and, relevant to this rulemaking, accessibility. The W3C®'s WAI has developed voluntary guidelines for web accessibility, known as WCAG, to help web developers create web content that is accessible to individuals with disabilities.

The first version of WCAG, WCAG 1.0, was published in 1999. WCAG 2.0 was published in December 2008, and is available at *http://www.w3.org/TR/2008/REC-WCAG20-20081211/* [*https://perma.cc/L2NH-VLCR*]. WCAG 2.0 was approved as an international standard by the International Organization for Standardization (''ISO'') and the International Electrotechnical Commission (''IEC'') in October 2012.[67] WCAG 2.1, the most recent and updated recommendation of WCAG, was published in June 2018, and is available at *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*].[68]

WCAG 2.1 contains four principles that provide the foundation for web accessibility: perceivable, operable, understandable, and robust.[69] Testable success criteria (*i.e.,* requirements for web accessibility that are measurable) are provided ''to be used where requirements and conformance testing are necessary such as in design specification, purchasing, *regulation* and contractual agreements.'' [70] Thus, WCAG 2.1 contemplates establishing testable success criteria that could be used in regulatory efforts such as this one.

Proposed WCAG Version

The Department is proposing to adopt WCAG 2.1 as the technical standard for web and mobile app accessibility under title II. WCAG 2.1 was published in June 2018 and is available at *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*]. WCAG 2.1 represents the most recent and updated published recommendation of WCAG. WCAG 2.1 incorporates and builds upon WCAG 2.0—meaning that WCAG 2.1 includes all of the WCAG 2.0 success criteria, in addition to success criteria that were developed under WCAG 2.1.[71] Specifically, WCAG 2.1 added 12 Level A and AA success criteria to the 38 success criteria contained in WCAG 2.0 Level AA.[72] The additional criteria provide important accessibility benefits, especially for people with low vision, manual dexterity disabilities, and cognitive and learning disabilities.[73] The additional criteria are intended to improve accessibility for mobile web content and mobile apps.[74] The Department anticipates that WCAG 2.1 is familiar to web developers as it comprises WCAG 2.0's requirements—which have been in existence since 2008—and 12 new Level A and AA requirements that have been in existence since 2018.

The Department expects that adopting WCAG 2.1 as the technical standard will have benefits that are important to ensuring access for people with disabilities to public entities' services, programs, and activities. For example, WCAG 2.1 requires that text be formatted so that it is easier to read when magnified.[75] This is important, for example, for people with low vision who use magnifying tools. Without the formatting that WCAG 2.1 requires, a person magnifying the text might find reading the text disorienting because they could have to scroll horizontally on every line.[76]

WCAG 2.1 also has new success criteria addressing the accessibility of mobile apps or web content viewed on a mobile device. For example, WCAG 2.1 Success Criterion 1.3.4 requires that page orientation (*i.e.,* portrait or landscape) not be restricted to just one orientation, unless a specific display orientation is essential.[77] This feature is important, for example, for someone who uses a wheelchair with a tablet attached to it such that the tablet cannot be rotated.[78] If content only works in one orientation (*i.e.,* portrait or landscape) it will not always work for this individual depending on how the tablet is oriented, and could render that content or app unusable for the person.[79] Another WCAG 2.1 success criterion requires, in part, that if a device can be operated by motion—for example, shaking the device to undo typing—that there be an option to turn

[66] W3C®, *About Us, https://www.w3.org/about/* [*https://perma.cc/TQ2W-T377*].

[67] W3C®, *Web Accessibility Guidelines 2.0 Approved as ISO/IEC International Standard* (Oct. 15, 2012), *https://www.w3.org/press-releases/2012/wcag2pas/*[*https://perma.cc/JQ39-HGKQ*].

[68] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#wcag-2-layers-of-guidance* [*https://perma.cc/5PDG-ZTJE*]. Additionally, in May 2021, WAI published a working draft for WCAG 2.2, which has yet to be finalized. W3C®, Web Content Accessibility Guidelines 2.2 (May 21, 2021), *https://www.w3.org/TR/WCAG22/* [*https://perma.cc/M4G8-Z2GY*]. The WAI also published a working draft of WCAG 3.0 in December 2021. W3C®, Web Content Accessibility Guidelines 3.0 (Dec. 7, 2021), *https://www.w3.org/TR/wcag-3.0/* [*https://perma.cc/7FPQ-EEJ7*].

[69] *Id.*

[70] *See* W3C®, *Web Content Accessibility Guidelines 2.1, WCAG 2 Layers of Guidance* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#wcag-2-layers-of-guidance* [*https://perma.cc/5PDG-ZTJE*] (emphasis added).

[71] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[72] *Id.*

[73] *Id.*

[74] *See id.*

[75] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Reflow* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#reflow* [*https://perma.cc/YRP5-M599*].

[76] *See id.*

[77] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Orientation* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#orientation* [*https://perma.cc/FC3E-FRYK*].

[78] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*]

[79] *See id.*

off that motion sensitivity.[80] This could be important, for example, for someone who has tremors so that they do not accidentally undo their typing.[81]

Such accessibility features are critical for people with disabilities to have equal access to their State or local government's services, programs, and activities. This is particularly true given that using mobile devices to access government services is commonplace. For example, in August 2022, about 54 percent of visits to Federal Government websites over the previous 90 days were from mobile devices.[82] In addition, WCAG 2.1's incorporation of mobile-related criteria is important because of public entities' increasing use of mobile apps in offering their services, programs, and activities via mobile apps. As discussed in more detail later, public entities are using mobile apps to offer a range of critical government services—from traffic information, to scheduling trash pickup, to vaccination appointments.

Because WCAG 2.1 is the most recent recommended version of WCAG and generally familiar to web professionals, the Department expects it is well-positioned to continue to be relevant even as technology inevitably evolves. In fact, the W3C® advises using WCAG 2.1 over WCAG 2.0 when possible because WCAG 2.1 incorporates more forward-looking accessibility needs.[83] The WCAG standards were designed to be ''technology neutral.'' [84] This means that they are designed to be broadly applicable to current and future web technologies.[85] Thus, WCAG 2.1 also allows web and mobile app developers flexibility and potential for innovation.

The Department also expects that public entities are likely already familiar with WCAG 2.1 or will be able to become familiar quickly. This is because WCAG 2.1 has been available since 2018, and it builds upon WCAG 2.0, which has been in existence since 2008 and has been established for years as a benchmark for accessibility. In other words, the Department expects that web developers and professionals who work for or with public entities are likely to be familiar with WCAG 2.1. If they are not already familiar with WCAG 2.1, the Department expects that they are at least likely to be familiar with WCAG 2.0 and will be able to become acquainted quickly with WCAG 2.1's 12 additional Level A and AA success criteria. The Department also believes that resources exist to help public entities implement or understand how to implement not only WCAG 2.0 Level AA, but also WCAG 2.1 Level AA. Additionally, public entities will have two or three years to come into compliance with a final rule, which should also provide sufficient time to get acquainted with and implement WCAG 2.1.

According to the Department's research, WCAG 2.1 is also being increasingly used by members of the public and governmental entities. In fact, the Department recently included WCAG 2.1 in several settlement agreements with covered entities addressing inaccessible websites.[86]

In evaluating what technical standard to propose, the Department also considered WCAG 2.0. In addition, the Department considered the standards set forth under section 508 of the Rehabilitation Act of 1973, which governs the accessibility of the Federal Government's web content and is harmonized with WCAG 2.0.[87] In 2017, when the United States Access Board adopted WCAG 2.0 as the technical standard for the Federal Government's web content under section 508, WCAG 2.1 had not been finalized.[88] The Department ultimately decided to propose WCAG 2.1 as the appropriate standard. A number of countries that have adopted WCAG 2.0 as their standard are now making efforts to move or have moved to WCAG 2.1.[89] In countries that are part of the European Union, public sector websites and mobile apps generally must meet a technical standard that requires conformance with the WCAG 2.1 Level AA success criteria.[90] And although WCAG 2.0 is the standard adopted by the Department of Transportation in its rule implementing the Air Carrier Access Act, which covers airlines' websites and kiosks,[91] that rule—like the section 508 rule—was promulgated before WCAG 2.1 was published.

The Department expects that the wide usage of WCAG 2.0 lays a solid foundation for public entities to become familiar with and implement WCAG 2.1's additional Level A and AA criteria. According to the Department's research, approximately 48 States either use or strive to use a WCAG 2.0 standard or greater for at least some of their web content. It appears that at least four of these States—Louisiana, Maryland, Nebraska, and Washington—already either use WCAG 2.1 or strive to use WCAG 2.1 for at least some of their web content.

WCAG 2.1 represents the most up-to-date recommendation and is generally familiar to web professionals. It offers important accessibility benefits for people with disabilities that affect manual dexterity, adds some criteria to reduce barriers for those with low vision and cognitive disabilities, and expands coverage of mobile content. Given that public entities will have two or three years to comply, the Department views WCAG 2.1 as the appropriate technical standard to propose at this time.

The Department is aware that a working draft for WCAG 2.2 was published in May 2021.[92] Several subsequent drafts have also been

[80] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Motion Actuation* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#motion-actuation* [*https://perma.cc/6S93-VX58*].

[81] *See* W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[82] U.S. Gen. Servs. Admin. Digital Analytics Program, *https://analytics.usa.gov/* [*https://perma.cc/2YZP-KCMG*].

[83] W3C®, *WCAG 2.0 Overview* (updated Aug. 6, 2022), *https://www.w3.org/WAI/standards-guidelines/wcag/* [*https://perma.cc/L7NX-8XW3*].

[84] W3C®, *Introduction to Understanding WCAG* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/intro* [*https://perma.cc/XB3Y-QKVU*].

[85] *See* W3C®, *Understanding Techniques for WCAG Success Criteria* (June 20, 2023), *https://www.w3.org/WAI/WCAG21/Understanding/understanding-techniques* [*https://perma.cc/AMT4-XAAL*].

[86] *See, e.g.,* Settlement Agreement with CVS Pharmacy, Inc. (Apr. 11, 2022), *https://archive.ada.gov/cvs_sa.pdf* [*https://perma.cc/H5KZ-4VVF*]; Settlement Agreement with Meijer, Inc. (Feb. 2, 2022), *https://archive.ada.gov/meijer_sa.pdf* [*https://perma.cc/5FGD-FK42*]; Settlement Agreement with The Kroger Co. (Jan. 28, 2022), *https://archive.ada.gov/kroger_co_sa.pdf* [*https://perma.cc/6ASX-U7FQ*]; Settlement Agreement with Champaign-Urbana Mass Transit Dist. (Dec. 14, 2021), *https://www.justice.gov/d9/case-documents/attachments/2021/12/14/champaign-urbana_sa.pdf* [*https://perma.cc/66XY-QGA8*]; Settlement Agreement with Hy-Vee, Inc. (Dec. 1, 2021) *https://archive.ada.gov/hy-vee_sa.pdf* [*https://perma.cc/GFY6-BJNE*]; Settlement Agreement with Rite Aid Corp. (Nov. 1, 2021), *https://archive.ada.gov/rite_aid_sa.pdf* [*https://perma.cc/4HBF-RBK2*].

[87] 36 CFR 1194, app. A.

[88] *See* Information and Communication Technology (''ICT'') Standards and Guidelines, 82 FR 5790, 5791 (Jan. 18, 2017); W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*].

[89] *See e.g., Exploring WCAG 2.1 for Australian government services,* Australian Government Digital Transformation Agency (Aug. 22, 2018), *https://www.dta.gov.au/blogs/exploring-wcag-21-australian-government-services.* A Perma archive link was unavailable for this citation.

[90] *Web Accessibility,* European Comm'n (updated July 13, 2022), *https://digital-strategy.ec.europa.eu/en/policies/web-accessibility* [*https://perma.cc/LSG9-XW7L*]; *Accessibility Requirements for ICT Products and Services,* European Telecomm. Standards Institute, 45–51, 64–78 (Mar. 2021), *https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.02.01_60/en_301549v030201p.pdf* [*https://perma.cc/5TEZ-9GC6*].

[91] *See* 14 CFR 382.43(c)–(e), 382.57.

[92] W3C®, *Web Content Accessibility Guidelines 2.2* (May 21, 2021), *https://www.w3.org/TR/2021/WD-WCAG22-20210521/* [*https://perma.cc/M4G8-Z2GY*].

published.[93] All of the WCAG 2.0 and WCAG 2.1 success criteria except for one are included in WCAG 2.2.[94] But WCAG 2.2 also includes six additional Level A and AA success criteria beyond those included in WCAG 2.1.[95] Like WCAG 2.1, WCAG 2.2 offers benefits for individuals with low vision, limited manual dexterity, and cognitive disabilities. For example, Success Criterion 3.3.8, which is a new criterion under WCAG 2.2, improves access for people with cognitive disabilities by limiting the use of cognitive function tests, like solving puzzles, in authentication processes.[96] Because WCAG 2.2 has not yet been finalized and is subject to change, and web professionals have had less time to become familiar with the additional success criteria that have been incorporated into WCAG 2.2, the Department does not believe it is appropriate to adopt WCAG 2.2 as the technical standard at this time.

The Department is seeking feedback from the public about its proposal to use WCAG 2.1 as the standard under this rule and its assumptions underlying this decision. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 3: Are there technical standards or performance standards other than WCAG 2.1 that the Department should consider? For example, if WCAG 2.2 is finalized before the Department issues a final rule, should the Department consider adopting that standard? If so, what is a reasonable time frame for State and local compliance with WCAG 2.2 and why? Is there any other standard that the Department should consider, especially in light of the rapid pace at which technology changes?

Proposed WCAG Conformance Level

For a web page to conform to WCAG 2.1, the web page must satisfy the success criteria under one of three levels of conformance: A, AA, or AAA. The three levels of conformance indicate a measure of accessibility and feasibility. Level A, which is the minimum level of accessibility, contains criteria that provide basic web accessibility and are the least difficult to achieve for web developers.[97] Level AA, which is the intermediate level of accessibility, includes all of the Level A criteria and contains enhanced criteria that provide more comprehensive web accessibility, and yet are still achievable for most web developers.[98] Level AAA, which is the highest level of conformance, includes all of the Level A and Level AA criteria and contains additional criteria that can provide a more enriched user experience, but are the most difficult to achieve for web developers.[99] The W3C® does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA criteria for some content.[100]

Based on review of previous public feedback and independent research, the Department believes that WCAG 2.1 Level AA is an appropriate conformance level because it includes criteria that provide web accessibility to individuals with disabilities—including those with visual, auditory, physical, speech, cognitive, and neurological disabilities—and yet is feasible for public entities' web developers to implement. In addition, Level AA conformance is widely used, making it more likely that web developers are already familiar with its requirements. Though many of the entities that conform to Level AA do so under WCAG 2.0, not 2.1, this still suggests a widespread familiarity with most of the Level AA success criteria, given that 38 of the 50 Level A and AA success criteria in WCAG 2.1 are also included in WCAG 2.0. The Department believes that Level A conformance alone is not appropriate because it does not include criteria for providing web accessibility that the Department understands are critical, such as a minimum level of color contrast so that items like text boxes or icons are easier to see, which is important for people with vision disabilities. Also, while Level AAA conformance provides a richer user experience, it is the most difficult to achieve for many entities. Therefore, the Department is proposing Level AA conformance for public feedback as to whether it strikes the right balance between accessibility for individuals with disabilities and achievability for public entities. Adopting a WCAG 2.1 Level AA conformance level would make the ADA requirements consistent with a standard that has been widely accepted internationally. Many nations have selected Level AA conformance as their standard for web accessibility.[101] The web content of Federal agencies that are governed by section 508 also need to comply with Level AA.[102] In its proposed regulatory text in § 35.200(b)(1) and (2), the Department provides that public entities must ''comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1.'' WCAG 2.1 provides that for ''Level AA conformance, the web page [must] satisf[y] all the Level A and Level AA Success Criteria . . . .'' [103] However, individual success criteria in WCAG 2.1 are labeled only as Level A or Level AA. Therefore, a person reviewing individual requirements in WCAG 2.1 may not understand that both Level A and Level AA success criteria must be met in order to attain Level AA. Accordingly, the Department has made explicit in its proposed regulation that both Level A and Level AA success criteria and conformance requirements must be met in order to comply with the proposed web accessibility requirements.

Conformance Level for Small Public Entities

The Department considered proposing another population threshold of very small entities that would be subject to a lower conformance level or WCAG version, to reduce the burden of compliance on those entities. However, the Department decided against this proposal due to a variety of factors. First, this would make for inconsistent levels of WCAG conformance across public entities, and a universal standard for consistency in implementation would promote predictability. A universal level of conformance would reduce confusion about which standard applies, and it would create a basic level of conformance for all public entities to follow. It would also allow for people with disabilities to know what they can

[93] *See, e.g.,* W3C®, *Web Content Accessibility Guidelines 2.2* (May 17, 2023), *https://www.w3.org/TR/WCAG22/* [*https://perma.cc/SXA7-RF32*].

[94] W3C®, *What's New in WCAG 2.2 Draft* (May 17, 2023), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-22/* [*https://perma.cc/Y67R-SFSE*].

[95] *Id.*

[96] *Id.*

[97] W3C®, *Web Content Accessibility Guidelines (WCAG) 2 Level A Conformance* (July 13, 2020), *https://www.w3.org/WAI/WCAG2A-Conformance* [*https://perma.cc/KT74-JNHG*].

[98] *Id.*

[99] *Id.*

[100] *See* W3C®, *Understanding Conformance, Understanding Requirement 1, https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/9ZG9-G5N8*].

[101] *See* W3C®, *Web Accessibility Laws & Policies* (Mar. 21, 2018), *https://www.w3.org/WAI/policies/* [*https://perma.cc/5EBY-3WX4*].

[102] *See* Information and Communication Technology (''ICT'') Standards and Guidelines, 82 FR 5790, 5791 (Jan. 18, 2017).

[103] *See* W3C®, *Conformance Requirements, Web Content Accessibility Guidelines (WCAG) 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#cc1* [*https://perma.cc/ZL6N-VQX4*]. WCAG 2.1 also states that a Level AA conforming alternate version may be provided. The Department has adopted a slightly different approach to conforming alternate versions, which is discussed below.

expect when navigating a public entity's web content; for example, it will be helpful for people with disabilities to know that they can expect to be able to navigate a public entity's web content independently using their assistive technology. Finally, for the reasons discussed above, the Department believes that WCAG 2.1 Level AA contains criteria that are critical to accessing services, programs, and activities of public entities, which may not be included under a lower standard. However, the Department recognizes that small public entities—those with a total population of less than 50,000 based on Census data—might initially face more technical and resource challenges in complying than larger public entities. Therefore, as discussed below, the Department has decided to propose different compliance dates according to a public entity's size to reduce burdens on small public entities.

Possible Alternative Standards for Compliance

The Department considered proposing to adopt the section 508 standards but decided not to take this approach. The section 508 standards are harmonized with WCAG 2.0, and for the reasons discussed above, the Department believes WCAG 2.1—which had not been finalized at the time the section 508 standards were promulgated—is the more appropriate recommendation for this proposed rule. Moreover, by adopting WCAG on its own rather than adopting it through the section 508 standards, the Department can then tailor the rule to public entities as it does in this proposed rule.

The Department also considered adopting performance standards instead of specific technical standards for accessibility of web content. Performance standards establish general expectations or goals for web accessibility and allow for compliance via a variety of unspecified methods. Performance standards could provide greater flexibility in ensuring accessibility as web technologies change. However, based on what the Department has heard previously from the public and its own knowledge of this area, the Department understands that performance standards might be too vague and subjective and could prove insufficient in providing consistent and testable requirements for web accessibility. Additionally, the Department expects that performance standards would likely not result in predictability for either public entities or people with disabilities in the way that a more specific technical standard would. Further, similar to a performance standard, WCAG has been designed to allow for flexibility and innovation in the evolving web environment. The Department recognizes the importance of adopting a standard for web accessibility that provides not only specific and testable requirements, but also sufficient flexibility to develop accessibility solutions for new web technologies. The Department believes that WCAG achieves this balance because it provides flexibility similar to a performance standard, but it also provides more clarity, consistency, predictability, and objectivity. Using WCAG also enables public entities to know precisely what is expected of them under title II, which may be of particular benefit to jurisdictions with less technological experience. This will assist public entities in targeting accessibility errors, which may reduce costs they would incur without clear expectations.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 4: What compliance costs and challenges might small public entities face in conforming with this rule? How accessible are small public entities' web content and mobile apps currently? Do small public entities have internal staff to modify their web content and mobile apps, or do they use outside consulting staff to modify and maintain their web content and mobile apps? If small public entities have recently (for example, in the past three years) modified their web content or mobile apps to make them accessible, what costs were associated with those changes?

Question 5: Should the Department adopt a different WCAG version or conformance level for small entities or a subset of small entities?

Public Entities' Use of Social Media Platforms

Public entities are increasingly using social media platforms to provide information and communicate with the public about their services, programs, and activities in lieu of or in addition to engaging the public on their own websites. The Department is using the term ''social media platforms'' to refer to websites or mobile apps of third parties whose primary purpose is to enable users to create and share content in order to participate in social networking (*i.e.,* the creation and maintenance of personal and business relationships online through websites and mobile apps like Facebook, Instagram, Twitter, and LinkedIn).

The Department is proposing to require that web content that public entities make available to members of the public or use to offer services, programs, and activities to members of the public be accessible within the meaning of proposed § 35.200. This requirement would apply regardless of whether that web content is located on the public entity's own website or elsewhere on the web. It therefore covers web content that a public entity makes available via a social media platform. Even where a social media platform is not fully accessible, a public entity can generally take actions to ensure that the web content that it posts is accessible and in compliance with WCAG 2.1.[104] The Department understands that social media platforms often make available certain accessibility features like the ability to add captions or alt text. It is the public entity's responsibility to use these features when it makes web content available on social media sites. For example, if a public entity posts an image to a social media site that allows users to post alt text, the public entity needs to ensure that appropriate alt text accompanies that image so that screen reader users can access the information.

At this time, the Department is not proposing any regulatory text specific to the web content that public entities make available to members of the public via social media platforms because web content posted on social media platforms will be treated the same as any other content public entities post on the web. However, the Department is considering creating an exception from coverage under the rule for social media posts if they were posted before the effective date of the rule. This exception would recognize that making preexisting social media content accessible may be impossible at this time or result in a significant burden. Many public entities have posted social media content for several years, often numbering thousands of posts, which may not all be accessible. The benefits of making all preexisting social media posts accessible might also be limited as these posts are intended to provide current updates on platforms that are frequently refreshed with new information. The Department is considering this exception in recognition of the fact that many entities' resources may be better spent

[104] *See Federal Social Media Accessibility Toolkit Hackpad, Digital.gov* (updated June 21, 2022), *https://digital.gov/resources/federal-social-media-accessibility-toolkit-hackpad/* [*https://perma.cc/DJ8X-UCHA*].

ensuring that current web content is accessible, rather than reviewing all preexisting social media content for compliance or possibly deleting their previous posts. The Department is looking for input on whether this approach would make sense and whether any limitations to this approach are necessary, such as providing that the exception does not apply when preexisting social media content is currently used to offer a service, program, or activity, or possibly limiting this exception when the public requests certain social media content to be made accessible.

The Department is also weighing whether public entities' preexisting videos posted to social media platforms such as YouTube should be excepted from coverage due to these same concerns or otherwise be treated differently.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 6: How do public entities use social media platforms and how do members of the public use content made available by public entities on social media platforms? What kinds of barriers do people with disabilities encounter when attempting to access public entities' services via social media platforms?

Mobile Applications

The Department is proposing to adopt the same technical standard for mobile app accessibility as it is for web content—WCAG 2.1 Level AA. As discussed earlier, WCAG 2.1 was published in June 2018 and was developed, in part, to address mobile accessibility.[105]

The Department considered applying WCAG 2.0 Level AA to mobile apps, which is a similar approach to the requirements in the final rule promulgated by the United States Access Board in its update to the section 508 standards.[106] WCAG 2.1 was not finalized when the Access Board adopted the section 508 standards. When WCAG 2.0 was originally drafted in 2008, mobile apps were not as widely used or developed. Further, the technology has grown considerably since that time. Accordingly, WCAG 2.1 provides 12 additional Level A and AA success criteria not included in WCAG 2.0 to ensure, among other things, that mobile apps are more accessible to individuals with disabilities using mobile devices.[107] For example, WCAG 2.1 includes Success Criterion 1.4.12, which ensures that text spacing like letter spacing, line spacing, and word spacing meets certain requirements to ensure accessibility; Success Criterion 2.5.4, which enables the user to disable motion actuation (*e.g.,* the ability to activate a device's function by shaking it) to prevent such things as accidental deletion of text; and Success Criterion 1.3.5, which allows a user to input information such as a name or address automatically.[108]

The Access Board's section 508 standards include additional requirements applicable to mobile apps that are not in WCAG 2.1, and the Department is requesting feedback on whether to adopt those requirements as well. For example, the section 508 standards apply the following requirements not found in WCAG 2.1 to mobile apps: interoperability requirements to ensure that a mobile app does not disrupt a device's assistive technology for persons with disabilities (*e.g.,* screen readers for persons who are blind or have low vision); requirements for mobile apps to follow preferences on a user's phone such as settings for color, contrast, and font size; and requirements for caption controls and audio description controls that enable users to adjust caption and audio description functions.[109]

Adopting WCAG 2.1 Level AA for mobile apps will help ensure this rule's accessibility standards for mobile apps are consistent with this rule's accessibility standards for web content. We seek comments on this approach below. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 7: How do public entities use mobile apps to make information and services available to the public? What kinds of barriers do people with disabilities encounter when attempting to access public entities' services, programs, and activities via mobile apps? Are there any accessibility features unique to mobile apps that the Department should be aware of?

Question 8: Is WCAG 2.1 Level AA the appropriate accessibility standard for mobile apps? Should the Department instead adopt another accessibility standard or alternative for mobile apps, such as the requirements from section 508 discussed above?

Requirements by Entity Size

Section 35.200(b) sets forth the proposed specific standard with which the web content and mobile apps that public entities make available to members of the public or use to offer services, programs, and activities to members of the public must comply, and also proposes time frames for compliance. The proposed requirements of § 35.200(b) are generally delineated by the size of the population of the public entity, as calculated by the U.S. Census Bureau.

Section 35.200(b)(1): Larger Public Entities

Section 35.200(b)(1) sets forth the proposed web and mobile app accessibility requirements for public entities with a total population of 50,000 or more. The requirements of proposed § 35.200(b)(1) are meant to apply to larger public entities—specifically, to those public entities that do not qualify as ''small governmental jurisdictions'' as defined in the Regulatory Flexibility Act.[110] As applied to this proposed rule, the Department defines the population of a public entity by the total general population of the jurisdiction as calculated by the U.S. Census Bureau. If a public entity does not have a specific population calculated by the U.S. Census Bureau, but belongs to another jurisdiction that does, the population of the entity is determined by the population of the jurisdiction to which the entity belongs. For example, a county police department in a county with a population of 5,000 is a small public entity, while a city police department in a city with a population of 200,000 is not a small public entity. For purposes of this rule, a population of a public entity is not defined by the population that is eligible for or that takes advantage of the specific services of the public entity. For example, a county school district in a county with a population of 60,000 adults and children is not a small public entity regardless of the number of students

[105] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[106] *See* 82 FR 5790, 5815 (Jan. 18, 2017).

[107] W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[108] W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*].

[109] 36 CFR 1194, app. C (§§ 502.1, 502.2.2, 503.2, 503.4.1, 503.4.2).

[110] 5 U.S.C. 601(5) (''[T]he term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand . . . .'').

enrolled or eligible for services. Similarly, individual county schools are also not considered small public entities if they are components of a county government that has a population of over 50,000 (*i.e.,* when the individual county schools are not separate legal entities). Though a specific county school may create and maintain web content or a mobile app, the county, as the legal entity governed by title II, is also responsible for what happens in the individual school. The Department expects that the specific school benefits from the resources made available or allocated by the county.

The Department is also proposing this approach because, practically speaking, it is likely to make it easier for public entities to determine their population size. Under the Department's proposal, population size is used to determine a public entity's compliance time frame. Some public entities, like libraries or public universities and community colleges, do not have population data associated with them in the U.S. Census. By using the population data associated with the entity the library or university belongs to, like a county or State, the library or university can assess its compliance time frame. This also allows the county or State as a whole to assess compliance for its services, programs, and activities holistically.

Proposed § 35.200(b)(1) requires that a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1. Public entities subject to proposed § 35.200(b)(1) have two years after the publication of a final rule to make their web content and mobile apps accessible, unless they can demonstrate that compliance with proposed § 35.200(b)(1) would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. The limitations on a public entity's obligation to comply with the proposed requirements are discussed in more detail below.

The Department has received varied feedback from the public in the past regarding an appropriate time frame for requiring compliance with technical web accessibility standards. Individuals with disabilities or disability advocacy organizations tended to prefer a shorter time frame, often arguing that web accessibility has long been required by the ADA and that extending the deadline for compliance rewards entities that have not made efforts to make their websites accessible. Some covered entities have asked for more time to comply. State and local government entities have been particularly concerned about shorter compliance deadlines, often citing budgets and staffing as major limitations. In the past, many public entities stated that they lacked qualified personnel to implement the web accessibility requirements of WCAG 2.0, which was relatively new at the time. They told the Department that in addition to needing time to implement the changes to their websites, they also needed time to train staff or contract with professionals who are proficient in developing accessible websites. Considering all these factors, as well as the facts that over a decade has passed since the Department started receiving such feedback and there is more available technology to make web content and mobile apps accessible, the Department is proposing a two-year implementation time frame for public entities with a total population of 50,000 or more. Regulated entities and the community of web developers have had over a decade to familiarize themselves with WCAG 2.0, which was published in 2008 and serves as the foundation for WCAG 2.1, and five years to familiarize themselves with the additional 12 Level A and AA success criteria of WCAG 2.1. Though the Department is now proposing requiring public entities to comply with WCAG 2.1 instead of WCAG 2.0, the Department believes the time allowed to come into compliance is appropriate. As discussed above, WCAG 2.1 Level AA only adds 12 Level A and AA success criteria that were not included in WCAG 2.0. The Department believes these additional success criteria will not significantly increase the time or resources that it will take for a public entity to come into compliance with the proposed rule beyond what would have already been required to comply with WCAG 2.0, though the Department seeks the public's input on this belief. The Department therefore believes this proposal balances the resource challenges reported by public entities with the interests of individuals with disabilities in accessing the multitude of services, programs, and activities that public entities now offer via the web and mobile apps.

Section 35.200(b)(2): Small Public Entities and Special District Governments

The Department has also previously received public input on whether it should consider different compliance requirements or a different compliance date for small entities in order to take into account the impact on small entities as required by the Regulatory Flexibility Act of 1980 and Executive Order 13272.[111] Many disability organizations and individuals have opposed having a different timetable or different accessibility requirements for smaller entities, stating that many small entities have smaller and less complex websites with fewer web pages, which would make compliance easier. The Department has also heard from other members of the public opposing different timetables or different accessibility requirements for smaller entities. These commenters note that small public entities are protected from excessive burdens deriving from rigorous compliance dates or stringent accessibility standards by the ADA's ''undue burden'' compliance limitations. It is also the Department's understanding that many web accessibility professionals may operate online and could be available to assist entities with compliance regardless of their location.

Many of those expressing concerns about compliance dates, especially web developers as well as State and local government entities, have stated that compliance in incremental levels would help public entities to allocate resources—both financial and personnel—to bring their websites into compliance. Such entities have noted that many small State and local government entities do not have a dedicated web developer or staff. The Department has heard that when these small entities develop or maintain their own websites, they often do so with staff or volunteers who have only a cursory knowledge of web design and use manufactured web templates or software, which may create inaccessible web pages. Some small public entities have expressed concern that even when they do use outside help, there is likely to be a shortage of professionals who are proficient in web accessibility and can assist all public entities in bringing their websites into compliance. Some public entities have also expressed concern that smaller entities would need to take

[111] *See* Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 FR 43460, 43467 (July 26, 2010).

down their websites because they would not be able to comply with the accessibility requirements, although the Department notes that public entities would not be required to undertake changes that would impose an undue financial and administrative burden.

In light of these concerns, proposed § 35.200(b)(2) sets forth the Department's proposed web and mobile app accessibility requirements for small public entities and special district governments. Specifically, proposed § 35.200(b)(2) covers those public entities with a total population of less than 50,000 and special district governments. Section 35.200(b)(2) would require these public entities to ensure that the web content and mobile apps they make available to the public or use to offer services, programs, and activities to members of the public, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless they can demonstrate that compliance would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. This is the same substantive standard that applies to larger entities. However, the Department is proposing to give these small entities additional time to bring their web content and mobile apps into compliance with proposed § 35.200(b)(2). Specifically, small public entities and special district governments covered by proposed § 35.200(b)(2) will have three years after the publication of a final rule to make their web content and mobile apps compliant with the Department's proposed requirements. The Department believes this longer phase-in period would be prudent to allow small public entities and special district governments to properly allocate their personnel and financial resources in order to bring their web content and mobile apps into compliance with the Department's proposed requirements. However, the Department welcomes feedback on whether there are alternatives to delaying compliance requirements by a year that could better balance the needs of small public entities and the people with disabilities who live in those communities.

Proposed § 35.200(b)(2) also covers public entities that are special district governments. As previously noted, special district governments are governments that are authorized to provide a single function or a limited number of functions, such as a zoning or transit authority. As discussed above, proposed § 35.200 proposes different compliance dates according to the size of the population of the public entity, as calculated by the U.S. Census Bureau. The Department believes applying to special district governments the same compliance date as proposed for small public entities (*i.e.,* compliance in three years) may be appropriate for two reasons. First, because the U.S. Census Bureau does not provide population estimates for special district governments, these limited-purpose public entities would find it difficult to obtain population estimates that are objective and reliable in order to determine their duties under the proposed rule. Though some special district governments may estimate their total populations, these entities may use varying methodology to calculate population estimations, which may lead to confusion and inconsistency in the application of the proposed accessibility requirements. Second, although special district governments in some instances may serve a large population, unlike counties, cities, or townships with large populations that provide a wide range of online government services and programs and have large and varying budgets, special district governments are authorized to provide a single function or a limited number of functions (*e.g.,* to provide mosquito abatement or water and sewer services) and have more limited or specialized budgets. Therefore, proposed § 35.200(b)(2) extends the deadline for compliance for special district governments to three years, as it does for small public entities.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 9: How will the proposed compliance date affect small public entities? Are there technical or budget constraints that small public entities would face in complying with this rule, such that a longer phase-in period is appropriate?

Question 10: How will the proposed compliance date affect people with disabilities, particularly in rural areas?

Question 11: How should the Department define ''small public entity''? Should categories of small public entities other than those already delineated in this proposed rule be subject to a different WCAG 2.1 conformance level or compliance date?

Question 12: Should the Department consider factors other than population size, such as annual budget, when establishing different or tiered compliance requirements? If so, what should those factors be, why are they more appropriate than population size, and how should they be used to determine regulatory requirements?

Limitations

The proposed rule sets forth the limitations on public entities' obligations to comply with the specific requirements of this proposed rule. For example, where it would impose an undue financial and administrative burden to comply with WCAG 2.1 (or part of WCAG 2.1), public entities would not be required to remove their web content and mobile apps, forfeit their web presence, or otherwise undertake changes that would be unduly burdensome. Further, as proposed in § 35.200(b), the web and mobile app accessibility requirements would not require any public entity to take actions that would result in a fundamental alteration in the nature of a service, program, or activity.

In circumstances where officials of a public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with proposed § 35.200(b) would result in such an alteration or such burdens, a public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity. For more information, see the discussion below regarding limitations on obligations under proposed § 35.204.

Captions for Live-Audio Content

WCAG 2.1 Level AA Success Criterion 1.2.4 requires synchronized captions for live-audio content. The intent of this success criterion is to ''enable people who are deaf or hard of hearing to watch *real-time* presentations. Captions provide the part of the content available via the audio track. Captions not only include dialogue, but also identify who is speaking and notate sound effects and

other significant audio.'' [112] Modern live captioning often can be created with the assistance of technology, such as by assigning captioners through Zoom or other conferencing software, which integrates captioning with live meetings.

The Department proposes to apply the same compliance date to all of the WCAG 2.1 Level AA success criteria, including live-audio captioning requirements. As noted above, this would allow for three years after publication of the final rule for small public entities and special district governments to comply, and two years for large public entities. The Department believes this approach is appropriate for several reasons. First, the Department understands that technology utilizing live-audio captioning has developed in recent years and continues to develop. In addition, the COVID–19 pandemic moved a significant number of formerly in-person meetings, activities, and other gatherings to online settings, many of which incorporated live-audio captioning. As a result of these developments, live-audio captioning has become even more critical for individuals with certain types of disabilities to participate fully in civic life. And while the Department believes that the two- and three-year periods described above afford a sufficient amount of time for public entities to allocate resources towards live-audio captioning, public entities have the option to demonstrate that compliance with any success criterion would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

Though at least one country that has adopted WCAG 2.0 Level AA as its standard for web accessibility has exempted entities from having to comply with the live-audio captioning requirements,[113] the Department does not believe this approach is appropriate or necessary under the current circumstances, given the current state of live-audio captioning technology and the critical need for live-audio captioning for people with certain types of disabilities to participate more fully in civic life. Further, the Department believes that the state of live-audio captioning technology has advanced since 2016 when Canada made the decision to exempt entities from the live-audio captioning requirements.[114] However, the Department is interested in learning more about compliance capabilities. Accordingly, the Department poses several questions for commenters about the development of live-audio captioning technology and the Department's proposed requirement.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 13: Should the Department consider a different compliance date for the captioning of live-audio content in synchronized media or exclude some public entities from the requirement? If so, when should compliance with this success criterion be required and why? Should there be a different compliance date for different types or sizes of public entities?

Question 14: What types of live-audio content do public entities and small public entities post? What has been the cost for providing live-audio captioning?

§ 35.201 Exceptions

This rule would require public entities to make their web content and mobile apps accessible. However, the Department believes it may be appropriate in some situations for certain content to be excepted from compliance with the technical requirements of this proposed rule. The Department has heard a range of views on this issue, including that a title II regulation should not include any exceptions because the compliance limitations for undue financial and administrative burdens would protect public entities from any unrealistic requirements. On the other hand, the Department has also heard that exceptions are necessary to avoid substantial burdens on public entities. The Department also expects that such exceptions may help public entities avoid uncertainty about whether they need to ensure accessibility in situations where it might be extremely difficult. After consideration of the public's views and after its independent assessment, the Department is proposing the following exceptions and poses questions for public feedback. The Department is interested in feedback about whether these proposed exceptions would relieve the burden on public entities, and also how these proposed exceptions would impact people with disabilities.

The Department is proposing exceptions from coverage—subject to certain limitations—for the following seven categories of web content: (1) archived web content; (2) preexisting conventional electronic documents; (3) web content posted by third parties on a public entity's website; (4) third-party web content linked from a public entity's website; (5) course content on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution; (6) class or course content on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school; and (7) conventional electronic documents that are about a specific individual, their property, or their account and that are password-protected or otherwise secured. Additionally, there are certain limitations to these exceptions—situations in which the otherwise excepted content still must be made accessible. This proposed rule's exceptions as well as the limitations on those exceptions are explained below.

Archived Web Content

Public entities' websites can often include a significant amount of archived web content, which may contain information that is outdated, superfluous, or replicated elsewhere. The Department's impression is that generally, this historic information is of interest to only a small segment of the general population. Still, the information may be of interest to some members of the public, including some individuals with disabilities, who are conducting research or are otherwise interested in these historic documents. The Department is aware and concerned, however, that based on current technologies, public entities would need to expend considerable resources to retroactively make accessible the large quantity of historic or otherwise outdated information available on public entities' websites. Thus, proposed § 35.201(a) provides an exception from the web access requirements of proposed § 35.200 for web content that meets the definition of ''archived web content'' in proposed § 35.104. As mentioned previously, proposed § 35.104 defines ''archived web content'' as ''web content that (1) is maintained exclusively for reference, research, or recordkeeping; (2) is not altered or updated after the date of archiving; and (3) is organized and stored in a dedicated area or areas clearly identified as being archived.''

[112] W3C®, *Captions (Live), Understanding SC 1.2.4, Understanding WCAG 2.0: A Guide to Understanding and Implementing WCAG 2.0, http://www.w3.org/TR/UNDERSTANDING-WCAG20/media-equiv-real-time-captions.html* [*https://perma.cc/NV74-U77R*] (emphasis in original).

[113] *See* W3C®, *Canada* (last updated Feb. 9, 2017), *https://www.w3.org/WAI/policies/canada/* [*https://perma.cc/W2DS-FAE9*].

[114] *See id.*

The archived web content exception allows public entities to keep and maintain historic web content, while utilizing their resources to make accessible the many up-to-date materials that people need to currently access public services or to participate in civic life.

The Department notes that under this exception, public entities may not circumvent their accessibility obligations by merely labeling their web content as ''archived'' or by refusing to make accessible any content that is old. The exception focuses narrowly on content that satisfies all three of the criteria necessary to qualify as ''archived web content,'' namely content that is maintained exclusively for reference, research, or recordkeeping; is not altered or updated after the date of archiving; and is organized and stored in a dedicated area or areas clearly identified as being archived. If any one of those criteria is not met, the content does not qualify as ''archived web content.'' For example, if an entity maintains content for any purpose other than reference, research, or recordkeeping—such as for purposes of offering a current service, program, or activity—then that content would not fall within the exception, even if an entity labeled it as ''archived.'' Similarly, an entity would not be able to circumvent its accessibility obligations by rapidly moving newly posted content that is maintained for a purpose other than reference, research, or recordkeeping, or that the entity continues to update, from a non-archived section of its website to an archived section.

Though the Department proposes that archived web content be excepted from coverage under this rule, if an individual with a disability requests that certain archived web content be made accessible, public entities generally have an existing obligation to make these materials accessible in a timely manner and free of charge.[115]

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 15: How do public entities currently manage content that is maintained for reference, research, or recordkeeping?

Question 16: What would the impact of this exception be on people with disabilities?

Question 17: Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception? How would foreseeable advances in technology affect the need for this exception?

Preexisting Conventional Electronic Documents

As discussed in the section-by-section analysis for proposed § 35.104 above, the Department is proposing to add a definition for ''conventional electronic documents.'' Specifically, the proposed definition provides that the term ''conventional electronic documents'' ''means web content or content in mobile apps that is in the following electronic file formats: portable document formats ('PDF'), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats.'' This list of conventional electronic documents is intended to be an exhaustive list of file formats, rather than an open-ended list.

Proposed § 35.201(b) provides that ''conventional electronic documents created by or for a public entity that are available on a public entity's website or mobile app before the date the public entity is required to comply with this rule'' do not have to comply with the accessibility requirements of proposed § 35.200, ''unless such documents are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities.''

The Department's research indicates that many websites of public entities contain a significant number of conventional electronic documents, such as comprehensive reports on water quality containing text, images, charts, graphs, and maps. The Department expects that many of these conventional electronic documents are in PDF format, but many conventional electronic documents are formatted as word processor files (*e.g.,* Microsoft Word files), presentation files (*e.g.,* Apple Keynote or Microsoft PowerPoint files), spreadsheet files (*e.g.,* Microsoft Excel files), and database files (*e.g.,* FileMaker Pro or Microsoft Access files).

Because of the substantial number of conventional electronic documents that public entities make available on their websites and mobile apps, and because of the difficulty of remediating some complex types of information and data to make them accessible after-the-fact, the Department believes public entities should generally focus their personnel and financial resources on developing new conventional electronic documents that are accessible and remediating existing conventional electronic documents that are currently used by members of the public to access the public entity's services, programs, or activities. For example, if before the date a public entity is required to comply with this rule, the entity's website contains a series of out-of-date PDF reports on local COVID–19 statistics, those reports generally need not comply with WCAG 2.1. Similarly, if a public entity maintains decades' worth of water quality reports in conventional electronic documents on the same web page as its current water quality report, the old reports that were posted before the date the entity was required to comply with this rule generally do not need to comply with WCAG 2.1. As the public entity posts new reports going forward, however, those reports must comply with WCAG 2.1. This approach is expected to reduce the burdens on public entities.

This exception is subject to a limitation: the exception does not apply to any preexisting documents that are currently used by members of the public to apply for, access, or participate in the public entity's services, programs, or activities. In referencing ''documents that are currently used,'' the Department intends to cover documents that are used by members of the public at any given point in the future, not just at the moment in time when this rule is published. This limitation includes documents that provide instructions or guidance. For example, a public entity must not only make an application for a business license accessible, but it must also make accessible other materials that may be needed to obtain the license, complete the application, understand the process, or otherwise take part in the program, such as business license application instructions, manuals, sample knowledge tests, and guides, such as ''Questions and Answers'' documents.

The Department notes that a public entity may not rely on this ''preexisting conventional electronic documents'' exception to circumvent its accessibility obligations by, for example, converting all of its web content to conventional electronic document formats and posting those documents before the date the entity must comply with this rule. As noted above, any documents that are currently used by members of the public to access the public entity's services, programs, or activities would need to be accessible as defined under this rule, even if those documents were posted before the date the entity was required to comply with the rule. And if an entity updates a conventional electronic document after the date the entity must

[115] *See, e.g.,* 28 CFR 35.130(b)(7)(i), (f), 35.160(b)(2).

comply with this rule, that document would no longer qualify as ''preexisting,'' and would thus need to be made accessible as defined under this rule.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 18: Where do public entities make conventional electronic documents available to the public? Do public entities post conventional electronic documents anywhere else on the web besides their own websites?

Question 19: Would this ''preexisting conventional electronic documents'' exception reach content that is not already excepted under the proposed archived web content exception? If so, what kinds of additional content would it reach?

Question 20: What would the impact of this exception be on people with disabilities? Are there alternatives to this exception that the Department should consider, or additional limitations that should be placed on this exception? How would foreseeable advances in technology affect the need for this exception?

Third-Party Web Content

Public entities' websites can include or link to many different types of third-party content (*i.e.,* content that is created by someone other than the public entity), some of which is posted by or on behalf of public entities and some of which is not. For example, many public entities' websites contain third-party web content like maps, calendars, weather forecasts, news feeds, scheduling tools, reservations systems, or payment systems. Third-party web content may also be posted by members of the public on a public entity's online message board or other sections of the public entity's website that allow public comment. In addition to third-party content that is posted on the public entity's own website, public entities frequently provide links to third-party content (*i.e.,* links on the public entity's website to content that has been posted on another website that does not belong to the public entity), including links to outside resources and information.

The Department has heard a variety of views regarding whether or not public entities should be responsible for ensuring that third-party content on their websites and linked third-party content are accessible. Some maintain that public entities cannot be held accountable for third-party content on their websites, and without such an exception, public entities may have to remove the content altogether. Others have suggested that public entities should not be responsible for third-party content and linked content unless that content is necessary for individuals to access public entities' services, programs, or activities. The Department has also previously heard the view, however, that public entities should be responsible for third-party content because an entity's reliance on inaccessible third-party content can prevent people with disabilities from having equal access to the public entity's own services, programs, and activities. Furthermore, boundaries between web content generated by a public entity and by a third party are often difficult to discern.

At this time, the Department is proposing the following two limited exceptions related to third-party content in §§ 35.201(c)–(d) and is posing questions for public comment.

Section 35.201(c): Web Content Posted by a Third Party on a Public Entity's Website

Proposed § 35.201(c) provides an exception to the web accessibility requirements of proposed § 35.200 for ''web content posted by a third party that is available on a public entity's website.''

The Department is proposing this exception in recognition of the fact that individuals other than a public entity's agents sometimes post content on a public entity's website. For example, members of the public may sometimes post on a public entity's online message boards, wikis, social media, or other web forums, many of which are unregulated, interactive spaces designed to promote the sharing of information and ideas. Members of the public may post frequently, at all hours of the day or night, and a public entity may have little or no control over the content posted. In some cases, a public entity's website may include posts from third parties dating back many years, which are likely of limited, if any, relevance today. Because public entities often lack control over this third-party content, it may be challenging (or impossible) for them to make it accessible. Moreover, because this third-party content may be outdated or unrelated to a public entity's services, programs, and activities, there may be only limited benefit to requiring public entities to make this content accessible. Accordingly, the Department believes it is appropriate to create an exception for this content. However, while this exception applies to web content posted by third parties, it does not apply to the tools or platforms used to post third-party content on a public entity's website such as message boards—these tools and platforms are subject to the rule's technical standard.

This exception applies to, among other third-party content, documents filed by third parties in administrative, judicial, and other legal proceedings that are available on a public entity's website. This example helps to illustrate why the Department believes this exception is necessary. Many public entities have either implemented or are developing an automated process for electronic filing of documents in administrative, judicial, or legal proceedings in order to improve efficiency in the collection and management of these documents. Courts and other public entities receive high volumes of filings in these sorts of proceedings each year. The majority of these documents are submitted by third parties—such as a private attorney in a legal case or other members of the public—and often include appendices, exhibits, or other similar supplementary materials that may be difficult to make accessible.

However, the Department notes that public entities have existing obligations under title II of the ADA to ensure the accessibility of their services, programs, and activities.[116] Accordingly, for example, if a person with a disability is a party to a case and requests access to inaccessible filings submitted by a third party in a judicial proceeding that are available on a State court's website, the court may need to timely provide those filings in an accessible format. Similarly, public entities may need to provide reasonable modifications to ensure that people with disabilities have access to the entities' services, programs, and activities. For example, if a hearing had been scheduled in the proceeding referenced above, the court might need to postpone the hearing if it did not provide the filings in an accessible format to the requestor in sufficient time for the requestor to review the documents before the scheduled hearing.

Sometimes a public entity itself chooses to post content created by a third party on its website. This exception does not apply to content posted by the public entity itself, even if the content was originally created by a third party. For example, many public entities post third-party content on their websites, such as calendars, scheduling tools, maps, reservations systems, and payment systems that were developed

[116] 28 CFR 35.130, 35.160.

by an outside technology company. To the extent a public entity chooses to rely on third-party content on its website, it must select third-party content that meets the requirements of proposed § 35.200.

Moreover, a public entity may not delegate away its obligations under the ADA.[117] Accordingly, if a public entity relies on a contractor or another third party to post content on the entity's behalf, the public entity retains responsibility for ensuring the accessibility of that content. For example, if a public housing authority relies on a third-party contractor to collect applications for placement on a waitlist for housing, the public housing authority must ensure that this content is accessible.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 21: What types of third-party web content can be found on websites of public entities and, how would foreseeable advances in technology affect the need for creating an exception for this content? To what extent is this content posted by the public entities themselves, as opposed to third parties? To what extent do public entities delegate to third parties to post on their behalf? What degree of control do public entities have over content posted by third parties, and what steps can public entities take to make sure this content is accessible?

Question 22: What would the impact of this exception be on people with disabilities?

Section 35.201(d): Third-Party Content Linked From a Public Entity's Website

Proposed § 35.201(d) provides that a public entity is not responsible for the accessibility of third-party web content linked from the public entity's website ''unless the public entity uses the third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities.'' Many public entities' websites include links to other websites that contain information or resources in the community offered by third parties that are not affiliated with the public entity. Clicking on one of these links will take an individual away from the public entity's website to the website of a third party. Typically, the public entity has no control over or responsibility for a third party's web content or the operation of the third party's website. Accordingly, the public entity has no obligation to make the content on a third party's website accessible. For example, if for purely informational or reference purposes, a public university posts a series of links to restaurants and tourist attractions that members of the public may wish to visit in the surrounding area, the public entity is not responsible for ensuring the websites of those restaurants and tourist attractions are accessible.

Proposed § 35.201(d) generally allows public entities to provide relevant links to third-party web content that may be helpful without making them responsible for the third party's web content. However, the Department's title II regulation prohibits discrimination in the provision of any aid, benefit, or service provided by public entities directly or through contractual, licensing, or other arrangements.[118] Therefore, if the public entity uses the linked third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities, then the public entity must ensure it only links to third-party web content that complies with the web accessibility requirements of proposed § 35.200. This approach is consistent with public entities' obligation to make all of their services, programs, or activities accessible to the public, including those it provides through third parties.[119] For example, a public entity that links to online payment processing websites offered by third parties to accept the payment of fees, parking tickets, or taxes must ensure that the third-party web content it links to in order for members of the public to pay for the public entity's services, programs, or activities complies with the web accessibility requirements of proposed § 35.200. In other words, if a public entity links to a website for a third-party payment service that the entity allows the public to use to pay taxes, the public entity would be using that third-party web content to allow members of the public to participate in its tax program, and the linked third-party web content would need to comply with this rule. Otherwise, the public entity's tax program would not be equally accessible to people with disabilities. Similarly, if a public entity links to a third-party website that processes applications for benefits or requests to sign up for classes or programs the public entity offers, the public entity is using the third party's linked web content to allow members of the public to participate in the public entity's services, programs, or activities, and the public entity must thus ensure that it links to only third-party web content that complies with the requirements of proposed § 35.200.

The Department believes this approach strikes the appropriate balance between acknowledging that public entities may not have the ability to make third parties' web content accessible and recognizing that public entities do have the ability to choose to use only third-party content that is accessible when that content is used to allow members of the public to participate in or benefit from the public entity's services, programs, or activities.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 23: Do public entities link to third-party web content to allow members of the public to participate in or benefit from the entities' services, programs, or activities? If so, to what extent does the third-party web content that public entities use for that purpose comply with WCAG 2.1 Level AA?

Question 24: What would the impact of this exception be on people with disabilities and how would foreseeable advances in technology affect the need for this exception?

External Mobile Apps

Many public entities use mobile apps that are developed, owned, and operated by third parties, such as private companies, to allow the public to access the entity's services, programs, or activities. We will refer to these mobile apps as ''external mobile apps.'' [120] One example of an external mobile app is the ''ParkMobile'' app, a private company's app that some cities direct the public to in order to pay for

[117] *See* 28 CFR 35.130(b)(1) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

[118] 28 CFR 35.130(b)(1).

[119] *See* 28 CFR 35.130(b)(1)(ii) (prohibiting discrimination through a contractual, licensing, or other arrangement that would provide an aid, benefit, or service to a qualified individual with a disability that is not equal to that afforded others).

[120] In this document, we refer to web content that is created by someone other than a public entity as ''third-party web content.'' We note that we do not use ''third-party'' to describe mobile apps here to avoid confusion. It is our understanding that the term ''third-party mobile app'' appears to have a different meaning in the technology industry and some understand ''a third-party app'' as an application that is provided by a vendor other than the manufacturer of the device or operating system provider. *See* Alice Musyoka, *Third-Party Apps, Webopedia* (Aug. 4, 2022), *https://www.webopedia.com/definitions/third-party-apps/* [*https://perma.cc/SBW3-RRGN*].

parking in the city.[121] In addition, members of the public use mobile apps that are operated by private companies, like the ''SeeClickFix'' app, to submit non-emergency service requests such as fixing a pothole or a streetlight.[122]

At this time, the Department is not proposing to create an exception for public entities' use of external mobile apps (*e.g.,* mobile apps operated by a third party) from proposed § 35.200. We expect that public entities are using external mobile apps mostly to offer the entities' services, programs, and activities, such that creating an exception for these apps would not be appropriate.

Accordingly, the Department is seeking comment and additional information on external mobile apps that public entities use to offer their services, programs, and activities. Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 25: What types of external mobile apps, if any, do public entities use to offer their services, programs, and activities to members of the public, and how accessible are these apps? While the Department has not proposed an exception to the requirements proposed in § 35.200 for public entities' use of external mobile apps, should the Department propose such an exception? If so, should this exception expire after a certain time, and how would this exception impact persons with disabilities?

Password-Protected Class or Course Content of Public Educational Institutions

Proposed § 35.201(e) and (f) provide exceptions for public educational institutions' password-protected class or course content where there is no student with a disability enrolled in the class or course (or, in the elementary and secondary school context, where there is no student enrolled in the class or course who has a parent with a disability) who needs the password-protected content to be made accessible.

Public educational institutions, like many other public institutions, use their websites to provide a variety of services, programs, and activities to members of the public. Many of the services, programs, and activities on these websites are available to anyone. The content on these websites can include such general information as the academic calendar, enrollment process, admission requirements, school lunch menus, school policies and procedures, and contact information. Under the proposed regulation, all such services, programs, or activities available to the public on the websites of public educational institutions must comply with the requirements of proposed § 35.200 unless the content is subject to a proposed exception.

In addition to the information available to the general public on the websites of public educational institutions, the websites of many schools, colleges, and universities also make certain services, programs, and activities available to a discrete and targeted audience of individuals (*e.g.,* students taking particular classes or courses or, in the elementary or secondary school context, parents of students enrolled in particular classes or courses). This information is often provided using a Learning Management System (''LMS'') or similar platform that can provide secure online access and allow the exchange of educational and administrative information in real time. LMSs allow public educational institutions and their faculty and staff to exchange and share information with students and parents about classes or courses and students' progress. For example, faculty and staff can create and collect assignments, post grades, provide real-time feedback, and share subject-specific media, documents, and other resources to supplement and enrich the curriculum. Parents can track their children's attendance, assignments, grades, and upcoming class events. To access the information available on these platforms, students (and parents in the elementary and secondary school context) generally must obtain a password, login credentials, or some equivalent from the educational institution. The discrete population that has access to this content may not always include a person with a disability. For example, a student who is blind may not have enrolled in a psychology course, or a parent who is deaf may not have a child enrolled in a particular ninth-grade world history class.

The Department's regulatory proposal would require that the LMS platforms that public elementary and secondary schools, colleges, and universities use comply with proposed § 35.200. However, subject to limitations, the Department is proposing an exception for password-protected class or course content. Thus, while the LMS platform would need to be accessible, class or course content (such as syllabi and assigned readings) posted on the password-protected LMS platform would not need to be, except in specified circumstances. Specifically, the content available on password-protected websites for specific classes or courses would generally be excepted from the requirements of proposed § 35.200 unless a student is enrolled in that particular class or course and the student (or the parent[123] in the elementary and secondary school context) would be unable, because of a disability, to access the content posted on the password-protected website for that class or course. Thus, once a student with a disability (or a student in an elementary or secondary school with a parent with a disability) is enrolled in a particular class or course, the content available on the password-protected website for the specific class or course would need to be made accessible in accordance with certain compliance dates discussed below. This may include scenarios in which a student with a disability (or, in the elementary and secondary school context, a student whose parent has a disability) preregisters, enrolls, or transfers into a class or course or acquires a disability during the term, or when a school otherwise identifies a student in a class or course (or their parent in the elementary and secondary school context) as having a disability. The educational institution would generally be required to make the course content for that class or course fully compliant with all WCAG 2.1 Level AA success criteria, not merely the criteria related to that student or parent's disability. This will ensure that course content becomes more accessible to all students over time. In addition, the Department expects that it will be more straightforward for public entities to comply with WCAG 2.1 Level AA as a whole, rather than attempting to identify and isolate the WCAG 2.1 success criteria that relate to a specific student, and then repeating that process for a subsequent student with a different disability.

The Department proposes this exception for class and course content based on its understanding that it would be burdensome to require public educational institutions to make

[121] *See ParkMobile Parking App, https://parkmobile.io* [*https://perma.cc/G7GY-MDFE*].

[122] *See Using Mobile Apps in Government,* IBM Ctr. for the Bus. of Gov't, at 32–33 (2015), *https://www.businessofgovernment.org/sites/default/files/Using%20Mobile%20Apps%20in%20Government.pdf* [*https://perma.cc/248X-8A6C*].

[123] The Department notes that the term ''parent'' as used throughout proposed § 35.201(f) is intended to include biological, adoptive, step-, or foster parents; legal guardians; or other individuals recognized under Federal or State law as having parental rights.

accessible all of the documents, videos, and other content that many instructors upload and assign via LMS websites. For instance, instructors may scan hard-copy documents and then upload them to LMS sites as conventional electronic documents. In some instances, these documents comprise multiple chapters from books and may be hundreds of pages long. Similarly, instructors may upload videos or other multimedia content for students to review. The Department believes that making all of this content accessible when students with disabilities (or their parents in the elementary and secondary context) are not enrolled in the class or course may be onerous for public educational institutions, but the Department also understands that it is critical for students and parents with disabilities to have access to needed course content.

The Department believes its proposal provides a balanced approach by ensuring access to students with disabilities (or, in elementary and secondary school settings, parents with disabilities) enrolled in the educational institution, while recognizing that there are large amounts of class or course content that may not immediately need to be accessed by individuals with disabilities because they have not enrolled in a particular class or course.

By way of analogy and as an example, under the Department's existing title II regulations, public educational institutions are not required to proactively provide accessible course handouts to all students in a course, but they are required to do so for a student with a disability who needs them to access the course content. The Department envisions the requirements proposed here as an online analogue: while public educational institutions are not required to proactively make all password-protected course handouts accessible, for example, once an institution knows that a student with a disability is enrolled in a course and, accordingly, needs the content to be made accessible, the institution must do so. The institution must also comply with its obligations to provide accessible course content under all other applicable laws, including the IDEA.

The Department appreciates that some public educational institutions may find it preferable or more effective to make all class or course content accessible from the outset without waiting for a student with a disability (or, in the elementary and secondary school context, a student with a parent with a disability) to enroll in a particular class or course, and nothing in this rule would prevent public educational institutions from taking that approach. Even if public educational institutions do not take this approach, the Department expects that those institutions will likely need to take steps in advance so that they are prepared to make all class or course content for a particular course accessible within the required timeframes discussed below when there is an enrolled student with a disability (or, in the elementary and secondary school context, an enrolled student with a parent with a disability) who needs access to that content.

Because the nature, operation, and structure of public elementary and secondary schools are different from those of public colleges and universities, the proposed regulation sets forth separate requirements for the two types of institutions.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following question.

Question 26: Are there particular issues relating to the accessibility of digital books and textbooks that the Department should consider in finalizing this rule? Are there particular issues that the Department should consider regarding the impact of this rule on libraries?

Public Postsecondary Institutions: Password-Protected Web Content

In proposed § 35.201(e), the Department is considering an exception to the requirements proposed in § 35.200 for public postsecondary institutions, subject to two limitations. This exception would provide that ''course content available on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution'' would not need to comply with the web accessibility requirements of proposed § 35.200 unless one of the two limitations described below applies. As used in this context, ''admitted students'' refers to students who have applied to, been accepted by, and are enrolled in a particular educational institution. These students include both matriculated students (*i.e.,* students seeking a degree) and non-matriculated students (*i.e.,* continuing education students or non-degree-seeking students). As noted above, this exception applies only to password-protected or otherwise secured content. Content may be otherwise secured if it requires some process of authentication or login to access the content.

The exception is not intended to apply to password-protected content for classes or courses that are made available to the general public, or a subset thereof, without enrolling at a particular educational institution. Such classes or courses generally only require limited, if any, registration to participate. These types of classes or courses may sometimes be referred to as Massive Open Online Courses, or MOOCs. Because access to the content on these password-protected websites is not limited to a discrete student population within an educational institution but is instead widely available to the general public—sometimes without limits as to enrollment—any individual, including one with a disability, may enroll or participate at almost any time. Under these circumstances, the public entity must make such class or course content accessible from the outset of the class or course regardless of whether a student with a disability is known to be participating. The Department is interested in the public's feedback on this exception, and in particular the impact it may have on public institutions' continued use of MOOCs.

The phrase ''enrolled in a specific course'' as used in proposed § 35.201(e) limits the exception to password-protected course content for a particular course, at a particular time, during a particular term. For example, if a university offers a 20th-Century Irish Literature course at 10 a.m. that meets on Mondays, Wednesdays, and Fridays for the fall semester of the 2029–2030 academic year, the exception would apply to the password-protected course content for that course, subject to the limitations discussed below.

The proposed exception in § 35.201(e) would not apply to non-course content on the public entity's password-protected website that is generally available to all admitted students. For example, forms for registering for class, applications for meal plans or housing, academic calendars, and announcements generally made available to all students enrolled in the postsecondary institution would all be required to comply with proposed § 35.200. In addition, if a public postsecondary institution made course content for specific courses available to all admitted students on a password-protected website, regardless of whether students had enrolled in that specific course, the exception would not apply, even if such content was only made available for a limited time, such as within a set time frame for course shopping.

Sections 35.201(e)(1)–(2): Limitations to the Exception for Password-Protected Course Content for Specific Courses

As noted previously, there are two important limitations to the general exception for course content on password-protected websites of postsecondary institutions in proposed § 35.201(e); both limitations apply to situations in which an admitted student with a disability is enrolled in a particular course at a postsecondary institution and the student, because of a disability, would be unable to access the content on the password-protected website for the specific course. The phrase ''the student, because of a disability, would be unable to access'' is meant to make clear that these limitations are not triggered merely by the enrollment of a student with a disability, but instead they are triggered by the enrollment of a student whose disability would make them unable to access the content on the password-protected course website. These limitations would also be triggered by the development or identification of such a disability while a student is enrolled, or the realization that a student's disability makes them unable to access the course content during the time that they are enrolled. The phrase ''unable to access'' does not necessarily mean a student has no access at all. Instead, the phrase ''unable to access'' is intended to cover situations in which a student's disability would limit or prevent their ability to equally access the relevant content.

The provisions set forth in the limitations to the exception are consistent with longstanding obligations of public entities under title II of the ADA. Public entities are already required to make appropriate reasonable modifications and ensure effective communication, including by providing the necessary auxiliary aids and services to students with disabilities, under the current title II regulation. It is the public educational institution, not the student, that is responsible for ensuring that it is meeting these obligations. Such institutions, therefore, should be proactive in addressing the access needs of admitted students with disabilities, including those who would be unable to access inaccessible course content on the web. This also means that when an institution knows that a student with a disability is unable to access inaccessible content, the institution should not expect or require that the student first attempt to access the information and be unable to do so before the institution's obligation to make the content accessible arises.

Correspondingly, when an institution has notice that such a student is enrolled in a course, all of the content available on the password-protected website for that course must be made accessible in compliance with the accessibility requirements of proposed § 35.200. The difference between the two limitations to the exception to proposed § 35.201(e) is the date that triggers compliance. The triggering event is based on when the institution knew, or should have known, that such a student with a disability would be enrolled in a specific course and would be unable to access the content available on the password-protected website.

The application of the limitation in proposed § 35.201(e)(1) and (e)(2), discussed in detail below, is contingent upon the institution having notice both that a student with a disability is enrolled in a specific course and that the student cannot access the course content because of their disability. Once an institution is on notice that a student with a disability is enrolled in a specific course and that the student's disability would render the student unable to access the content available on the password-protected website for the specific course, the password-protected course content for that course must be made accessible within the time frames set forth in proposed § 35.201(e)(1) and (e)(2), which are described in greater detail below.

The first proposed limitation to the exception for postsecondary institutions, proposed § 35.201(e)(1), would require that ''if a public entity is on notice that an admitted student with a disability is pre-registered in a specific course offered by a public postsecondary institution and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course,'' then ''all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 by the date the academic term begins for that course offering. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.'' Students may register for classes and make accessibility requests ahead of the start of the term—often during the previous term. The institution therefore knows, or should know, that a student with a disability has registered for a particular course or notified the school that content must be made accessible for a particular course. This provision would ensure that students with disabilities have timely access to and equal opportunity to benefit from content available on a password-protected website for their particular courses.

The second proposed limitation to the exception for postsecondary institutions, proposed § 35.201(e)(2), applies to situations in which ''a public entity is on notice that an admitted student with a disability is enrolled in a specific course offered by a public postsecondary institution after the start of the academic term, and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course.'' In this instance, unlike proposed § 35.201(e)(1), the postsecondary institution is not on notice until after the start of the academic term that a student is enrolled in a particular course and that the student, because of a disability, would be unable to access the content on the password-protected course website. In such circumstances, all content available on the public entity's password-protected website for the specific course must comply with the requirements of proposed § 35.200 within five business days of such notice. This second limitation would apply to situations in which students have not pre-registered in a class, such as when students enroll in a class during the add/drop period, or where waitlisted or transfer students enroll in a class at the start of, or during, the academic term. This second limitation to the exception for postsecondary institutions would also apply to situations in which the institution was not on notice that the enrolled student had a disability and would be unable to access online course content until after the academic term began—because, for example, the student newly enrolled at the institution or was recently diagnosed with a disability.

In proposing the five-day remediation requirement in this limitation, the Department is attempting to strike the appropriate balance between providing postsecondary institutions with a reasonable opportunity to make the content on the password-protected or otherwise secured website accessible and providing individuals with disabilities full and timely access to this information that has been made available to all other students in the course. The Department believes five days provides a reasonable opportunity to make the relevant content accessible in most cases, subject to the general limitations under proposed § 35.204, entitled ''Duties.'' However, the

Department is interested in the public's feedback and data on whether this remediation requirement provides a reasonable opportunity to make the relevant content accessible, and whether a shorter or longer period would be more appropriate in most cases.

If, for example, a public college offers a specific fall semester course, a student with a disability pre-registers for it and, because of disability, that student would be unable to access the content available on the password-protected website for that course, all content available on the institution's password-protected website for that specific course must comply with the requirements of proposed § 35.200 by the date the academic semester begins for the fall semester (according to the first limitation). If, instead, that same student does not enroll in that particular course until two days after the start of the fall semester, all content available on the institution's password-protected or otherwise secured website for that specific course must comply with the requirements of proposed § 35.200 within five business days of notice that a student with a disability is enrolled in that particular course and, because of disability, would be unable to access the content (according to the second limitation).

The exception applies to course content such as conventional electronic documents, multimedia content, or other course material ''available'' on a public entity's password-protected or otherwise secured website. As such, the two limitations apply when that content is made ''available'' to students with disabilities enrolled in a specific course who are unable to access course content. Although a professor may load all of their course content on the password-protected website at one time, they may also stagger the release of particular content to their students at various points in time during the term. It is when this content is made available to students that it must be made accessible in compliance with proposed § 35.200.

The two limitations to the exception for password-protected course content state that the limitations apply whenever ''the student, because of a disability, would be unable to access the content available on the public entity's password-protected website for the specific course.'' Pursuant to longstanding obligations of public entities under title II of the ADA, the public postsecondary institution must continue to take other steps necessary to timely make inaccessible course content accessible to an admitted student with a disability during the five-day period proposed in the second limitation, unless doing so would result in a fundamental alteration or undue financial and administrative burden. This could include timely providing alternative formats, a reader, or a notetaker for the student with a disability, or providing other auxiliary aids and services that enable the student with a disability to participate in and benefit from the services, programs, and activities of the public entity while the public entity is making the course content on the password-protected website accessible.

Once the obligation is triggered to make password-protected course content accessible for a specific course, the obligation is ongoing for the duration of the course (*i.e.,* the obligation is not limited to course content available at the beginning of the term). Rather, all web content newly added throughout the remainder of the student's enrollment in the course must also be accessible at the time it is made available to students. Furthermore, once a public postsecondary institution makes conventional electronic documents, multimedia content, or other course material accessible in accordance with the requirements of proposed § 35.201(e)(1) or (e)(2), the institution must maintain the accessibility of that specific content as long as that content is available to students on the password-protected course website, in compliance with the general accessibility requirement set forth in proposed § 35.200. However, new content added later, when there is no longer a student with a disability who is unable to access inaccessible web content enrolled in that specific course, would not need to be made accessible because that course-specific web content would once again be subject to the exception, unless and until another student with a disability is enrolled in that course.

With regard to third-party content linked to from a password-protected or otherwise secured website for a specific course, the exception and limitations set forth in proposed § 35.201(d) apply to this content, even when a limitation under proposed § 35.201(e)(1) or (e)(2) has been triggered requiring all the content available to students on a password-protected website for a specific course to be accessible. Accordingly, third-party web content to which a public entity provides links for informational or resource purposes is not required to be accessible; however, if the postsecondary institution uses the third-party web content to allow members of the public to participate in or benefit from the institution's services, programs, or activities, then the postsecondary institution must ensure it links to third-party web content that complies with the web accessibility requirements of proposed § 35.200. For example, if a postsecondary institution requires students to use a third-party website it links to on its password-protected course website to complete coursework, then the third-party web content must be accessible.

The Department believes that this approach strikes a proper balance of providing necessary and timely access to course content, while not imposing burdens where web content is currently only utilized by a population of students without relevant disabilities, but it welcomes public feedback on whether alternative approaches might strike a more appropriate balance.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 27: How difficult would it be for public postsecondary institutions to comply with this rule in the absence of this exception?

Question 28: What would the impact of this exception be on people with disabilities?

Question 29: How do public postsecondary institutions communicate general information and course-specific information to their students?

Question 30: Do public postsecondary institutions commonly provide parents access to password-protected course content?

Question 31: The proposed exception and its limitations are confined to content on a password-protected or otherwise secured website for students enrolled in a specific course. Do public postsecondary institutions combine and make available content for particular groups of students (e.g., newly admitted students or graduating seniors) using a single password-protected website and, if so, should such content be included in the exception?

Question 32: On average, how much content and what type of content do password-protected course websites of postsecondary institutions contain? Is there content posted by students or parents? Should content posted by students or parents be required to be accessible and, if so, how long would it take a public postsecondary institution to make it accessible?

Question 33: How long would it take to make course content available on a public entity's password-protected or otherwise secured website for a particular course accessible, and does this vary based on the type of course? Do students need access to course

content before the first day of class? How much delay in accessing online course content can a student reasonably overcome in order to have an equal opportunity to succeed in a course, and does the answer change depending on the point in the academic term that the delay occurs?

Question 34: To what extent do public postsecondary institutions use or offer students mobile apps to enable access to password-protected course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(e) and (e)(1)–(2), respectively, to mobile apps?

Question 35: Should the Department consider an alternative approach, such as requiring that all newly posted course content be made accessible on an expedited time frame, while adopting a later compliance date for remediating existing content?

Public Elementary and Secondary Schools: Password-Protected Web Content

In proposed § 35.201(f), the Department is considering an exception to the requirements proposed in § 35.200 for public elementary and secondary schools that would provide, subject to four limitations, that ''class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school'' would not need to comply with the web accessibility requirements of proposed § 35.200.

Because parents of students in elementary and secondary schools have greater rights, roles, and responsibilities with regard to their children and their children's education than in the postsecondary education setting, and because these parents typically interact with such schools much more often and in much greater depth and detail, parents are expressly included in both the general exception for password-protected web content in proposed § 35.201(f) and its limitations.[124] Parents use password-protected websites to access progress reports and grades, track homework and long-term project assignments, and interact regularly with their children's teachers and administrators.

[124] The Department notes that the term ''parent'' as used throughout proposed § 35.201(f) is intended to include biological, adoptive, step-, or foster parents; legal guardians; or other individuals recognized under Federal or State law as having parental rights.

Proposed exception § 35.201(f) provides that ''class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course offered by a public elementary or secondary school'' does not need to comply with the accessibility requirements of proposed § 35.200 unless and until a student is enrolled in that particular class or course and either the student or the parent would be unable, because of a disability, to access the content available on the password-protected website. As used in this context, ''enrolled . . . in a specific class or course'' limits the exception to password-protected class or course content for a particular class or course during a particular academic term. For example, content on a password-protected website for students, and parents of students, in a specific fifth-grade class would not need to be made accessible unless a student enrolled, or the parent of a student enrolled, in the class that term would be unable, because of a disability, to access the content on the password-protected website.

The proposed exception in § 35.201(f) is not intended to apply to password-protected content that is available to all students or their parents in a public elementary or secondary school. Content on password-protected websites that is not limited to students enrolled, or parents of students enrolled, in a specific class or course, but instead is available to all students or their parents at the public elementary or secondary school is not subject to the exception. For example, a school calendar available on a password-protected website to which all students or parents at a particular elementary school are given a password would not be subject to the exception for password-protected web content for a specific class or course. It would, therefore, need to comply with the requirements of proposed § 35.200.

Sections 35.201(f)(1)–(4): Limitations to the Exception for Password-Protected Class or Course Content

There are four critical limitations to the general exception in proposed § 35.201(f) for public elementary and secondary schools' class or course content. These limitations are identical to those discussed above in the postsecondary context, except that they arise not only when a school is on notice that a student with a disability is enrolled in a particular class or course and cannot access content on the class or course's password-protected website because of their disability, but also when the same situation arises for a parent with a disability. The discussion above of the limitations in the postsecondary context applies with equal force here, and a shorter discussion of the limitations in the elementary and secondary context follows. However, the Department acknowledges that there are existing legal frameworks specific to the public elementary and secondary education context which are described further in this section.

The first limitation, in proposed § 35.201(f)(1), addresses situations in which the public entity is on notice before the beginning of the academic term that a student with a disability is pre-registered in a specific class or course offered by a public elementary or secondary school, and the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected website for the specific class or course must comply with the requirements of proposed § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

Similarly, the second limitation, proposed § 35.201(f)(2), addresses situations in which the pre-registered student's parent has a disability. Proposed § 35.201(f)(2) applies when the public entity is on notice that a student is pre-registered in a public elementary or secondary school's class or course, and that the student's parent needs the content to be accessible because of a disability that inhibits access to the content available on the password-protected website for the specific class or course. In such circumstances, all content available on the public entity's password-protected website for the specific class or course must comply with the requirements of proposed § 35.200 by the date the school term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

The third and fourth limitations to the exception for class or course content on password-protected websites for particular classes or courses at elementary and secondary schools are similar to the first and second limitations but have different triggering

events. These limitations apply to situations in which a student is enrolled in a public elementary or secondary school's class or course after the term begins, or when a school is otherwise not on notice until after the term begins that there is a student or parent with a disability who is unable to access class or course content because of their disability. The third limitation, in proposed § 35.201(f)(3), would apply once a public entity is on notice that ''a student with a disability is enrolled in a public elementary or secondary school's class or course after the term begins and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course.'' In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of proposed § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

Proposed § 35.201(f)(4), the fourth limitation, applies the same triggering event as in proposed § 35.201(f)(3) to situations in which the student's parent has a disability. Proposed § 35.201(f)(4) would apply once a public entity is on notice that a student is enrolled in a public elementary or secondary school's class or course after the term begins, and that the student's parent needs the content to be accessible because of a disability that would inhibit access to the content available on the public entity's password-protected website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of proposed § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of proposed § 35.200 at the time it is added to the website.

The procedures for enrollment in the public elementary or secondary school context likely vary from the postsecondary context. Unlike in postsecondary institutions, public elementary and secondary schools generally have more autonomy and authority regarding student placement in a particular class or course. The student or parent generally does not control placement in a particular class or course. To the extent a parent or student has such autonomy or authority, the application of the limitations in proposed § 35.201(f)(1) through (f)(4) is contingent on whether the public elementary or secondary school knows, or should know, that a student with a disability is enrolled, or a parent with a disability has a child enrolled, in a particular class or course, and that the student or parent would be unable to access the class or course content because of their disability.

Regardless of what process a school follows for notification of enrollment, accessibility obligations for password-protected class or course content come into effect once a school is on notice that materials need to be made accessible under these provisions. For example, some schools that allow students to self-select the class or course in which they enroll may require students with disabilities to notify their guidance counselor or the special education coordinator each time they have enrolled in a class or course. With respect to parents, some schools may have a form that parents fill out as part of the process for enrolling a student in a school, or in a particular class or course in that school, indicating that they (the parent) are an individual with a disability who, because of their disability, needs auxiliary aids or services. Other schools may publicize the schools' responsibility to make class or course content accessible to parents with disabilities and explain the process for informing the school that they cannot access inaccessible websites. Under this rule, regardless of the process a school follows, once the public elementary or secondary school is on notice, the password-protected class or course content for that class or course must be made accessible within the time frames set forth in proposed § 35.201(f)(1) through (f)(4). We note that the ADA would prohibit limiting assignment of students with disabilities only to classes for which the content has already been made accessible.[125]

The Department emphasizes that in the public elementary and secondary school context a variety of Federal laws include robust protections for students with disabilities, and this rule is intended to build on, but not to supplant, those protections for students with disabilities. Public schools that receive Federal financial assistance already must ensure they comply with obligations under other statutes such as the IDEA and section 504 of the Rehabilitation Act, including the Department of Education's regulations implementing those statutes. The IDEA and section 504 already include affirmative obligations that covered public schools work to identify children with disabilities, regardless of whether the schools receive notice from a parent that a student has a disability, and provide a Free Appropriate Public Education (FAPE).[126] The Department acknowledges that educational entities likely already employ procedures under those frameworks to identify children with disabilities and assess their educational needs. Under the IDEA and section 504, schools have obligations to identify students with the relevant disabilities that would trigger the limitations in proposed § 35.201(f)(1) through (f)(4). The proposed rule would add to and would not supplant the already robust framework for identifying children with disabilities and making materials accessible. The language used in the educational exceptions and their limitations is not intended to replace or conflict with those existing procedures. In other words, regardless of the means by which schools identify students with the relevant disabilities here, including procedures developed to comply with the IDEA and section 504 regulations, once a school is on notice that either the student or the parent has a disability and requires access because of that disability, the limitation is triggered. Further, schools should not alter their existing practices to wait for notice because of this rule—this rule does not modify existing requirements that schools must follow under other statutes such as the IDEA and section 504.

Federal and State laws may have a process for students who are newly enrolled in a school and those who are returning to have their educational program or plan reviewed and revised annually. This generally would include a determination of the special education, related services, supplementary aids and services, program modifications, and supports from school personnel that the student needs, which under the ADA would be similar to the terms ''modifications'' and ''auxiliary aids and services.'' However, once the school is on notice that the student has a disability and requires access because of the disability, those processes and procedures cannot be used to delay or avoid compliance with the time frames set forth in proposed § 35.201(f)(1) through (f)(4). For example, if a school knows that a student who is blind is enrolled at the school for the first time over the summer, the school is then on notice that, in accordance with proposed

[125] *See* 28 CFR 35.130.

[126] *See* 20 U.S.C. 1412; 34 CFR 104.32–104.33.

§ 35.201(f)(1), the content on the school's password-protected website for the class or course to which the school assigns the student must be accessible in compliance with the requirements of proposed § 35.200 by the date the term begins, regardless of the timeframes for evaluation or the review or development of an Individualized Education Program or section 504 Plan.

As in the postsecondary context, the Department believes that these exceptions and limitations strike a proper balance of providing necessary and timely access to class or course content, while not imposing burdens where class or course content is currently only used by a population of students and parents without relevant disabilities, but it welcomes public feedback on whether alternative approaches might strike a more appropriate balance.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 36: How difficult would it be for public elementary and secondary schools to comply with this rule in the absence of this exception?

Question 37: What would the impact of this exception be on people with disabilities?

Question 38: How do elementary and secondary schools communicate general information and class- or course-specific information to students and parents?

Question 39: The proposed exception and its limitations are confined to content on a password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course. Do public elementary or secondary schools combine and make available content for all students in a particular grade or certain classes (e.g., all 10th-graders in a school taking chemistry in the same semester) using a single password-protected website and, if so, should such content be included in the exception?

Question 40: Do elementary and secondary schools have a system allowing a parent with a disability to provide notice of their need for accessible class or course content?

Question 41: On average, how much content and what type of content do password-protected websites of public elementary or secondary school courses contain? Is there content posted by students or parents? Should content posted by students or parents be required to be accessible and, if so, how long would it take a public elementary or secondary school to make it accessible?

Question 42: How long would it take to make class or course content available on a public entity's password-protected or otherwise secured website for the particular class or course accessible, and does this vary based on the type of course? Do parents and students need access to class or course content before the first day of class? How much delay in accessing online class or course content can a student reasonably overcome in order to have an equal opportunity to succeed in a course, and does the answer change depending on the point in the academic term that the delay occurs?

Question 43: To what extent do public elementary or secondary schools use or offer students or parents mobile apps to enable access to password-protected class or course content? Should the Department apply the same exceptions and limitations to the exceptions under proposed § 35.201(f) and (f)(1)–(4), respectively, to mobile apps?

Question 44: Should the Department consider an alternative approach, such as requiring that all newly posted course content be made accessible on an expedited timeframe, while adopting a later compliance date for remediating existing content?

Individualized, Password-Protected Documents

In proposed § 35.201(g), the Department is considering an exception to the accessibility requirements of proposed § 35.200 for web-based ''[c]onventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured.''

Many public entities use the web to provide access to digital versions of documents for their customers, constituents, and other members of the public. For example, some public utility companies provide a website where customers can log in and view a PDF version of their latest bill. Similarly, many public hospitals offer a virtual platform where healthcare providers can send digital versions of test results and scanned documents to their patients. The Department anticipates that a public entity could have many such documents. The Department also anticipates that making conventional electronic documents accessible in this context may be difficult for public entities, and that in many instances, the individuals who are entitled to view a particular individualized document will not need an accessible version. However, some public entities might be able to make some types of documents accessible relatively easily after they make the template they use to generate these individualized documents accessible. To help better understand whether these assumptions are accurate, the Department asks questions for public comment below about what kinds of individualized, conventional electronic documents public entities make available, how public entities make these documents available to individuals, and what experiences individuals have had in accessing these documents.

This proposed exception is expected to reduce the burdens on public entities. The Department expects that making such documents accessible for every individual, regardless of whether they need such access, could be too burdensome and would not deliver the same benefit to the public as a whole as if the public entity were to focus on making other types of web content accessible. The Department expects that it would generally be more impactful for public entities to focus resources on making documents accessible for those individuals who actually need the documents to be accessible. It is the Department's understanding that making conventional electronic documents accessible is generally a more time- and resource- intensive process than making other types of web content accessible. As discussed below, public entities must still provide accessible versions of individualized, password-protected conventional electronic documents in a timely manner when those documents pertain to individuals with disabilities. This approach is consistent with the broader title II regulatory framework. For example, public utility companies are not required to provide accessible bills to all customers. Instead, the companies need only provide accessible bills to those customers who need them because of a disability.

This exception is limited to ''conventional electronic documents'' as defined in proposed § 35.104. This exception would, therefore, not apply in a case where a public entity makes individualized information available in formats other than a conventional electronic document. For example, if a public utility makes individualized bills available on a password-protected web platform as HTML content (rather than a PDF), that content would not be subject to this exception. Such bills, therefore, would need to be made accessible in accordance with proposed § 35.200. On the other hand, if a public entity makes individualized bills

available on a password-protected web platform in PDF form, that content would be excepted from the accessibility requirements of proposed § 35.200, subject to the limitation discussed in further detail below.

This exception also only applies when the content is individualized for a specific person or their property or account. Examples of individualized documents include medical records or notes about a specific patient, receipts for purchases (like a parent's receipt for signing a child up for a recreational sports league), utility bills concerning a specific residence, or Department of Motor Vehicles records for a specific person or vehicle. Content that is broadly applicable or otherwise for the general public (*i.e.,* not individualized) is not subject to this exception. For instance, a PDF notice that explains an upcoming rate increase for all utility customers and is not addressed to a specific customer would not be subject to this exception. Such a general notice would not be subject to this exception even if it were attached to or sent with an individualized letter, like a bill, that is addressed to a specific customer.

Finally, this exception applies only to password-protected or otherwise secured content. Content may be otherwise secured if it requires some process of authentication or login to access the content. Unless subject to another exception, conventional electronic documents that are on a public entity's general, public web platform would not be excepted.

This proposed exception for individualized, password-protected conventional electronic documents has certain limitations. While the exception is meant to alleviate the burden on public entities of making all individualized, password-protected or otherwise secured conventional electronic documents generally accessible, people with disabilities must still be able to access information from documents that pertain to them. An accessible version of these documents must be provided in a timely manner.[127] A public entity might also need to make reasonable modifications to ensure that a person with a disability has equal access to its services, programs, or activities.[128] For example, if a person with a disability requests access to an inaccessible bill from a county hospital, the hospital may need to extend the payment deadline and waive any late fees if the hospital does not provide the bill in an accessible format in sufficient time for the person to review the bill before payment is due.

As in other situations involving a public entity's effective communication obligations—for example, when providing an American Sign Language interpreter—this exception and its accompanying limitation would also apply to the parent, spouse, or companion of the person receiving the public entity's services in appropriate circumstances.[129]

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 45: What kinds of individualized, conventional electronic documents do public entities make available and how are they made available (e.g., on websites or mobile apps)? How difficult would it be to make such documents accessible? How do people with disabilities currently access such documents?

Question 46: Do public entities have adequate systems for receiving notification that an individual with a disability requires access to an individualized, password-protected conventional electronic document? What kinds of burdens do these notification systems place on individuals with disabilities and how easy are these systems to access? Should the Department consider requiring a particular system for notification or a particular process or timeline that entities must follow when they are on notice that an individual with a disability requires access to such a document?

Question 47: What would the impact of this exception be on people with disabilities?

Question 48: Which provisions of this rule, including any exceptions (e.g., the exceptions for individualized, password-protected conventional electronic documents and content posted by a third party), should apply to mobile apps?

§ 35.202 Conforming Alternate Versions

Generally, to meet the WCAG 2.1 standard, a web page must satisfy one of the defined levels of conformance—in the case of this proposed rule, Level AA.[130] However, WCAG 2.1 allows for the creation of a ''conforming alternate version,'' a separate web page that is accessible, up-to-date, contains the same information and functionality as the inaccessible web page, and can be reached via a conforming page or an accessibility-supported mechanism.[131] The ostensible purpose of a ''conforming alternate version'' is to provide individuals with relevant disabilities access to the information and functionality provided to individuals without relevant disabilities, albeit via a separate vehicle.

Having direct access to an accessible web page provides the best user experience for many individuals with disabilities, and it may be difficult for public entities to reliably maintain conforming alternate versions, which must be kept up to date. Accordingly, the W3C® explains that providing a conforming alternate version of a web page is intended to be a ''fallback option for conformance to WCAG and the preferred method of conformance is to make all content directly accessible.'' [132] However, WCAG 2.1 does not explicitly limit the circumstances under which an entity may choose to create a conforming alternate version of a web page instead of making the web page directly accessible.

The Department is concerned that WCAG 2.1 can be interpreted to permit the development of two separate websites—one for individuals with relevant disabilities and another for individuals without relevant disabilities—even when doing so is unnecessary and when users with disabilities would have a better experience using the main web page. This segregated approach is concerning and appears inconsistent with the ADA's core principles of inclusion and integration.[133] The Department is also concerned that the creation of separate websites for individuals with disabilities may, in practice, result in unequal access to information and

[127] *See* 28 CFR 35.160(b)(2).

[128] *See* 28 CFR 35.130(b)(7)(i).

[129] *See ADA Requirements: Effective Communication,* U.S. Dep't of Just. (updated Feb. 28, 2020), *https://www.ada.gov/effective-comm.htm* [*https://perma.cc/W9YR-VPBP*].

[130] *See* W3C®, *Web Content Accessibility Guidelines 2.1* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#cc1* [*https://perma.cc/ZL6N-VQX4*].

[131] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Conforming Alternate Version* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#dfn-conforming-alternate-version* [*https://perma.cc/5NJ6-UZPV*].

[132] *See* W3C®, *Understanding Conformance* (last updated Dec. 24, 2022), *https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/Q2XU-K4YY*].

[133] *See, e.g.,* 42 U.S.C. 12101(a)(2) (finding that ''society has tended to isolate and segregate individuals with disabilities''); 28 CFR 35.130(b)(1)(iv) (stating that public entities generally may not ''[p]rovide different or separate aids, benefits, or services to individuals with disabilities . . . than is provided to others unless such action is necessary[.]''); 35.130(d) (requiring that public entities administer services, programs, and activities in ''the most integrated setting appropriate'').

functionality. However, as the W3C® explains, certain limited circumstances may warrant the use of conforming alternate versions of web pages. For example, a conforming alternate version of a web page may be necessary when a new, emerging technology is used on a web page, but the technology is not yet capable of being made accessible, or when a website owner is legally prohibited from modifying the web content.[134]

Due to the concerns about user experience, segregation of users with disabilities, unequal access to information, and maintenance burdens discussed above, the Department is proposing to adopt a slightly different approach to ''conforming alternate versions'' than that provided under WCAG 2.1. Instead of permitting entities to adopt ''conforming alternate versions'' whenever they believe this is appropriate, proposed § 35.202 makes it clear that use of conforming alternate versions of websites and web content to comply with the Department's proposed requirements in § 35.200 is permissible only where it is not possible to make websites and web content directly accessible due to technical limitations (*e.g.,* technology is not yet capable of being made accessible) or legal limitations (*e.g.,* web content is protected by copyright). Conforming alternate versions should be used rarely—when it is truly not possible to make the content accessible for reasons beyond the public entity's control. For example, a conforming alternate version would not be permissible due to technical limitations just because a town's web developer lacked the knowledge or training needed to make content accessible. By contrast, the town could use a conforming alternate version if its website included a new type of technology that it is not yet possible to make accessible, such as a specific kind of immersive virtual reality environment. Similarly, a town would not be permitted to claim a legal limitation because its general counsel failed to approve contracts for a web developer with accessibility experience. Instead, a legal limitation would apply when the inaccessible content itself could not be modified for legal reasons specific to that content, such as lacking the right to alter the content or needing to maintain the content as it existed at a particular time due to pending litigation. The Department believes this approach is appropriate because it ensures that, whenever possible, people with disabilities have access to the same web content that is available to people without disabilities. However, proposed § 35.202 does not prohibit public entities from providing alternate versions of web pages *in addition* to their accessible main web page to possibly provide users with certain types of disabilities a better experience.

In addition to allowing conforming alternate versions to be used where it is not possible to make websites and web content directly accessible due to technical or legal limitations, this proposed rulemaking also incorporates general limitations if public entities can demonstrate that full compliance with proposed § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[135] If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.[136] One way in which public entities could fulfill their obligation to provide the benefits or services to the maximum extent possible, in the rare instance when they can demonstrate that full compliance would result in a fundamental alteration or undue burden, is through creating conforming alternate versions.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 49: Would allowing conforming alternate versions due to technical or legal limitations result in individuals with disabilities receiving unequal access to a public entity's services, programs, and activities?

§ 35.203 Equivalent Facilitation

Proposed § 35.203 provides that nothing prevents a public entity from using designs, methods, or techniques as alternatives to those prescribed in the proposed regulation, provided that such alternatives result in substantially equivalent or greater accessibility and usability. The 1991 and 2010 ADA Standards for Accessible Design both contain an equivalent facilitation provision.[137] However, for purposes of proposed subpart H, the reason for allowing for equivalent facilitation is to encourage flexibility and innovation by public entities while still ensuring equal or greater access to web and mobile content. Especially in light of the rapid pace at which technology changes, this proposed provision is intended to clarify that public entities can use methods or techniques that provide equal or greater accessibility than this proposed rule would require. For example, if a public entity wanted to conform its website or mobile app to WCAG 2.1 Level AAA—which includes all the Level AA requirements plus some additional requirements for even greater accessibility—this provision makes clear that the public entity would be in compliance with this rule. A public entity could also choose to comply with this rule by conforming its website to WCAG 2.2 or WCAG 3.0, so long as the version and conformance level of those guidelines that the entity selects includes all of the WCAG 2.1 Level AA requirements. The Department believes that this proposed provision offers needed flexibility for entities to provide usability and accessibility that meet or exceed what this rule would require as technology continues to develop. The responsibility for demonstrating equivalent facilitation rests with the public entity.

§ 35.204 Duties

Section 35.204 sets forth the general limitations on the obligations under subpart H. Proposed § 35.204 provides that in meeting the accessibility requirements set out in this subpart, a public entity is not required to take any action that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. These proposed limitations on a public entity's duty to comply with the proposed regulatory provisions mirror the fundamental alteration and undue burden compliance limitations currently provided in the title II regulation in 28 CFR 35.150(a)(3) (program accessibility) and 35.164 (effective communication), and the fundamental alteration compliance limitation currently provided in the title II regulation in 28 CFR 35.130(b)(7) (reasonable modifications in policies, practices, or procedures). These limitations are thus familiar to public entities.

Generally, the Department believes it would not constitute a fundamental

[134] *See* W3C®, *Understanding WCAG 2.0* (Oct. 7, 2016), *https://www.w3.org/TR/UNDERSTANDING-WCAG20/conformance.html#uc-conforming-alt-versions-head* [*https://perma.cc/DV5L-RJUG*].

[135] *See* proposed § 35.204.

[136] *See id.*

[137] *See* 28 CFR pt. 36, app. D, at 1000 (1991); 36 CFR pt. 1191, app. B at 329.

alteration of a public entity's services, programs, or activities to modify web content or mobile apps to make them accessible, though the Department seeks the public's input on this view. Moreover, like the undue burden and fundamental alteration limitations in the title II regulation referenced above, proposed § 35.204 does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity under this proposed rule is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must comply with the requirements of this subpart to the extent that compliance does not result in a fundamental alteration or undue financial and administrative burdens. For instance, a public entity might determine that full WCAG 2.1 Level AA compliance would result in a fundamental alteration or undue financial and administrative burdens. However, this same public entity must then determine whether it can take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible. To the extent that the public entity can, it must do so. This may include the public entity's bringing its web content into compliance with some of the WCAG 2.1 Level A or Level AA success criteria.

It is the Department's view that most entities that choose to assert a claim that full compliance with the proposed web or mobile app accessibility requirements would result in undue financial and administrative burdens will be able to attain at least partial compliance. The Department believes that there are many steps a public entity can take to comply with WCAG 2.1 that should not result in undue financial and administrative burdens, depending on the particular circumstances.

In determining whether an action would result in undue financial and administrative burdens, all of a public entity's resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with proposed § 35.204 would fundamentally alter the nature of a service, program, or activity, or would result in undue financial and administrative burdens, rests with the public entity. As the Department has consistently maintained since promulgation of the title II regulation in 1991, the decision that compliance would result in a fundamental alteration or impose undue burdens must be made by the head of the public entity or their designee, and must be memorialized with a written statement of the reasons for reaching that conclusion.[138] The Department has always recognized the difficulty public entities have in identifying the official responsible for this determination, given the variety of organizational structures within public entities and their components.[139] The Department has made clear that ''the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.'' [140]

Where a public entity cannot bring web content or a mobile app into compliance without a fundamental alteration or an undue burden, it must take other steps to ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

Once a public entity has complied with the web or mobile app accessibility requirements set forth in subpart H, it is not required by title II of the ADA to make further modifications to its web or mobile app content to accommodate an individual who is still unable to access, or does not have equal access to, the web or mobile app content due to their disability. However, it is important to note that compliance with this ADA title II rule will not alleviate title II entities of their distinct employment-related obligations under title I of the ADA. The Department realizes that the proposed rule is not going to meet the needs of and provide access to every individual with a disability, but believes that setting a consistent and enforceable web accessibility standard that meets the needs of a majority of individuals with disabilities will provide greater predictability for public entities, as well as added assurance of accessibility for individuals with disabilities.

Fully complying with the web and mobile app accessibility requirements set forth in subpart H means that a public entity is not required by title II of the ADA to make any further modifications to its web or mobile app content. This is consistent with the approach the Department has taken in the context of physical accessibility, where a public entity is not required to exceed the applicable design requirements of the ADA Standards if certain wheelchairs or other power-driven mobility devices exceed those requirements.[141] However, if an individual with a disability, on the basis of disability, cannot access or does not have equal access to a service, program, or activity through a public entity's web content or mobile app that conforms to WCAG 2.1 Level AA, the public entity still has an obligation to provide the individual an alternative method of access to that service, program, or activity unless the public entity can demonstrate that alternative methods of access would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.[142] Thus, just because an entity is in full compliance with this rule's web or mobile app accessibility standard does not mean it has met all of its obligations under the ADA or other applicable laws. Even though no further changes to a public entity's web or mobile app content are required by title II of the ADA, a public entity must still take other steps necessary to ensure that an individual with a disability who, on the basis of disability, is unable to access or does not have equal access to the service, program, or activity provided by the public entity through its accessible web content or mobile app can obtain access through other effective means. The entity must still satisfy its general obligations to provide effective communication, reasonable modifications, and an equal opportunity to participate in or benefit from the entity's services using methods other than its website or mobile app.[143] Of course, an entity may also choose to further modify its web or mobile app content to make that content more accessible or usable than this subpart requires.

The public entity must determine on a case-by-case basis how best to accommodate those individuals who cannot access the service, program, or activity provided through the public entity's fully compliant web content or mobile app. A public entity should refer to 28 CFR 35.160 (effective communication) to determine its obligations to provide individuals with disabilities with the appropriate auxiliary aids and services necessary to afford them an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. A public entity should refer to 28 CFR 35.130(b)(7) (reasonable modifications) to determine its

[138] 28 CFR 35.150(a)(3), 35.164.

[139] 28 CFR pt. 35, app. B, at 708 (2022).

[140] *Id.*

[141] *See* 28 CFR pt. 35, app. A, at 626 (2022).

[142] *See, e.g.,* 28 CFR 35.130(b)(1)(ii), (b)(7), 35.160.

[143] *See* 28 CFR 35.130(b)(1)(ii), (b)(7), 35.160.

obligations to provide reasonable modifications in policies, practices, or procedures to avoid discrimination on the basis of disability. It is helpful to provide individuals with disabilities with information about how to obtain the modifications or auxiliary aids and services they may need. The Department therefore strongly recommends that the public entity provide notice to the public on how an individual who cannot use the web content or mobile app because of a disability can request other means of effective communication or reasonable modifications in order to access the public entity's services, programs, or activities that are being provided through the web content or mobile app. The Department also strongly recommends that the public entity provide an accessibility statement that tells the public how to bring web or mobile app accessibility problems to the public entity's attention, and that public entities consider developing and implementing a procedure for reviewing and addressing any such issues raised. For example, a public entity is encouraged to provide an email address, accessible link, accessible web page, or other accessible means of contacting the public entity to provide information about issues individuals with disabilities may encounter accessing web or mobile app content or to request assistance.[144] Providing this information will help public entities to ensure that they are satisfying their obligations to provide equal access, effective communication, and reasonable modifications.

V. Additional Issues for Public Comment

A. Measuring Compliance

As discussed above, the Department is proposing to adopt specific standards for public entities to use to ensure that their web content and mobile apps are accessible to individuals with disabilities. Proposed § 35.200(a) requires public entities to ensure that any web content and mobile apps that they make available to members of the public or use to offer services, programs, and activities to members of the public are readily accessible to and usable by individuals with disabilities. Proposed § 35.200(b) sets forth the specific technical requirements in WCAG 2.1 Level AA with which public entities must comply unless compliance results in a fundamental alteration in the nature of a service, program, or activity or undue financial and administrative burdens. Now that the Department is proposing requiring public entities to comply with a specific technical standard for web accessibility, it seeks to craft a framework for determining when an entity has complied with that standard. The framework will ensure the full and equal access to which individuals with disabilities are entitled, while setting forth obligations that will be achievable for public entities.

1. Existing Approaches to Defining and Measuring Compliance

a. Federal and International Approaches

The Department is aware of two Federal agencies that have implemented requirements for complying with technical standards for web accessibility. Each agency has taken a different approach to defining what it means to comply with its regulation. As discussed above, for Federal agency websites covered by section 508, the Access Board requires conformance with WCAG 2.0 Level A and Level AA.[145] In contrast, in its regulation on accessibility of air carrier websites, the Department of Transportation took a tiered approach that did not require all web content to conform to a technical standard before the first compliance date.[146] Instead, the Department of Transportation required those web pages associated with ''core air travel services and information'' to conform to a technical standard first, while other types of content could come into conformance later.[147] The Department of Transportation also required air carriers to consult with members of the disability community to test, and obtain feedback about, the usability of their websites.[148]

International laws appear to have taken different approaches to evaluating compliance, though it is unclear which, if any, would be feasible within the system of government in the United States and the Department's authority under the ADA. For example, the European Union has crafted a detailed monitoring methodology that specifies protocols for member States to sample, test, and report on accessibility of government websites and mobile apps.[149] Canada has established a reporting framework for the specific Federal departments covered by its web accessibility standard and may impose a range of corrective actions, depending on how conformant a website is with a technical standard, measured as a percentage.[150] New Zealand has developed a self-assessment methodology for government agencies that combines automated and manual testing and requires agencies to conduct a detailed risk assessment and develop a plan for addressing nonconformance over time.[151] In the United Kingdom, a government agency audits a sample of public sector websites and mobile apps (*i.e.,* websites and mobile apps of central government, local government organizations, some charities, and some other non-governmental organizations) every year, using both manual and automated testing, following a priority order for auditing that is based on the ''social impact (for example size of population covered, or site or service usage) and complaints received.'' [152] The auditing agency then sends a report to the public entity, requires the entity to fix accessibility issues within 12 weeks, and refers the matter to an enforcement agency after that time frame has passed and the website or app has been retested.[153]

b. State Governments' Approaches

Within the United States, different public entities have taken different approaches to measuring compliance with a technical standard under State laws. For example, Florida,[154]

[144] *See* W3C®, *Developing an Accessibility Statement* (Mar. 11, 2021), *https://www.w3.org/WAI/planning/statements/* [*https://perma.cc/85WU-JTJ6*].

[145] 36 CFR 1194.1; *id.* part 1194, app. A (E205.4).

[146] 14 CFR 382.43(c)(1).

[147] *Id.*

[148] *Id.* 382.43(c)(2).

[149] *Commission Implementing Decision (EU) 2018/1524* (Dec. 10, 2018), *https://eur-lex.europa.eu/eli/dec_impl/2018/1524/oj* [*https://perma.cc/5M7B-SVP9*].

[150] Government of Canada, *Standard on Web Accessibility* (Aug. 1, 2011), *https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=23601&section=html* [*https://perma.cc/ZU5D-CPQ7*].

[151] New Zealand Government, *2017 Web Standards Self-Assessments Report* (July 2018), *https://www.digital.govt.nz/dmsdocument/97-2017-web-standards-self-assessments-report/html* [*https://perma.cc/3TQ3-2L9L*]; New Zealand Government, *Web Standards Risk Assessment* (Oct. 19, 2020), *https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/risk-assessment/* [*https://perma.cc/N3GJ-VK7X*]; New Zealand Government, *About the Web Accessibility Standard* (Mar. 3, 2022), *https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/about-2/* [*https://perma.cc/GPR4-QJ29*].

[152] United Kingdom, *Understanding accessibility requirements for public sector bodies* (Aug. 22, 2022), *https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps;* United Kingdom, *Public sector website and mobile application accessibility monitoring* (Nov. 1, 2022), *https://www.gov.uk/guidance/public-sector-website-and-mobile-application-accessibility-monitoring.* A Perma archive link was unavailable for these citations.

[153] United Kingdom, *Public sector website and mobile application accessibility monitoring* (Dec. 6, 2021), *https://www.gov.uk/guidance/public-sector-website-and-mobile-application-accessibility-monitoring.* A Perma archive link was unavailable for this citation.

[154] Fla. Stat. 282.603 (2023).

Illinois,[155] and Massachusetts [156] seem to simply require conformance, without specifying how compliance will be measured or how entities can demonstrate compliance with this requirement. California requires the director of each State agency to certify compliance with technical standards and post a certification form on the agency's website.[157] California also provides assessment checklists for its agencies and guidelines for sampling and testing, including recommending that agencies use analytics data to conduct thorough testing on frequently used pages.[158] Minnesota requires compliance with a technical standard, provides accessibility courses and other resources, and notes the importance of both automated and manual testing; it also states that ''[f]ew systems are completely accessible,'' and that ''[t]he goal is continuous improvement.'' [159] Texas law requires State agencies to, among other steps, comply with a technical standard, conduct tests with one or more accessibility validation tools, establish an accessibility policy that includes criteria for compliance monitoring and a plan for remediation of noncompliant items, and establish goals and progress measurements for accessibility.[160] Texas has also developed an automated accessibility scanning tool and offers courses on web accessibility.[161]

c. Other Approaches to Defining and Measuring Compliance

The Department understands that businesses open to the public, which are subject to title III of the ADA, have, like public entities, taken different approaches to web accessibility. These approaches may include collecting feedback from users with disabilities about inaccessible websites or mobile apps or relying on external consultants to conduct periodic testing and remediation. Other businesses may have developed detailed internal policies and practices that require comprehensive automated and manual testing, including testing by people with disabilities, on a regular basis throughout their digital content development and quality control processes. Some businesses have also developed policies that include timelines for remediation of any accessibility barriers; these policies may establish different remediation time frames for different types of barriers.

2. Challenges of Defining and Measuring Compliance With This Rule

The Department recognizes that it must move forward with care, weighing the interests of all stakeholders, so that as accessibility for individuals with disabilities is improved, innovation in the use of the web or mobile apps by public entities is not hampered. The Department appreciates that the dynamic nature of web content and mobile apps presents unique challenges in measuring compliance. For example, as discussed further below, this type of content can change frequently and assessment of conformance can be complex or subjective. Therefore, the Department is seeking public input on issues concerning how compliance should be measured, which the Department plans to address in its final rule.

The Department is concerned that the type of compliance measures it currently uses in the ADA, such as the one used to assess compliance with the ADA Standards, may not be practical in the web or mobile app context. Public entities must ensure that newly designed and constructed State and local government facilities are in full compliance with the scoping and technical specifications in the ADA Standards unless full compliance is structurally impracticable.[162] The ADA Standards require newly constructed State or local government buildings to be 100 percent compliant at all times with the applicable provisions, subject to limited compliance limitations. However, unlike buildings, public entities' websites and mobile apps are dynamic and interconnected, and can contain a large amount of complex, highly technical, varied, and frequently changing content. Accordingly, the Department is concerned that a compliance measure similar to the one used in the other area where it has adopted specific technical standards may not work well for web content or mobile apps.

If web content or mobile apps are updated frequently, full conformance with a technical standard after the compliance date may be difficult or impossible to maintain at all times. The Department is aware that even when a public entity understands its accessibility obligations, is committed to maintaining an accessible website, and intends to conform with WCAG 2.1 Level AA, the dynamic and complex nature of web content is such that full conformance may not always be achieved successfully. The Department is seeking public comment about whether a different framework for measuring compliance may be needed to address the difficulty that public entities may have in achieving 100 percent conformance with a technical standard, 100 percent of the time. Though title II does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs,[163] it is possible that websites or mobile apps could be undergoing maintenance or repair almost constantly, such that this compliance limitation is not readily transferrable to web or mobile app accessibility.

The Department also appreciates the serious impact that a failure to comply with WCAG 2.1 Level AA can have on people with disabilities. For example, if a person who has limited manual dexterity and uses keyboard navigation is trying to apply for public benefits, and the ''submit'' button on the form is not operable using the keyboard, that person will not be able to apply independently for benefits online, even if the rest of the website is fully accessible. A person who is blind and uses a screen reader may not be able to make an appointment at a county health clinic if an element of the clinic's appointment calendar is not coded properly. Nearly all of a public entity's web content could conform with the WCAG 2.1 Level AA success criteria, but one instance of nonconformance could still prevent someone from accessing services on the website. People with disabilities must be able to access the many important government services, programs, and activities that are offered through web content and mobile apps on equal terms, without sacrificing their privacy, dignity, or independence. The Department's concern about the many barriers to full and equal participation in civic life that inaccessible web content can pose for

[155] 30 Ill. Comp. Stat. 587 (2023); *Illinois Information Technology Accessibility Act* (Mar. 18, 2022), *https://www.dhs.state.il.us/page.aspx?item=32765.* A Perma archive link was unavailable for the second citation.

[156] Commonwealth of Massachusetts, *Enterprise Information Technology Accessibility Policy* (July 28, 2021), *https://www.mass.gov/policy-advisory/enterprise-information-technology-accessibility-policy* [*https://perma.cc/8293-HXUA*].

[157] Cal. Gov't Code 11546.7.

[158] Department of Rehabilitation, *website Accessibility Requirements and Assessment Checklists, https://www.dor.ca.gov/Home/WebRequirementsAndAssessmentChecklists* [*https://perma.cc/JAS9-Q343*].

[159] Minnesota IT Services, *Guidelines for Accessibility and Usability of Information Technology Standard* (Apr. 17, 2018), *https://mn.gov/mnit/assets/accessibility-guidelines-2018_tcm38-336072.pdf* [*https://perma.cc/Q9P5-NGMT*].

[160] 1 Tex. Admin. Code 206.50, 213.21.

[161] Texas Department of Information Resources, *EIR Accessibility Tools & Training, https://dir.texas.gov/electronic-information-resources-eir-accessibility/eir-accessibility-tools*-training [*https://perma.cc/A5LC-ZTST*].

[162] 28 CFR 35.151(a), (c).

[163] *See* 28 CFR 35.133(b).

people with disabilities is an important motivating factor behind the Department's decision to propose requiring compliance with a technical standard. By clarifying what compliance with a technical standard means, the Department seeks to enhance the impact this requirement will have on the daily lives of people with disabilities by helping public entities to understand their obligations, thereby increasing compliance.

An additional challenge to specifying what it means to comply with a technical standard for web accessibility is that, unlike the physical accessibility required by the ADA Standards, which can be objectively and reliably assessed with one set of tools, different automated testing tools may provide different assessments of the same website's accessibility. For example, using different web browsers with different testing tools or assistive technology can yield different results. Assessments of a website's or mobile app's accessibility may change frequently over time as the web content or mobile app changes. Automated testing tools also may report purported accessibility errors inaccurately. For example, an automated testing tool may report an error related to insufficient color contrast because the tool has not correctly detected the foreground and background colors. These tools will also provide an incomplete assessment of a website's accessibility because automated tools cannot assess conformance with certain WCAG success criteria, such as whether color is being used as the only visual means of conveying information or whether all functionality of the content is operable through a keyboard interface.[164] Additional, manual testing is required to conduct a full assessment of conformance, which can take time and often relies on sampling. Furthermore, the Department understands that a person's experiences of web or mobile app accessibility may vary depending on what assistive technology or other types of hardware or software they are using. Accordingly, the Department is considering what the appropriate measure for determining compliance with the web and mobile app accessibility requirements should be.

The Department believes that a more nuanced definition of compliance might be appropriate because some instances of nonconformance with WCAG success criteria may not impede access to the services, programs, or activities offered through a public entity's web content or mobile app. For example, even if a county park fails to provide alt text on an image of the scenic views at the park, a person who is using a screen reader could still reserve a picnic area successfully, so long as the website also includes text about any amenities shown in the photo. If the contrast between the text and background colors used for permit application instructions deviates by a few hundredths from the color contrast ratio required by WCAG 2.1 Level AA, most people with low vision will likely still be able to access those instructions without difficulty. However, in either of these examples, the web content would be out of conformance with WCAG 2.1 Level AA. If the Department does not establish a more detailed compliance framework, a person with a disability would have a valid basis for filing a complaint with the Department, other designated Federal agencies, or in Federal court about either scenario. This could expose public entities to extensive litigation risk, while potentially generating more complaints than the Department, other designated Federal agencies, or the courts have capacity to resolve, and without improving access for people with disabilities.

Some may argue that the same risk of allegedly unjustified enforcement action also exists for some provisions of the ADA Standards. Yet, the Department believes that, for all of the reasons described above (including the frequently changing nature of web content, the technical difficulties inherent in ensuring compliance, and the potential for differing assessments of compliance), a public entity's web content and mobile apps may be more likely to be out of full compliance with WCAG 2.1 Level AA than its buildings are to be out of compliance with the ADA Standards. Sustained, perfect compliance with WCAG 2.1 Level AA may be more difficult to achieve on a website that is updated several times a week and includes thousands of pages of content than compliance with the ADA Standards is in a town hall that is renovated once a decade. The Department also believes that slight deviations from WCAG 2.1 Level AA may be more likely to occur without having a detrimental impact on access than is the case with the ADA Standards. Additionally, it may be easier for an aggrieved individual to find evidence of noncompliance with WCAG 2.1 Level AA than noncompliance with the ADA Standards, given the availability of many free testing tools and the fact that public entities' websites can be accessed from almost anywhere. The Department welcomes public comment on the accuracy of all of these assumptions, as well as about whether it is appropriate to consider the impact of nonconformance with a technical standard when evaluating compliance with the proposed rule.

3. Possible Approaches to Defining and Measuring Compliance With This Rule

The Department is considering a range of different approaches to measuring compliance with this proposed rule. First, the Department is considering whether to require a numerical percentage of conformance with a technical standard, which could be 100 percent or less. This percentage could be a simple numerical calculation based on the number of instances of nonconformance across a website or mobile app, or the percentage could be calculated by weighting different instances of nonconformance differently. Weighting could be based on factors like the importance of the content; the frequency with which the content is accessed; the severity of the impact of nonconformance on a person's ability to access the services, programs, or activities provided on the website; or some other formula. This idea of weighting would not be unprecedented in the context of the title II regulatory scheme because, in some circumstances, the existing title II regulation requires priority to be given to alterations that will provide the greatest access.[165] As described above, the Department of Transportation's web accessibility regulation has, at times, also prioritized the accessibility of certain content.

However, the Department does not believe that a percentage-based approach would achieve the purposes of this rule or be feasible to implement because it may not ensure access and will be difficult to measure. First, as discussed previously, a percentage-based approach seems unlikely to ensure access for people with disabilities. Even if the Department were to require that 95 percent or 99 percent of an entity's web content or mobile apps conform with WCAG 2.1 (or that all content or apps conform to 95 percent or 99 percent of the WCAG 2.1 success criteria), the relatively small percentage that does not conform could still block an individual with a disability from accessing a service, program, or activity. For example, a

[164] *See* W3C®, *Web Content Accessibility Guidelines 2.1, Use of Color* (June 5, 2018), *https://www.w3.org/TR/WCAG21/#use-of-color* [*https://perma.cc/R3VC-WZMY*]; W3C®, *Web Content Accessibility Guidelines 2.1, Keyboard Accessible, http://www.w3.org/TR/WCAG21/#keyboard-accessible* [*https://perma.cc/5A3C-9KK2*].

[165] *See* 28 CFR 35.151(b)(4)(iv)(B).

single critical accessibility error could prevent an individual with a disability from submitting their application for a business license.

A percentage-based standard is also likely to be difficult to implement. If the Department adopts a specific formula for calculating whether a certain percentage-based compliance threshold has been met, it could be challenging for members of the public and regulated entities to determine whether web content and mobile apps comply with this rule. Calculations required to evaluate compliance could become complex, particularly if the Department were to adopt a weighted or tiered approach that requires certain types of core content to be fully accessible, while allowing a lower percentage of accessibility for less important or less frequently accessed content. People with disabilities who are unable to use inaccessible parts of a website or mobile app may have particular difficulty calculating a compliance percentage, because it could be difficult, if not impossible, for them to correctly evaluate the percentage of a website or mobile app that is inaccessible if they do not have full access to the entire website or app. For these reasons, the Department currently is not inclined to adopt a percentage-based approach to measuring compliance, though we welcome public comment on ways that such an approach could be implemented successfully.

Another possible approach might be to limit an entity's compliance obligations where nonconformance with a technical standard does not impact a person's ability to have equal access to services, programs, or activities offered on a public entity's website or mobile app. For example, the Department could specify that nonconformance with WCAG 2.1 Level AA does not constitute noncompliance with this part if that nonconformance does not prevent a person with a disability from accessing or acquiring the same information, engaging in the same interactions, performing the same transactions, and enjoying the same services, programs, and activities that the public entity offers visitors to its website without relevant disabilities, with substantially equivalent ease of use. This approach would provide equal access to people with disabilities, while limiting the conformance obligations of public entities where technical nonconformance with WCAG 2.1 Level AA does not affect access. If a public entity's compliance were to be challenged, in order to prevail, the entity would need to demonstrate that, even though it was technically out of conformance with one or more of the WCAG 2.1 Level AA success criteria, the nonconformance had such a minimal impact that this provision applies, and the entity has therefore met its obligations under the ADA despite nonconformance with WCAG 2.1.

The Department believes that this approach would have a limited impact on the experience of people with disabilities who are trying to use web content or mobile apps for two reasons. First, by its own terms, the provision would require a public entity to demonstrate that any nonconformance did not have a meaningful effect. Second, it is possible that few public entities will choose to rely on such a provision, because they would prefer to avoid assuming the risk inherent in this approach to compliance. A public entity may find it easier to conform to WCAG 2.1 Level AA in full so that it can depend on that clearly defined standard, instead of attempting to determine whether any nonconformance could be excused under this provision. Nonetheless, the Department believes some public entities may find such a provision useful because it would prevent them from facing the prospect of failing to comply with the ADA based on a minor technical error. The Department seeks public comment on all of these assumptions.

The Department also believes such an approach may be logically consistent with the general nondiscrimination principles of section 508, which require comparable access to information and data,[166] and of the ADA's implementing regulation, which require an equal opportunity to participate in and benefit from services.[167] The Department has heard support from the public for ensuring that people with disabilities have equal access to the same information and services as people without disabilities, with equivalent ease of use. The Department is therefore evaluating ways that it can incorporate this crucial principle into a final rule, while simultaneously ensuring that the compliance obligations imposed by the final rule will be attainable for public entities in practice.

Another approach the Department is considering is whether an entity could demonstrate compliance with this part by affirmatively establishing and following certain robust policies and practices for accessibility feedback, testing, and remediation. The Department has not made any determinations about what policies and practices, if any, would be sufficient to demonstrate compliance, and the Department is seeking public comment on this issue. However, for illustrative purposes only, and to enable the public to better understand the general approach the Department is considering, assume that a public entity proactively tested its existing web and mobile app content for conformance with WCAG 2.1 Level AA using automated testing on a regular basis (*e.g.,* every 30 days), conducted user testing on a regular basis (*e.g.,* every 90 days), and tested any new web and mobile app content for conformance with WCAG 2.1 Level AA before that content was posted on its website or added to its mobile app. This public entity also remediated any nonconformance found in its existing web and mobile app content soon after the test (*e.g.,* within two weeks). An entity that took these (or similar) steps on its own initiative could be deemed to have complied with its obligations under the ADA, even if a person with a disability encountered an access barrier or a particular automated testing report indicated noncompliance with WCAG 2.1 Level AA. The public entity would be able to rely on its existing, effectively working web and mobile app content accessibility testing and remediation program to demonstrate compliance with the ADA. In a final rule, the Department could specify that nonconformance with WCAG 2.1 Level AA does not constitute noncompliance with this part if a public entity has established certain policies for testing the accessibility of web and mobile app content and remediating inaccessible content, and the entity can demonstrate that it follows those policies.

This approach would enable a public entity to remain in compliance with the ADA even if its website or mobile app is not in perfect conformance with WCAG 2.1 Level AA at all times, if the entity is addressing any nonconformance within a reasonable period of time. A new policy that a public entity established in response to a particular complaint, or a policy that an entity could not demonstrate that it has a practice of following, would not satisfy such a provision. The Department could craft requirements for such policies in many different ways, including by requiring more prompt remediation for nonconformance with a technical standard that has a more serious impact on access to services, programs, and activities; providing more detail about what testing is sufficient (*e.g.,* both automated testing and manual testing, testing by users with certain types of disabilities); setting shorter or longer time frames for how often testing

[166] *See* 29 U.S.C. 794d(a)(1)(A).

[167] *See* 28 CFR 35.130(b)(1)(ii).

should occur; setting shorter or longer time frames for remediation; or establishing any number of additional criteria.

The Department is also considering whether an entity should be permitted to demonstrate compliance with this rule by showing organizational maturity—that the organization has a sufficiently robust program for web and mobile app accessibility. Organizational maturity models provide a framework for measuring how developed an organization's programs, policies, and practices are—either as a whole or on certain topics (*e.g.,* cybersecurity, user experience, project management, accessibility). The authors of one accessibility maturity model observe that it can be difficult to know what a successful digital accessibility program looks like, and they suggest that maturity models can help assess the proficiency of accessibility programs and a program's capacity to succeed.[168] Whereas accessibility conformance testing evaluates the accessibility of a particular website or mobile app at a specific point in time, organizational maturity evaluates whether an entity has developed the infrastructure needed to produce accessible web content and mobile apps consistently.[169] For example, some outcomes that an organization at the highest level of accessibility maturity might demonstrate include integrating accessibility criteria into all procurement and contracting decisions, leveraging employees with disabilities to audit accessibility, and periodically evaluating the workforce to identify gaps in accessibility knowledge and training.[170]

Existing maturity models for accessibility establish several different categories of accessibility, which are called domains or dimensions, then assess which maturity level an organization is at for each category.[171]

For example, the Office of Management and Budget requires Federal agencies to assess the maturity of their section 508 programs in the following domains: acquisition, agency technology life cycles, testing and validation, complaint management, and training.[172] At the lowest level of maturity in each domain, no formal policies, processes, or procedures have been defined; at the highest level of maturity, effectiveness in the domain is validated, measured, and tracked.[173]

As another example, according to a different digital accessibility maturity model, if an organization has well-trained, qualified individuals test all of its technology, and has individuals with relevant disabilities conduct testing at multiple stages in the development lifecycle, the organization would meet some of the criteria to be rated at the fourth level out of five maturity levels in one of ten dimensions—testing and validation.[174] The Department seeks public comment on whether the maturity levels and criteria established in existing organizational maturity models for digital accessibility would be feasible for State and local government entities to meet.

As with the policy-based approach discussed above, a focus on organizational maturity would enable a public entity to demonstrate compliance with the ADA even if the entity's website or mobile app is not in perfect conformance with WCAG 2.1 Level AA at all times, so long as the entity can demonstrate sufficient maturity of its digital accessibility program, which would indicate its ability to quickly remedy any issues of nonconformance identified. The Department could define requirements for organizational maturity in many different ways, including by adopting an existing organizational maturity model in full, otherwise relying on existing organizational maturity models, establishing different categories of organizational maturity (*e.g.,* training, testing, feedback), or establishing different criteria for measuring organizational maturity levels in each category. The Department could also require an entity to have maintained a certain level of organizational maturity across a certain number of categories for a specified period of time or require an entity to have improved its organizational maturity by a certain amount in a specified period of time.

The Department has several concerns about whether allowing organizations to demonstrate compliance with this rule through their organizational maturity will achieve the goals of this rulemaking. First, this approach may not provide sufficient accessibility for individuals with disabilities. It is not clear that when State and local government entities make their accessibility programs more robust, that will necessarily result in websites and mobile apps that consistently conform to WCAG 2.1 Level AA. If the Department permits a lower level of organizational maturity (*e.g.,* level four out of five) or requires the highest level of maturity in only some categories (*e.g.,* level five in training), this challenge may be particularly acute. Second, this approach may not provide sufficient predictability or certainty for public entities. Organizational maturity criteria may prove subjective and difficult to measure, so disputes about an entity's assessments of its own maturity may arise. Third, an organizational maturity model may be too complex for the Department to define or for public entities to implement. Some existing models include as many as ten categories of accessibility, with five levels of maturity, and more than ten criteria for some levels.[175] Some of these criteria are also highly technical and may not be feasible for some public entities to understand or satisfy (*e.g.,* testing artifacts are actively updated and disseminated based on lessons learned from each group; accessibility testing artifacts required by teams are actively updated and maintained for form and ease of use).[176] Of course, a public entity that does not want to use an organizational maturity model would not need to do so; it could meet its obligations under the rule by complying with WCAG 2.1 Level AA. But it is unclear whether this approach will benefit either people with disabilities or public entities. We seek public

[168] *See* Level Access, *The Digital Accessibility Maturity Model: Introduction to DAMM, https://www.levelaccess.com/the-digital-accessibility-maturity-model-introduction-to-damm/* [*https://perma.cc/6K38-FJZU*].

[169] *See* W3C®, *W3C Accessibility Maturity Model, About the W3C Accessibility Maturity Model* (Sept. 6, 2022), *https://www.w3.org/TR/maturity-model/* [*https://perma.cc/NB29-BDRN*].

[170] *See* W3C®, *W3C Accessibility Maturity Model, Ratings for Evaluation* (Sept. 6, 2022), *https://www.w3.org/TR/maturity-model/* [*https://perma.cc/W7DA-HM9Z*].

[171] *See, e.g.,* W3C®, *W3C Accessibility Maturity Model, Maturity Model Structure* (Sept. 6, 2022), *https://www.w3.org/TR/maturity-model/* [*https://perma.cc/NB29-BDRN*]; Level Access, *The Digital Accessibility Maturity Model: Core Dimensions, https://www.levelaccess.com/the-digital-accessibility-maturity-model-core-dimensions/* [*https://perma.cc/C6ZC-K9ZF*]; Level Access, *The Digital Accessibility Maturity Model: Maturity Levels, https://www.levelaccess.com/the-digital-accessibility-maturity-model-maturity-levels/* [*https://perma.cc/25HH-SLYF*].

[172] U.S. Gen. Servs. Admin., *Assess your Section 508 program maturity, https://www.section508.gov/tools/playbooks/technology-accessibility-playbook-intro/play02/* [*https://perma.cc/89FM-SJ3H*].

[173] *Id.*

[174] Level Access, *The Digital Accessibility Maturity Model: Dimension #7—Testing and Validation, https://www.levelaccess.com/the-digital-accessibility-maturity-model-dimension-7-testing-and-validation/* [*https://perma.cc/VU93-3NH4*].

[175] Level Access, *Digital Accessibility Maturity Model (DAAM) Archives, https://www.levelaccess.com/category/damm/* [*https://perma.cc/Z683-X9H5*].

[176] Level Access, *The Digital Accessibility Maturity Model: Dimension #7—Testing and Validation, https://www.levelaccess.com/the-digital-accessibility-maturity-model-dimension-7-testing-and-validation/* [*https://perma.cc/VU93-3NH4*].

comment on whether the Department should adopt an approach to compliance that includes organizational maturity, and how such an approach could be implemented successfully.

The Department seeks public comment on how compliance with the web and mobile app accessibility requirements should be assessed or measured, including comments on these approaches to measuring compliance and any alternative approaches it should consider.

Please provide as much detail as possible and any applicable data, suggested alternative approaches or requirements, arguments, explanations, and examples in your responses to the following questions.

Question 50: What should be considered sufficient evidence to support an allegation of noncompliance with a technical standard for purposes of enforcement action? For example, if web content or a mobile app is noncompliant according to one testing methodology, or using one configuration of assistive technology, hardware, and software, is that sufficient?

Question 51: In evaluating compliance, do you think a public entity's policies and practices related to web and mobile app accessibility (e.g., accessibility feedback, testing, remediation) should be considered and, if so, how? For example, should consideration be given to an entity's effectively working processes for accepting and addressing feedback about accessibility problems; using automated testing, manual testing, or testing by people with relevant disabilities to identify accessibility problems; and remediating any accessibility problems identified within a reasonable period of time according to the entity's policies, and if so, how? How would such an approach impact people with disabilities?

Question 52: If you think a public entity's policies and practices for receiving feedback on web and mobile app accessibility should be considered in assessing compliance, what specific policies and practices for feedback would be effective?

Question 53: If you think a public entity's web and mobile app accessibility testing policies and practices should be considered in assessing compliance, what specific testing policies and practices would be effective? For example, how often should websites and mobile apps undergo testing, and what methods should be used for testing? If manual testing is required, how often should this testing be conducted, by whom, and what methods should be used? Should the Department require public entities' websites and mobile apps to be tested in consultation with individuals with disabilities or members of disability organizations, and, if so, how?

Question 54: If you think a public entity's web and mobile app accessibility remediation policies and practices should be considered in assessing compliance, what specific remediation policies and practices would be effective? Should instances of nonconformance that have a more serious impact on usability—because of the nature of the nonconformance (i.e., whether it entirely prevents access or makes access more difficult), the importance of the content, or otherwise—be remediated in a shorter period of time, while other instances of nonconformance are remediated in a longer period of time? How should these categories of nonconformance be defined and what time frames should be used, if any?

Question 55: Should a public entity be considered in compliance with this part if the entity remediates web and mobile app accessibility errors within a certain period of time after the entity learns of nonconformance through accessibility testing or feedback? If so, what time frame for remediation is reasonable? How would allowing public entities a certain amount of time to remediate instances of nonconformance identified through testing or feedback impact people with disabilities?

Question 56: Should compliance with this rule be assessed differently for web content that existed on the public entity's website on the compliance date than for web content that is added after the compliance date? For example, might it be appropriate to allow some additional time for remediation of content that is added to a public entity's website after the compliance date, if the public entity identifies nonconformance within a certain period of time after the content is added, and, if so, what should the remediation time frame be? How would allowing public entities a certain amount of time to remediate instances of nonconformance identified in content added after the compliance date impact people with disabilities?

Question 57: What policies and practices for testing and remediating web and mobile app accessibility barriers are public entities or others currently using and what types of testing and remediation policies and practices are feasible (or infeasible)? What types of costs are associated with these testing and remediation policies?

Question 58: In evaluating compliance, do you think a public entity's organizational maturity related to web and mobile app accessibility should be considered and, if so, how? For example, what categories of accessibility should be measured? How should maturity in each category be assessed or demonstrated i.e., what should the levels of organizational maturity be and what should an entity be required to do to attain each level)? What indicators of organizational maturity criteria would be feasible for public entities to attain? How would an approach that assesses organizational maturity for purposes of demonstrating compliance impact people with disabilities? Would such an approach be useful for public entities?

Question 59: If you think a public entity's organizational maturity should be considered in assessing compliance, what level of organizational maturity would be effective? For example, if an organizational maturity model has ten categories, should an entity be required to attain the highest level of maturity in all ten? Should an entity be required to sustain a particular level of organizational maturity for a certain length of time?

Question 60: Should a public entity be considered in compliance with this part if the entity increases its level of organizational maturity by a certain amount within a certain period of time? If so, what time frame for improvement is reasonable, and how much should organizational maturity be required to improve? How would an entity demonstrate this improvement? How would allowing public entities a certain amount of time to develop organizational maturity with respect to accessibility impact people with disabilities? Would requiring public entities to improve their organizational maturity over time be effective?

Question 61: Are there any frameworks or methods for defining, assessing, or demonstrating organizational maturity with respect to digital accessibility that the Department should consider adopting for purposes of this rule?

Question 62: Should the Department address the different level of impact that different instances of nonconformance with a technical standard might have on the ability of people with disabilities to access the services, programs, and activities that a public entity offers via the web or a mobile app? If so, how?

Question 63: Should the Department consider limiting public entities' compliance obligations if nonconformance with a technical standard does not prevent a person with disabilities from accessing the services, programs, and activities that a public entity offers via the web or a mobile app? Should the Department consider limiting public entities' compliance obligations if nonconformance with a technical standard does not prevent a person with disabilities from accessing the same information, engaging in the same interactions, and enjoying the same programs, services, and activities as people without relevant disabilities, within similar time frames and with substantially equivalent ease of use? Should the Department consider limiting public entities' compliance obligations if members of the public with disabilities who are seeking information or services from a public entity have access to and use of information and services that is comparable to that provided to members of the public who are not individuals with disabilities? How would these limitations impact people with disabilities?

Question 64: Should the Department adopt percentages of web or mobile app content that need to be accessible or other similar means of measuring compliance? Is there a minimum threshold below 100 percent that is an acceptable level of compliance? If the Department sets a threshold for compliance, how would one determine whether a website or mobile app meets that threshold?

Question 65: When assessing compliance, should all instances of nonconformance be treated equally? Should nonconformance with certain WCAG 2.1 success criteria, or nonconformance in more frequently accessed content or more important core content, be given more weight when determining whether a website or mobile app meets a particular threshold for compliance?

Question 66: How should the Department address isolated or temporary noncompliance[177] *with a technical standard and under what circumstances should noncompliance be considered isolated or temporary? How should the Department address noncompliance that is a result of technical difficulties, maintenance, updates, or repairs?*

Question 67: Are there any local, State, Federal, international, or other laws or policies that provide a framework for measuring, evaluating, defining, or demonstrating compliance with web or mobile app accessibility requirements that the Department should consider adopting?

VI. Regulatory Process Matters

The Department has examined the likely economic and other effects of this proposed rule addressing the accessibility of web content and mobile apps, as required, under applicable Executive Orders,[178] Federal administrative statutes (*e.g.,* the Regulatory Flexibility Act,[179] Paperwork Reduction Act,[180] and Unfunded Mandates Reform Act[181]) and other regulatory guidance.[182]

As discussed previously, the purpose of this proposed regulation is to revise the regulation implementing title II of the ADA in order to ensure that the services, programs, or activities offered by State and local government entities to the public via web content and mobile apps are accessible to people with disabilities. The Department is proposing to adopt specific technical standards related to the accessibility of the web content and mobile apps of State and local government entities and is specifying proposed dates by which such web content and mobile apps must meet those standards. This rule is necessary to help public entities understand how to ensure that people with disabilities will have equal access to the services, programs, and activities public entities make available on or through their web content and mobile apps.

The Department has carefully crafted this proposed regulation to better ensure the protections of title II of the ADA, while at the same time doing so in the most economically efficient manner possible. After assessing the likely costs of this proposed regulation, the Department has determined that it is a section 3(f)(1) significant regulatory action within the meaning of Executive Order 12866, as amended by Executive Order 14094. As such, the Department has undertaken a Preliminary Regulatory Impact Analysis (''PRIA'') pursuant to Executive Order 12866. The Department has undertaken a Preliminary Regulatory Flexibility Analysis as specified in § 603(a) of the Regulatory Flexibility Act. The results of both of these analyses are summarized below. Lastly, the Department does not believe that this proposed regulation will have any impact—significant or otherwise—relative to the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or the federalism principles outlined in Executive Order 13132.

A. Preliminary Regulatory Impact Analysis (''PRIA'') Summary

1. Introduction

The Department has prepared a Preliminary Regulatory Impact Analysis (''PRIA'') for this rulemaking. This PRIA complies with the requirements of Executive Order 12866, as well as other authorities on regulatory planning, by providing a robust economic analysis of the costs and benefits of this rulemaking. It contains a Preliminary Regulatory Flexibility Analysis (''PRFA''), which is also included in this summary. The Department contracted with Eastern Research Group Inc. (''ERG'') to prepare this economic assessment. This summary provides an overview of the Department's preliminary economic analysis and key components of the PRIA. The full PRIA will be made available at *https://www.ada.gov/assets/_pdfs/web-pria.pdf.*

Requiring State and local government entities' web content and mobile apps to comply with the WCAG 2.1 Level AA success criteria will result in costs for State and local government entities to remediate and maintain their web content and mobile apps in conformance with this technical standard. The Department believes that most of these costs will be one-time expenses to remediate existing websites, and that the rule will not impose as substantial cost burdens in the creation of new websites, as experts estimate that building accessibility into a website initially is 3–10 times less expensive than retrofitting an existing one for accessibility.[183] Based on a Department analysis of the web presence of a sample of 227 State and local government

[177] *See* 28 CFR 35.133(b).

[178] *See* E.O. 14094, 88 FR 21879 (Apr. 6, 2023); E.O. 13563, 76 FR 3821 (Jan. 21, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993).

[179] Regulatory Flexibility Act of 1980 (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*

[180] Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*

[181] Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

[182] OMB Circular A–4 (Sept. 17, 2003).

[183] Level Access, *The Road to Digital Accessibility, https://www.levelaccess.com/the-road-to-digital-accessibility/* [*https://perma.cc/4972-J8TA*].

entities, the Department estimates that a total number of 109,893 State and local government entity websites and 8,805 State and local government entity mobile apps will be affected by the rule. These websites and mobile apps provide services on behalf of and are managed by 91,489 State and local government entities that will incur these costs. These costs include one-time costs for familiarization with the requirements of the rule; testing, remediation, and O&M costs for websites; testing, remediation, and O&M costs for mobile apps; and school course remediation costs. The remediation costs include both time and software components. Initial familiarization, testing, and remediation costs of the proposed rule occur over the first two or three years (two years for large governments and three years for small governments) and are presented in Table 3. Implementation costs accrue during the first three years of the analysis (the implementation period) and total $15.8 billion, undiscounted. After the implementation period, annual O&M costs are $1.8 billion. Annualized costs are calculated over a 10-year period that includes both this implementation period and seven years post-implementation. Annualized costs over this 10-year period are estimated at $2.8 billion assuming a 3 percent discount rate or $2.9 billion assuming a 7 percent discount rate. All values are presented in 2021 dollars as 2022 data were not yet available. These costs are summarized in Table 4, Table 5, and Table 6. Two findings that were notable in the Department's estimations for accessible course content were that, due to the limitations to the exceptions for course content, the Department expects that within two years following implementation virtually all postsecondary courses will be remediated, and within the first year of implementation virtually all elementary and secondary classes or courses will be remediated.

Benefits will generally accrue to all individuals who access State and local government entities' web content and mobile apps, and additional benefits will accrue to individuals with certain types of disabilities. The WCAG 2.1 Level AA standards primarily benefit individuals with vision, hearing, cognitive, and manual dexterity disabilities because WCAG 2.1 is intended to address barriers that often impede access for people with these disability types. Using 2021 data, the Department estimates that 4.8 percent of adults have a vision disability, 7.5 percent have a hearing disability, 10.1 percent have a cognitive disability, and 5.7 percent have a manual dexterity disability. Due to the incidence of multiple disabilities, the total share without any of these disabilities is 80.1 percent.

Annual benefits, beginning once the rule is fully implemented, total $11.4 billion. Because individuals generally prefer benefits received sooner, future benefits need to be discounted to reflect the lower value due to the wait to receive them. The Office of Management and Budget (''OMB'') guidance states that annualized benefits and costs should be presented using real discount rates of 3 and 7 percent.[184] Benefits annualized over a 10-year period that includes both three years of implementation and seven years post-implementation total $9.3 billion per year, assuming a 3 percent discount rate, and $8.9 billion per year, assuming a 7 percent discount rate. Annual and annualized monetized benefits of the proposed rule are presented in Table 7, Table 8, and Table 9. There are many additional benefits that have not been monetized due to data availability. Benefits that cannot be monetized are discussed qualitatively. Impacts to individuals include increased independence, increased flexibility, increased privacy, reduced frustration, decreased reliance on companions, and increased program participation. This proposed rule will also benefit governments through increased certainty about what constitutes accessible web content, potential reduction in litigation, and a larger labor market pool.

Comparing annualized costs and benefits, monetized benefits to society outweigh the costs. A summary of this comparison is presented in Table 10. Net annualized benefits over the first 10 years post publication of this rule total $6.5 billion per year using a 3 percent discount rate and $6.0 billion per year using a 7 percent discount rate. Additionally, beyond this 10-year period, benefits are likely to continue to accrue at a greater rate than costs because many of the costs are upfront costs and benefits tend to have a delay before beginning to accrue.

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department also compared the costs to revenues for public entities. Because the costs for each government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[185] Costs of the rulemaking for each government entity type are estimated to be well below this 1 percent threshold.

The Department's economic analysis is discussed more fully in the complete PRIA. However, the Department will review its findings and analysis in this summary. Some key portions of the PRIA are also included here in full to aid in understanding the Department's analysis and to provide sufficient context for public feedback.

[184] *See* Office of Management and Budget, *Circular A–4* (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* [*https://perma.cc/7655-M7UF*].

[185] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*].

TABLE 3—INITIAL FAMILIARIZATION, TESTING, AND REMEDIATION COSTS
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.02	$0.90	$5.79	$4.83	$11.44	$3.63	$0.00	$0.56	$27.17
Websites	228.9	742.5	2,363.4	1,342.9	374.4	1,826.1	6.4	1,283.0	8,167.7
Mobile apps	13.7	53.1	93.4	1.3	0.0	379.7	1.2	64.4	606.8
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	5,393.8	5,393.8
Primary and secondary course remediation	N/A	47.4	18.5	40.0	N/A	1,059.5	N/A	N/A	1,165.4
Third-party website remediation	6.6	35.8	133.5	77.6	18.0	103.1	0.0	84.7	459.2
Total	249.2	879.7	2,614.6	1,466.6	403.9	3,372.0	7.6	6,826.4	15,819.9

TABLE 4—AVERAGE ANNUAL COST AFTER IMPLEMENTATION
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Websites	$19.9	$65.1	$215.1	$124.2	$40.5	$164.7	$0.6	$111.7	$741.9
Mobile apps	0.01	0.04	0.03	0.00	0.00	0.21	0.00	0.04	0.33
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	935.7	935.7
Primary and secondary course remediation	N/A	4.7	1.9	4.0	N/A	105.9	N/A	N/A	116.5
Third-party website remediation	0.6	3.2	12.1	7.2	1.9	9.2	0.0	7.4	41.6
Total	20.5	73.1	229.2	135.4	42.5	280.1	0.6	1,054.8	1,836.0

TABLE 5—10-YEAR AVERAGE ANNUALIZED COST, 3 PERCENT DISCOUNT RATE
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.00	$0.10	$0.66	$0.55	$1.30	$0.41	$0.00	$0.06	$3.09
Websites	38.9	126.4	405.2	231.2	68.4	312.4	1.1	217.9	1,401.5
Mobile apps	1.5	5.9	10.5	0.1	0.0	42.2	0.1	7.2	67.7
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,100.9	1,100.9
Primary and secondary course remediation	N/A	7.9	3.1	6.7	N/A	176.9	N/A	N/A	194.6
Third-party website remediation	1.1	6.1	22.9	13.4	3.3	17.6	0.0	14.4	78.7
Total	41.5	146.4	442.3	251.9	73.0	549.6	1.2	1,340.6	2,846.6

TABLE 6—10-YEAR AVERAGE ANNUALIZED COST, 7 PERCENT DISCOUNT RATE
[Millions]

Cost	State	County	Municipal	Township	Special district	School district	U.S. territories	Higher ed.	Total
Regulatory familiarization	$0.00	$0.12	$0.77	$0.64	$1.52	$0.48	$0.00	$0.07	$3.61
Websites	41.6	135.2	429.6	244.5	71.8	331.8	1.2	233.5	1,489.1
Mobile apps	1.8	6.7	12.0	0.2	0.0	47.7	0.2	8.3	76.9
Postsecondary course remediation	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,097.5	1,097.5
Primary and secondary course remediation	N/A	8.0	3.1	6.8	N/A	179.2	N/A	N/A	197.1
Third-party website remediation	1.2	6.5	24.3	14.1	3.4	18.7	0.0	15.4	83.7
Total	44.6	156.6	469.8	266.1	76.8	577.9	1.3	1,354.8	2,947.9

TABLE 7—ANNUAL BENEFIT ONCE FULL IMPLEMENTATION
[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$549.6	$751.3	$2,858.5	N/A	$4,159.4

TABLE 7—ANNUAL BENEFIT ONCE FULL IMPLEMENTATION—Continued

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—new users	222.4	695.0	N/A	600.6	1,518.1
Time savings—mobile apps	51.5	70.5	268.1	N/A	390.1
Time savings—education	693.5	1,205.8	3,157.8	N/A	5,057.1
Educational attainment	7.2	255.6	N/A	N/A	262.8
Total benefits	1,524.2	2,978.3	6,284.3	600.6	11,387.5

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 8—10-YEAR AVERAGE ANNUALIZED BENEFITS, 3 PERCENT DISCOUNT RATE

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$463.6	$633.8	$2,411.6	N/A	$3,509.1
Time savings—new users	187.6	586.4	N/A	506.7	1,280.7
Time savings—mobile apps	43.5	59.4	226.2	N/A	329.1
Time savings—education	504.7	878.8	2,307.6	N/A	3,691.1
Educational attainment	13.8	492.4	N/A	N/A	506.2
Total benefits	1,213.2	2,650.9	4,945.4	506.7	9,316.3

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 9—10-YEAR AVERAGE ANNUALIZED BENEFITS, 7 PERCENT DISCOUNT RATE

[Millions]

Benefit type	Visual disability	Other relevant disability [a]	Without relevant disabilities	State and local gov'ts	Total
Time savings—current users	$451.4	$617.1	$2,347.7	N/A	$3,416.1
Time savings—new users	182.7	570.8	N/A	493.3	1,246.8
Time savings—mobile apps	42.3	57.9	220.2	N/A	320.4
Time savings—education	478.9	834.2	2,191.3	N/A	3,504.4
Educational attainment	12.3	437.2	N/A	N/A	449.5
Total benefits	1,167.6	2,517.1	4,759.1	493.3	8,937.2

[a] For purposes of this table, hearing, cognitive, and manual dexterity disabilities are referred to as ''other relevant disabilities.''

TABLE 10—10-YEAR AVERAGE ANNUALIZED COMPARISON OF COSTS AND BENEFITS

Benefit type	3% Discount rate	7% Discount rate
Average annualized costs (millions)	$2,846.6	$2,947.9
Average annualized benefits (millions)	9,316.3	8,937.2
Net benefits (millions)	6,469.7	5,989.3
Cost-to-benefit ratio	0.3	0.3

2. Baseline Conditions

To estimate the costs and benefits of the proposed rule, baseline web accessibility of government websites and baseline disability prevalence need to be considered both in the presence and absence of the proposed rule over the 10-year analysis period. For these analyses, the Department assumed that the number of governments would remain constant over the 10-year horizon for which the Department projects costs and benefits. This is in line with the trend of total government units in the United States, which rose by only 19 government units (representing a 0.02 percent increase) between 2012 and 2017.[186] The Department assumes that the total number of government websites scales with the number of governments, and that the number of government websites that each government maintains would remain constant for the 10-year period with or without the rule. The Department notes, however, that if the number of government websites increases over time, both costs and

[186] U.S. Census Bureau, *Census of Governments 2017—Public use Files* (Jan. 2017), *https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html* [*https://perma.cc/UG79-5MVM*]; U.S. Census Bureau, *Census of Governments 2012—Public use Files* (Jan. 2012), *https://www.census.gov/data/datasets/2012/econ/gus/public-use-files.html [https://perma.cc/7UPP-H9WN].*

benefits would increase accordingly, and because benefits are estimated to be larger than costs, this would only create a larger net benefit for the rule. The Department also assumes constant rates of disability over the 10-year horizon.[187] Finally, the ways in which government websites are used and the types of websites (*e.g.,* Learning Management Systems and Content Management Systems) are assumed to be constant due to a lack of data.

Costs to test and remediate websites were estimated based on the level of effort needed to reach full compliance with WCAG 2.1 Level AA from the level of observed compliance during the Department's automated and manual accessibility checking from September 2022 through October 2022. The Department did not feel confident quantifying baseline conformity with proposed requirements.[188] Baseline accessibility of mobile apps and password-protected course content was understood through literature, which estimated costs to make those materials WCAG 2.1 Level AA compliant, implicitly defining baseline conditions.

Most literature on current website accessibility has not historically tested websites against the same sets of standards, so comparing results from studies over time to find trends in accessibility is challenging. Additionally, the types of websites tested, and their associated geographies, tend to vary from study to study, compounding the difficulty of extracting longitudinal trends in accessibility. There are, however, some studies that have evaluated the change in accessibility for the same websites in different time periods, such as a 2014 paper that continued a study of Alabama website accessibility from 2002.[189] [190] That study found almost no change in accessibility from the previous 2002 study.[191] Although most accessibility studies do not take this longitudinal approach, their conclusions, regardless of the standards against which websites are checked, are generally that websites are not fully accessible. For example, a 2006 study found that 98 percent of State home pages did not meet WCAG 1.0 Level AA guidelines.[192] Another 2006 study found that only 18 percent of municipal websites met section 508 standards.[193] And 14 years later, a 2021 study found that 71 percent of county websites evaluated did not conform to WCAG 2.0, and the remaining 29 percent only partially conformed to the standards.[194] Given the minimal progress in web accessibility over the last 20 years, the Department does not expect that compliance with WCAG 2.1 Level AA would improve significantly in the absence of the rule.

3. Number of Affected Governments and Individuals

The proposed regulation will affect all State and local government entities [195] by requiring them to comply with WCAG 2.1 Level AA. The Department used the 2017 Census of Governments to determine the number of affected governments, disaggregated by government entity type as defined by the Census Bureau.[196] The Department estimates the number of government entities affected by the proposed rule in Table 11. To account for differences in government characteristics, the Department stratified the government entities by population size and analyzed impacts of the rule to each type of government entity within each population size category. The Department assumes that the number of governments would remain constant throughout the 10-year analysis period with or without the rule.

TABLE 11—NUMBER OF GOVERNMENTS BY GOVERNMENT ENTITY TYPE [197]

Type of government entity	Population of less than 50,000	Population of 50,000 or more	Total
State	N/A	[a] 51	51
County	2,105	926	3,031
Municipal	18,729	766	19,495
Township	16,097	156	16,253
Special district	[b] 38,542	N/A	38,542
School district	11,443	779	12,222
U.S. territory	2	3	5
Public university	[b] 744	N/A	744
Community college	[b] 1,146	N/A	1,146

[187] Recent trends in disability prevalence vary across surveys, with some finding an increase in recent years and others finding no change. Due to uncertainty, the Department assumed no change in prevalence rates over the next ten years. U.S. Census Bureau, *2021 SIPP: Estimates of Disability Prevalence* (Aug. 30, 2022), *https://www.census.gov/programs-surveys/sipp/tech-documentation/user-notes/2021-usernotes/estim-disabilty-preval.html* [*https://perma.cc/6BJB-XX96*].

[188] Though SortSite does give what percentile a website falls into as far as accessibility, it does not give a raw ''accessibility score.''

[189] Andrew Potter, *Accessibility of Alabama Government websites,* 29 Journal of Government Information 303 (2002), *https://doi.org/10.1016/S1352-0237(03)00053-4* [*https://perma.cc/5W29-YUHK*].

[190] Norman Youngblood, *Revisiting Alabama State website Accessibility,* 31 Government Information Quarterly 476 (2014), *https://doi.org/10.1016/j.giq.2014.02.007* [*https://perma.cc/PUL4-QUCD*].

[191] Potter (2002) found that 80 percent of State websites did not pass section 508 standards, and Youngblood (2014) found that 78 percent of those same websites still did not meet section 508 standards 12 years later. Andrew Potter, *Accessibility of Alabama Government websites,* 29 Journal of Government Information 303 (2002), *https://doi.org/10.1016/S1352-0237(03)00053-4* [*https://perma.cc/5W29-YUHK*]; Norman Youngblood, *Revisiting Alabama State website Accessibility,* 31 Government Information Quarterly 476 (2014), *https://doi.org/10.1016/j.giq.2014.02.007* [*https://perma.cc/PUL4-QUCD*].

[192] Tanya Goette et al., *An Exploratory Study of the Accessibility of State Government websites,* 5 Universal Access in the Information Society 41 (Apr. 20, 2006), *https://link.springer.com/article/10.1007/s10209-006-0023-2* [*https://perma.cc/6SD9-KRFT*].

[193] Jennifer S. Evans-Cowley, *The Accessibility of Municipal Government websites,* 2 Journal of E-Government 75 (2006), *https://www.tandfonline.com/doi/abs/10.1300/J399v02n02_05.* A Perma archive link was unavailable for this citation.

[194] Yang Bai et al., *Accessibility of Local Government websites: Influence of Financial Resources, County Characteristics and Local Demographics,* 20 Universal Access in the Information Society 851 (2021), *https://link.springer.com/article/10.1007/s10209-020-00752-5* [*https://perma.cc/YM6G-Y7TY*]. The Department notes that although these studies discuss State or local government conformance with the section 508 standards, those standards only apply to the Federal Government, not to State or local governments.

[195] The PRIA summary and PRFA frequently refer generally to ''governments,'' which is intended to include only State or local governments covered by this rulemaking.

[196] U.S. Census Bureau, *Census of Governments 2017—Public use Files* (Jan. *https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html* [*https://perma.cc/UG79-5MVM*].

[197] *See* Section 2.1, Number of Governments, in the accompanying PRIA for the Department's methodology.

TABLE 11—NUMBER OF GOVERNMENTS BY GOVERNMENT ENTITY TYPE [197]—Continued

Type of government entity	Population of less than 50,000	Population of 50,000 or more	Total
Total (no higher education)	86,918	2,681	89,599
Total (with higher education)	88,808	2,681	91,489

[a] Washington, DC is included as a State for purposes of this table and the following analysis.
[b] Special district, public university, and community college data do not include population. For these tables, they are displayed as small.

The Department expects the benefits of this proposed regulation will accrue to all individuals using State and local government entities' services, but particularly to those with certain types of disabilities. WCAG 2.1 Level AA primarily benefits individuals with vision, hearing, cognitive, and manual dexterity disabilities.[198] To identify persons with those disabilities, the Department relied on the U.S. Census Bureau's Survey of Income and Program Participation (''SIPP'') for reasons described further in the Department's full PRIA.[199]

Using SIPP 2021 data, as shown in Table 12, the Department estimates that 4.8 percent of adults have a vision disability, 7.5 percent have a hearing disability, 10.1 percent have a cognitive disability, and 5.7 percent have a manual dexterity disability. Due to the incidence of multiple disabilities, the total share without any of these disabilities is 80.1 percent.[200]

TABLE 12—DISABILITY PREVALENCE COUNTS, SIPP 2021

Disability type	Prevalence rate (%)	Number (millions)	Marginal prevalence rate [a] (%)	Marginal number [a] (millions)
Vision	4.8	12.2	4.8	12.2
Hearing	7.5	19.0	6.1	15.3
Cognitive	10.1	25.5	6.7	16.9
Manual dexterity	5.7	14.3	2.3	5.7
None of the above	80.1	202.3	80.1	202.3

Source: U.S. Census Bureau. *https://www.census.gov/programs-surveys/sipp/data/datasets/2021-data/2021.html.*
[a] Individuals with multiple qualifying disabilities are counted within the first disability category listed (*e.g.,* if someone has a cognitive and vision disability, they are included in the vision disability prevalence rate).

4. Compliance Cost Analysis

For State and local Government entities to comply with the proposed rule, they will have to invest time and resources to make inaccessible web and mobile app content accessible. Based on a review of the accessibility of a sample of State and local government entities' websites taken between September and November 2022, the Department has found that most government websites and mobile apps will require accessibility testing and remediation because they do not meet the success criteria of WCAG 2.1 Level AA. In addition, the proposed rule will generally require public postsecondary educational institutions and primary and secondary schools to provide accessible course content to students with disabilities at the time that the schools knew or should have known that a student with a disability is enrolled in a class and would be unable to access the content available on the password-protected website for that class (the rule provides a similar requirement for parents with disabilities in the primary and secondary school context). The Department performed analyses to estimate the costs to test and remediate inaccessible websites, mobile apps, and education course content. Estimated total costs of the rule can be found in Table 3 above. The monetized costs are also summarized further in the following subsections.

a. Regulatory Familiarization Costs

Regulatory familiarization refers to the time needed for professional staff members to become familiar with the requirements of new regulations. This may include time spent reading the rule itself, but more commonly it refers to time spent reviewing guidance documents provided by the Department, advocacy groups, or professional organizations. It does not include time spent identifying current compliance levels or implementing changes. It also does not include training time to learn the nuances of WCAG 2.1 Level AA.

The Department has estimated regulatory familiarization costs to be $27.2 million. The summary of the Department's regulatory familiarization calculations is included in Table 13, and the Department's analysis is explained in more detail in Section 3.2, Regulatory Familiarization Costs, of the full PRIA. Average annualized regulatory familiarization costs over 10 years, using a 7 percent discount rate, are $3.6 million.

TABLE 13—REGULATORY FAMILIARIZATION COSTS [201]

Variable	Value
Potentially affected governments	91,489
Average hours per entity	3

[198] *See* Section VI.A.5.b of this preamble for further information.

[199] *See* U.S. Census Bureau, *Survey of Income and Program Participation—About this Survey* (Aug. 2022), *https://www.census.gov/programs-surveys/sipp/about.html* [*https://perma.cc/Z7UH-6MJ8*].

[200] These estimates may miss some individuals due to underreporting. Some individuals with temporary disabilities may also not respond in the affirmative and may be missed. We note, however, that people with temporary disabilities may not always qualify as having a disability covered by the ADA.

[201] *See* Section 3.2, Regulatory Familiarization Costs, in the accompanying PRIA for the Department's methodology.

TABLE 13—REGULATORY FAMILIARIZATION COSTS [201]—Continued

Variable	Value
Loaded wage rate	$98.98
Base wage [a]	$49.49
Adjustment factor	2.00
Cost year 1 ($1,000s)	$27,167
Annual cost years 2–10 ($1,000s)	$0
Average annualized cost, 3% discount rate ($1,000s)	$3,092
Average annualized cost, 7% discount rate ($1,000s)	$3,615

[a] 2021 Occupational Employment and Wage Survey (OEWS) median wage for software and web developers, programmers, and testers (SOC 15–1250).

b. Website Testing, Remediation, and O&M Costs

The proposed rule uses WCAG 2.1 Level AA as the standard for State and local government entities' websites. To assess costs to State and local government entities, the Department employed multistage stratified cluster sampling to randomly select government entities and their websites. To account for variability in website complexity and baseline compliance with WCAG 2.1 between government types, the Department then sampled and assessed costs based on each government type. Each identified website within the second-stage sample was tested for accessibility using a two-pronged approach of automated and manual testing to estimate the number of accessibility errors present on each site. The Department estimated remediation costs for government websites based on these manual and automated accessibility reports. The cost of remediating a website was calculated by estimating the amount of time it would take to fix each accessibility error identified on that website and multiplying that time by the 2021 Occupational Employment and Wage Survey (''OEWS'') median wage for software and web developers, programmers, and testers and by a factor of two to account for benefits and overhead.[202]

Mobile app costs were analyzed separately as described in Section VI.A.4.c of this preamble. Further, costs associated with the remediation of PDFs and the captioning of video and audio media hosted on government websites were estimated separately, in order to better capture the nuanced costs associated with remediating these types of content.

For costs of PDF remediation, the Department calculated both software costs and remediation time, given that access to some PDF editing software equipped with accessibility functionality is necessary to ensure PDFs are accessible. The Department estimated the amount of time needed to remediate existing PDFs covered by the proposed rule by determining an average amount of time needed to make a pre-existing PDF compliant with WCAG 2.1 Level AA and estimating the number of covered PDFs hosted on State and local government entities' websites requiring remediation.

For costs of captioning, two governments were randomly selected from each government type, for a total of 28 governments selected. The Department compiled a list of all videos and audio files associated with each website. The Department then made a determination about whether the video or audio media required captions and recorded their durations. The durations of YouTube and Vimeo videos were imputed from the mean duration of non-YouTube and non-Vimeo videos, computed across all 28 governments. The Department estimated that, for those 28 entities, captioning is needed for: 1,640 minutes of non-YouTube and non-Vimeo videos, 378 minutes of audio files, and 23,794 minutes of YouTube and Vimeo videos. This adds up to a total captioning time of 25,811 minutes for the 28 governments. The Department then scanned consumer prices and, based on that scan, applied an upper bound rate of $15 per minute to caption to the total captioning time, yielding an estimated cost of $387,200 across the 28 governments. For these same governments, the total estimated website remediation costs are $8.1 million. Thus, the ratio of captioning costs to website remediation costs is 4.8 percent. This ratio represents the estimated mean percentage increase in website remediation costs when accounting for video and audio content requiring captions—including content posted to external sites and platforms such as YouTube and Vimeo. This mean percentage was applied uniformly to all government types to scale up the website remediation costs to account for video and audio content. The Department's assessment of these costs is included in the full PRIA and summarized in Table 14.

In addition, the Department estimated testing costs by evaluating the pricing of several commercial web accessibility checkers that could be used in tandem with manual testing. The Department then derived an average cost to test and remediate all websites of a given government entity for each government type and size. Initial website testing and remediation costs are summarized in Table 14, and the methodologies used to calculate these costs are fully described in Section 3.3, website Testing, Remediation, and O&M Costs, in the full PRIA.

TABLE 14—TOTAL INITIAL WEBSITE TESTING AND REMEDIATION COSTS

[Millions] [203]

Type of Government entity	Testing costs	Website remediation costs	PDF remediation costs	Video and audio captioning costs	Total initial costs
State	$28.3	$141.1	$22.9	$6.7	$199.0
County (small)	9.1	35.4	15.9	1.7	62.2
County (large)	87.7	433.2	44.4	20.6	585.9
Municipality (small)	268.8	1,260.1	112.7	60.0	1,701.5
Municipality (large)	61.8	304.2	45.0	14.5	425.5
Township (small)	185.5	876.1	89.5	41.7	1,192.8
Township (large)	3.8	18.0	2.1	0.9	24.7
Special district	61.4	247.0	13.8	11.8	333.9
U.S. territory (small)	0.1	0.6	0.4	0.0	1.2
U.S. territory (large)	0.6	3.0	0.7	0.1	4.5
School district (small)	175.1	813.5	55.7	38.7	1,083.0

[202] U.S. Bureau of Labor Statistics, *May 2021 National Occupational Employment and Wage Estimates United States* (Mar. 31, 2022), *https://www.bls.gov/oes/current/oes_nat.htm#15-0000* [*https://perma.cc/U2JE-ZXAL*].

TABLE 14—TOTAL INITIAL WEBSITE TESTING AND REMEDIATION COSTS—Continued

[Millions] [203]

Type of Government entity	Testing costs	Website remediation costs	PDF remediation costs	Video and audio captioning costs	Total initial costs
School district (large)	85.2	421.4	24.1	20.1	550.8
Public university	73.4	362.7	26.7	17.3	480.1
Community college	98.0	483.4	30.9	23.0	635.3
Total	1,138.8	5,399.6	484.9	257.1	7,280.3

In addition to initial testing and remediation costs associated with making existing web content accessible, the Department also estimated O&M costs, which State and local government entities would incur after the initial implementation phase. These O&M costs cover ongoing activities required under the rule to ensure that new web content meets WCAG 2.1 Level AA such as websites and new social media posts.

The Department estimates O&M costs will be composed of (1) a fixed cost for technology to assist with creating accessible content, as well as (2) a variable cost that scales according to the size and type of content on the website. In general, entities whose websites have higher remediation costs are likely to have a higher O&M burden, as remediation cost is one useful measure of the amount of web content that must conform to WCAG 2.1 Level AA. As such, the Department believes that the initial remediation costs serve as a reasonable basis for scaling future O&M costs. However, regardless of their initial remediation burden, governments may be able to mitigate their ongoing costs by developing systems early in the implementation period to ensure that accessibility considerations are incorporated at every stage of future content creation.

Annual O&M costs are estimated to be significantly smaller than remediation costs because (1) the amount of new material added each year will generally be less than the current amount of content and (2) the cost to make new content accessible is significantly smaller than to remediate existing content. One vendor estimates that making content accessible during the development phase is 3–10 times faster, and consequently less expensive, than remediating web content after a website has been fully launched.[204] Given the estimate that new web content is 3–10 times faster to make accessible than existing content, the Department concluded that allocating 10 percent of the time originally used to test and remediate sites to O&M each year would be more than sufficient to ensure future content is accessible.

Table 15 displays the undiscounted annual O&M costs for each government type. The total annual cost across all State and local government entities is estimated to be $741.9 million. O&M costs are estimated to accrue over the implementation period following the same schedule described for initial costs. Large governments will incur 100 percent of annual O&M costs starting in Year 3 following promulgation of the proposed rule, and small governments would incur these full O&M costs beginning in Year 4. For more on annual O&M costs, please see Section 3.3.8, Operating and Maintenance (''O&M'') Costs, of the accompanying PRIA.

TABLE 15—ANNUAL O&M COSTS, BY GOVERNMENT TYPE

[Thousands] [205]

Type of Government entity	Undiscounted annual O&M costs, per entity [a]	Total undiscounted annual O&M costs for all entities
State	$390.3	$19,906.4
County (small)	3.1	6,470.7
County (large)	63.4	58,677.8
Municipality (small)	9.2	172,517.7
Municipality (large)	55.6	42,622.7
Township (small)	7.6	121,724.7
Township (large)	15.9	2,482.2
Special district	1.1	40,513.9
U.S. territory (small)	57.9	115.8
U.S. territory (large)	149.2	447.7
School district (small)	9.6	109,531.3
School district (large)	70.8	55,156.1
Public university	64.6	48,081.1
Community college	55.5	63,644.5
Total	8.1	741,892.6

[a] This column presents the mean annual O&M cost across all governments, including those that do not have a website.

[203] *See* Section 3.3, website Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

[204] Level Access, *The Road to Digital Accessibility, https://www.levelaccess.com/the-road-to-digital-accessibility/* [*https://perma.cc/4972-J8TA*].

[205] *See* Section 3.3.8, Operating and Maintenance (O&M) Costs, in the accompanying PRIA for the Department's methodology.

The Department assumes that initial testing and remediation costs would be uniformly distributed across the number of implementation years for each entity type. In aggregate, it was assumed that large entities would incur 50 percent of their initial testing and remediation costs during each of Year 1 and Year 2 following the promulgation of the rule, and that small entities would incur 33 percent of their initial testing and remediation costs during each of the first three years following the promulgation of the rule. Total projected website costs over 10 years are displayed in Table 16, and are discussed in Section 3.3.9 of the full PRIA. Present value (''PV'') and average annualized costs are displayed using both a 3 percent and 7 percent discount rate.

TABLE 16—TOTAL PROJECTED 10-YEAR WEBSITE COSTS [206]

Time period	Cost (millions)
Year 1	$2,911.0
Year 2	3,206.8
Year 3	2,049.8
Year 4	741.9
Year 5	741.9
Year 6	741.9
Year 7	741.9
Year 8	741.9
Year 9	741.9
Year 10	741.9
PV of 10-year costs, 3% discount rate	11,954.8
Average annualized costs, 3% discount rate	1,401.5
PV of 10-year costs, 7% discount rate	10,458.6
Average annualized costs, 7% discount rate	1,489.1

c. Mobile App Testing, Remediation, and O&M Costs

Mobile apps offer convenient access to State and local government entities' services, programs, and activities. According to a 2021 U.S. Census Bureau report, in 2018, smartphones and tablet devices were present in 84 percent and 63 percent of U.S. households, respectively.[207] Mobile apps are relatively new compared to websites, and a different technology. Existing tools to evaluate website accessibility cannot reasonably be applied to mobile apps and cannot be easily altered for mobile app evaluation. The tools that do exist to evaluate mobile app accessibility are largely geared towards app developers and often require access to mobile app coding.[208] Literature related to accessibility for mobile software is also sparse, which may be attributed to the relative lack of tools available to assess mobile app accessibility compared with the tools available to assess website accessibility.[209] The Department expects that these resources will grow as a result of this rulemaking and a resulting greater demand for mobile app accessibility resources.

Under the proposed rule, mobile apps that State and local government entities make available to members of the public or use to offer services, programs, and activities to members of the public must adhere to WCAG 2.1 Level AA. To evaluate costs associated with mobile app compliance, a simple random sample of five entities was selected for each type of government. As described in more detail in Section 3.3.2, Government and Website Sampling, in the accompanying PRIA, governments were stratified by size when sampled.

State and local Government entities are obligated to ensure that mobile apps they make available or use to offer services, programs, and activities to members of the public are accessible. However, as with websites, the Department only identified mobile apps created directly for a government. The Department did not include mobile apps developed and managed by third parties and used by the sampled government entities (''external mobile apps'') because the Department was unable to find existing data or literature on the cost to remediate these apps, which may differ substantially from internal mobile apps. Additionally, many of these external mobile apps are used by multiple government clients, so our sample would overcount these apps. However, unlike websites, the Department has not included costs for third-party mobile apps as a separate cost, because the necessary data are unavailable. Exclusion of third-party developed mobile apps from this analysis may underestimate costs. The Department believes this undercount is offset elsewhere. For example, for State and local government entities' mobile apps used to offer services, programs, and activities to members of the public, the Department assumed all non-compliant material would be remediated, but in reality, some material that is not actively being used will likely be archived or removed.

To estimate the number of mobile apps controlled by State and local government entities, the Department calculated the average number of identified mobile apps per government entity in the sample, by entity type. The results of these calculations are presented below in Table 17. This was multiplied by the number of government entities for each respective government type (see Table 11) to estimate the number of mobile apps controlled by each government type. Estimates of the total number of mobile apps controlled by each government type are presented below, in Table 18. These calculations are discussed further in Section 3.4.1.1, Mobile App Estimation, of the PRIA.

TABLE 17—AVERAGE NUMBER OF MOBILE APPS BY GOVERNMENT TYPE [210]

Type of Government entity	Population less than 50,000	Population more than 50,000	Total
State	N/A	4.40	4.40
County	0.20	0.60	0.32
Municipal	0.00	1.00	0.04
Township	0.00	0.20	0.00
Special district	0.00	[a]	0.00
School district	0.40	1.40	0.46
U.S. territory	0.50	5.33	3.40
Public university	1.20	[a]	1.20

[206] *See* Section 3.3.9, Total Costs for Website Testing and Remediation, in the accompanying PRIA for the Department's methodology.

[207] Michael Martin, *Computer and internet Use in the United States: 2018,* American Community Survey Reports (Apr. 2021), *https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-49.pdf* [*https://perma.cc/ST79-PKX5*].

[208] *See id.*

[209] *See id.*

[210] *See* Section 3.4.1.1, Mobile App Estimation, in the accompanying PRIA for the Department's methodology.

TABLE 17—AVERAGE NUMBER OF MOBILE APPS BY GOVERNMENT TYPE [210]—Continued

Type of Government entity	Population less than 50,000	Population more than 50,000	Total
Community college	0.20	[a]	0.20
Total (special districts and higher education)	[a]	[a]	0.03
Total (all else)	0.10	1.00	0.15

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

TABLE 18—TOTAL ESTIMATED NUMBER OF MOBILE APPS BY GOVERNMENT TYPE [211]

Type of Government entity	Population less than 50,000	Population more than 50,000	Total
State	N/A	224	224
County	421	556	977
Municipal	0	766	766
Township	0	31	31
Special district	0	[a]	0
School district	4,577	1,091	5,668
U.S. territory	1	16	17
Public university	893	[a]	893
Community college	229	[a]	229
Total (special districts and higher education)	1,122	[a]	1,122
Total (all else)	4,999	2,684	7,683

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

As the Department describes more fully in its PRIA, there is a lack of literature related to accessibility testing guidelines, tools, and costs for mobile apps. Because of this, the Department assumed that costs to test and modify a mobile app for compliance with WCAG 2.1 Level AA success criteria would be a percentage of the cost to develop an ''average'' mobile app, based on the limited literature the Department found related to making mobile apps accessible. Using best professional judgment, the Department assumed that costs to test and modify an existing mobile app for accessibility will be greater than half of the cost to develop a mobile app from scratch, but less than the total cost of developing a new mobile app. Specifically, the Department assumed that the cost to test and modify a mobile app for accessibility will be 65 percent of the cost to develop a new mobile app. The Department seeks the public's input on this assumption. The Department used mobile app development cost data made public by the mobile app developer SPD Load in 2022 to estimate an average mobile app development cost of $105,000.[212] This results in an average mobile app accessibility testing and modification cost of $68,250 (65 percent of $105,000). Some mobile apps may be more complex than others, and therefore more expensive to test and modify for accessibility.[213] The Department thus used file size as a proxy for mobile app complexity in its analysis.

Table 19 shows the average costs associated with testing and modifying an existing mobile app to conform with WCAG 2.1 Level AA. Generally, the estimated costs differ due to variability in the file size. The average cost of initial mobile app testing and remediation was then multiplied by the total estimated number of mobile apps for each respective government type and size (see Table 18) to generate an estimated cost to all government entities in each respective category (Table 20). Underlying calculations to these tables are discussed further in Section 3.4, Mobile App Testing, Remediation, and O&M Costs, of the accompanying PRIA.

TABLE 19—AVERAGE COST TO MODIFY A MOBILE APP BY GOVERNMENT TYPE [214]

Type of Government entity	Population less than 50,000	Population more than 50,000
State	N/A	$61,045
County	$59,356	50,478
Municipal	N/A	121,922
Township	N/A	41,624

[211] *Id.*

[212] SPD Load, *How Much Does It Cost to Develop an App in 2022? Cost Breakdown, https://spdload.com/blog/app-development-cost/* [*https://perma.cc/Y2RM-X7VR*].

[213] Sudeep Srivastava, *What Differentiates a $10,000 Mobile App From a $100,000 Mobile App?,* appinventiv (May 6, 2022), *https://appinventiv.com/blog/mobile-app-development-costs-difference/* [*https://perma.cc/5RBB-W7VP*].

[214] *See* Section 3.4, Mobile App Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

TABLE 19—AVERAGE COST TO MODIFY A MOBILE APP BY GOVERNMENT TYPE [214]—Continued

Type of Government entity	Population less than 50,000	Population more than 50,000
Special district	[a] N/A	[a]
School district	68,250	61,670
U.S. territory	134,991	65,971
Public university	[a] 52,185	[a]
Community college	[a] 77,478	[a]
Total (special districts and higher education)	64,832	[a]
Total (all else)	87,532	67,118

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

TABLE 20—INITIAL MOBILE APP COSTS

[Millions] [215]

Type of Government entity	Population less than 50,000	Population more than 50,000	Total
State	N/A	$13.7	$13.7
County	$25.0	28.0	53.0
Municipal	0.0	93.4	93.4
Township	0.0	1.3	1.3
Special district	[a] 0.0	[a]	0.0
School district	312.4	67.3	379.7
U.S. territory	0.1	1.1	1.2
Public university	[a] 46.6	[a]	46.6
Community college	[a] 17.8	[a]	17.8
Total (special districts and higher education)	64.3	[a]	64.3
Total (all else)	337.5	204.7	542.3

[a] Special district, public university, and community college data do not include population. For tables in Section VI.A.4.c of this preamble, they are displayed as entities with populations less than 50,000.

Costs for the proposed rule are expected to be incurred at different times for each type of government entity because of differences in proposed implementation timelines. Government entities serving populations over 50,000 will have two years to implement the proposed rule, and costs are assumed to be distributed evenly across the two implementation years. Government entities serving populations of less than 50,000 and special districts will have three years to implement the proposed rule, and costs are assumed to be distributed evenly among the three implementation period years. Public postsecondary institutions are generally associated with large governments, and consequently, for purposes of this analysis, the Department assumes that public postsecondary institutions will have two years to implement the rule.

Additionally, the Department assumed that State and local Government entities will incur O&M costs associated with accessibility maintenance starting after the proposed rule's implementation period. The Department, using best professional judgment due to the absence of applicable data, assumed that added O&M costs associated with accessible mobile apps are equal to 10 percent of O&M costs associated with an average mobile app. The Department used a publicly available data range to calculate average annual mobile app O&M costs and estimate the annual cost of O&M for an average mobile app.[216] The estimated average annual cost of O&M per mobile app ($375) was multiplied by 10 percent to calculate expected additional O&M costs incurred as a result of compliance with the proposed rule ($37.50). The Department then multiplied expected additional O&M costs per app by the total estimated number of mobile apps. Undiscounted costs of compliance with the proposed rule over a 10-year period, PV of costs, and average annualized costs are presented in Table 21 and discussed further in Section 3.4, Mobile App Testing, Remediation, and O&M Costs, of the accompanying PRIA.

TABLE 21—TIMING OF MOBILE APP COSTS

[Millions] [217]

Time period	Costs
Year 1	$247.1
Year 2	247.1
Year 3	112.6
Year 4	0.3
Year 5	0.3
Year 6	0.3
Year 7	0.3
Year 8	0.3
Year 9	0.3
Year 10	0.3
PV of 10-year costs, 3% discount rate	577.7
Average annualized costs, 3% discount rate	67.7
PV of 10-year costs, 7% discount rate	540.1

[215] *Id.*

[216] Michael Georgiou, *Cost of Mobile App Maintenance in 2022 and Why It's Needed,* Imaginovation Insider (June 30, 2022), *https://imaginovation.net/blog/importance-mobile-app-maintenance-cost/* [*https://perma.cc/UY5K-6FKC*].

[217] *See* Section 3.4, Mobile App Testing, Remediation, and O&M Costs, in the accompanying PRIA for the Department's methodology.

TABLE 21—TIMING OF MOBILE APP COSTS—Continued

[Millions] [217]

Time period	Costs
Average annualized costs, 7% discount rate	76.9

d. Postsecondary Education

The proposed rule distinguishes between public postsecondary institutions' public-facing websites, mobile apps, and password-protected course material. Costs were estimated separately for these three categories.

Public-facing websites were assessed for current levels of compliance using SortSite, a software application the Department used to assess accessibility in tandem with manual testing.[218] For this cost component, unstratified random samples were drawn consisting of 10 public four-year universities and 10 public community colleges.[219] Whereas the Department searched for and scanned other State and local government entities' secondary websites, only the main site was scanned for postsecondary institutions. Instead, the Department estimated that postsecondary institutions' secondary websites would incur testing and remediation costs equal to 1.1 times the testing and remediation costs of their main websites. Postsecondary institutions were found to have main website costs that were most similar to those of large school districts and large counties, and for those two types of government entities, secondary websites incur 1.1 times the cost of the main websites, on average. Large school districts and large counties also have 5.7 times as many secondary websites as main websites and their secondary websites have 0.25 times the number of PDFs as their main websites. Those ratios were used in estimating numbers of higher education secondary websites and secondary website PDF costs. For a more complete discussion of the Department's methodology, please see Section 3.5.1, Postsecondary Education Overview, of the accompanying PRIA.

Postsecondary institutions' mobile app costs were assessed separately using the Department's methodology for mobile app calculation. This is discussed in full in the Department's PRIA.

Given that website accessibility scanning software is not compatible with password-protected sites, costs to remediate online course content were estimated with a different method. As an overview, the Department used a probabilistic model to estimate the proportion of courses that would require remediation during the first year of remediating course content under the proposed rule (the first year after implementation). As discussed in more detail in the full PRIA, the Department determined as a result of its modeling that virtually all remaining courses would be remediated in the second year of remediating course content. The Department does not expect that courses will be made accessible in a significant way in the absence of the rule, though this assumption is based on literature on trends in web accessibility rather than statistical modeling. The high rate at which courses will need remediation under the proposed rule is a notable finding of the Department's analysis, which has major implications for students with disabilities. The Department also conducted sensitivity analyses to ensure the PRIA accounts for a range of possibilities on course remediation.

O&M costs for course content were estimated at a higher annual rate than for websites to account for new courses that may be introduced, additional captioning associated with video lectures, and the like. This is further described in the Department's full PRIA.

Under the proposed rule, password-protected postsecondary course content (*e.g.,* course content provided through third-party learning management systems) must be made accessible when an institution is on notice that a student with a relevant disability is enrolled in a particular class. Using data from the 2021 SIPP, the Department estimated the prevalence of students with either a hearing, vision, manual dexterity, or cognitive disability. The Department estimated prevalence values for individuals aged 18–22 to account for the conventional school age population that attends four-year institutions and used an age range of 17–29 for community college students.[220] The Department recognizes that these age ranges do not represent the entire postsecondary population, and that they may underestimate disability prevalence by excluding older populations who may be more likely to have disabilities. However, given the need to define the population's age in order to estimate disability prevalence, the Department feels that these are appropriate ranges for this cost estimation.

The Department understands that only a portion of students with disabilities will require course remediation. Data in the High School Longitudinal Study (''HSLS'') of 2009, conducted by the National Center for Education Statistics (''NCES''), suggests that 37 percent of students with disabilities report their disability to their college or university.[221] Applying this proportion to the disability prevalence rates for students with a vision, hearing, dexterity, or cognitive disability, yields the percent of individuals aged 18–22 and 17–29 who will report a relevant disability to their college or university. However, because the HSLS reports the fraction of students with any disability who report their disability to the school, and not the fraction of students with either a vision, hearing, dexterity, or cognitive disability who report their disability to the school, this number may be an over- or underestimate depending on the variability in the likelihood that students with specific disabilities report their disability to the school. To estimate average class sizes, the Department used Common Data Set (''CDS'') reports from 21 public universities and 10 community colleges, resulting in an average of 29.8 students per class in public universities and 20.4 students per class in community colleges.[222]

When estimating the percent of courses that will be remediated in each year, the Department found that, within two years following implementation, virtually all postsecondary courses will have been remediated. Specifically, the probability function discussed in Section 3.5.2.2, Probabilistically Calculating the Rate of Course Remediation, in the Department's PRIA shows that by the end of year four (two years after postsecondary schools begin to remediate course content), 96 percent of courses offered by public four-year and postgraduate institutions and 90 percent of courses offered by community colleges will have been remediated. The Department assumes that despite having some courses for which remediation has not been requested by year five, postsecondary institutions will finish remediation on their own to preempt requests in the

[218] The Department's basis for selecting SortSite, as well as its methods for using SortSite in tandem with manual testing, are described in more detail in the full PRIA.

[219] Technical colleges were included with community colleges.

[220] The range 17–29 was calculated from National Center for Education Statistics data and includes 80 percent of the community college population.

[221] Institute of Education Sciences, *Use of Supports Among Students with Disabilities and Special Needs in College* Supp. Tbl. 2 (Apr. 2022), *https://nces.ed.gov/pubs2022/2022071/index.asp* [*https://perma.cc/RSY3-TQ46*].

[222] *See* Common Data Set Initiative, *https://commondataset.org/* (last visited June 15, 2023).

following year. For institutions that wait to remediate outstanding courses, the costs will be negligible because the number of outstanding courses is projected to be low, and because in year three entities will likely have ensured that their LMS supports accessibility and that their instructors have appropriate tools and training. These findings about the rapidity of course remediation speak to the necessity and importance of this rule. Table 22 shows the assumptions, data, and methods from Section 3.5, Postsecondary Education, of the accompanying PRIA to estimate course costs.

TABLE 22—COURSE REMEDIATION COSTS [223]

Description	Public university	Community college	Source
Age range	18–22	17–29	NCES.
Average class size	29.8	20.4	CDS Data.
Prevalence of disabilities	0.13	0.12	SIPP Data.
Share of students with a disability who notify school	0.37	0.37	HSLS.
Share of students who have a relevant disability and notify school	0.05	0.04	Calculation.
Total number of courses offered	1,803,277	965,097	Calculation.
Number of courses remediated first semester	900,406	383,766	Calculation.
Cost per course	$1,690	$1,690	Farr et al. (2009).[224] NCDAE.[225]
First semester cost for all institutions (millions)	$1,521.6	$648.5	Calculation.
First semester mean cost per institution (millions)	$2.0	$0.6	Calculation.
Number of courses remediated second semester	563,214	269,294	Calculation.
Second semester course remediation costs (millions)	$951.8	$455.1	Calculation.
First year cost (millions)	$2,473.4	$1,103.6	Calculation.
Courses remediated in Year 2	339,656	312,037	Calculation.
Year 2 course remediation cost (millions)	$574.0	$527.3	Calculation.
Total costs to remediate all courses (millions)	$3,047.4	$1,630.9	Calculation.
Mean cost per institution to remediate all courses (millions)	$4.1	$1.4	Calculation.
Mean cost per student to remediate all courses	$340.7	$341.4	Calculation.
Yearly O&M cost per course	$253	$253	Calculation.
Total yearly O&M cost (millions)	$609.5	$326.2	Calculation.
Mean O&M cost per institution	$819,198	$285,380	Calculation.

The Department calculated the proportion of classes requiring remediation on a per school basis using a methodology outlined in the PRIA, and with that number calculated the total number of classes offered by a school requiring remediation. The Department developed a per-course cost estimate because it believes that password-protected course content is unique in its combination of level of complexity, volume of material, and distribution of content compared to other government web content. These qualities distinguish it from other government entities' web contents, which necessitate a separate estimation approach. Though literature on the cost of remediating course content to WCAG 2.1 Level AA is sparse, the Department used findings from Farr et al. (2009) [226] and the National Center on Disability and Access to Education (''NCDAE'') GOALS Course Cost Case Study (2014),[227] to estimate the cost to remediate a course to be $1,690. Each of these studies presented ranges of cost estimates for ''simple'' and ''complex'' courses.[228] To generate an average course cost, the Department took the midpoint of the given ranges and generated a weighted average from the two studies' ''simple'' and ''complex'' course cost estimates using survey data from Farr et al. (2009) that estimated 40 percent of classes to be complex, and 60 percent of classes to be simple.[229] A full explanation of the Department's methodology on course cost estimates can be found in Section 3.5.2.3 of the accompanying PRIA.

The Department then multiplied the sum of the number of all institutions' first semester courses requiring remediation by the cost per course to estimate a total first-semester cost to remediate courses. The Department expects the first semester to be the most expensive as it will be the semester with the smallest amount of existing compliance, and therefore the greatest number of classes that are out of compliance with WCAG 2.1 Level AA. In subsequent semesters, those courses that have been previously remediated will already be accessible, meaning the total pool of classes needing remediation will decrease over time. The Department estimates that 46 percent of all classes offered between community colleges and four-year and postgraduate institutions will be remediated in the first semester, costing a total of $2.2 billion. On a per-student basis, this is $170 for four-year and postgraduate institutions and $136 for community colleges. A full explanation of the Department's methodology can be

[223] *See* Section 3.5, Postsecondary Education, in the accompanying PRIA for the Department's methodology.

[224] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible,* MPR Associates, Inc. (May 2009), *https://files.eric.ed.gov/fulltext/ED537862.pdf* [*https://perma.cc/LFT7-R2CL*].

[225] Cyndi Rowland, *GOALS Cost Case Study: Cost of Web Accessibility in Higher Education,* Gaining Online Accessible Learning through Self-Study (Dec. 2014), *https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf* [*https://perma.cc/UH6V-SBTU*].

[226] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible,* MPR Associates, Inc. (May 2009), *https://files.eric.ed.gov/fulltext/ED537862.pdf* [*https://perma.cc/LFT7-R2CL*].

[227] Cyndi Rowland et al., *GOALS Cost Case Study: Cost of Web Accessibility in Higher Education,* Gaining Online Accessible Learning through Self-Study (Dec. 2014), *https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf* [*https://perma.cc/UH6V-SBTU*].

[228] ''Simple'' courses are loosely defined as courses that mostly house images and documents.

[229] *See* Farr et al., at 5. As part of this study, experts were interviewed on online learning to estimate the proportion of classes which are simple or complex. These estimates are discussed throughout the paper and are first referenced on page 5.

found in Section 3.5, Postsecondary Education of the accompanying PRIA.

To calculate second-semester classes requiring remediation, the Department used the same proportion of classes needing remediation but calculated a new number of classes that are eligible for remediation. The Department estimates that there is a 50 percent overlap in classes offered during semester one and semester two. Using that estimate, the Department calculated the number of second semester classes eligible for remediation as half the number of classes in the first semester plus the courses which are offered both semesters but were not remediated in semester one. The Department estimates that 563,214 public four-year and postgraduate courses and 269,294 community college courses will need to be remediated in semester two, which will cost a total of $1.4 billion. Because the Department's estimated rate of remediation is relatively high (the modeling above yields a 75 percent remediation rate in semester one for four-year institutions, and a 60 percent remediation rate in semester one for community colleges), the Department assumed that by the end of the second year of remediation, all postsecondary institutions will have remediated all currently offered courses. For the Department's detailed methodology, see Section 3.5.2.2, Probabilistically Calculating the Rate of Course Remediation, of the accompanying PRIA.

Following this remediation period, the Department estimates yearly O&M costs to be 15 percent of initial remediation costs, amounting to $253 per class. As discussed more fully in its PRIA, the Department estimates general O&M costs to be 10 percent of total remediation costs. Given that course content often contains video-based lectures requiring closed captioning, and content that is updated more frequently than general web content, the Department assumes a 50 percent higher O&M cost for course content than for general web content. Additionally, this 50 percent higher estimate accounts for the cost of developing new accessible courses. The full 10-year costs of the rule for course remediation and O&M costs are presented in Table 23, along with PV and annualized costs. A full explanation of the Department's methodology can be found in Section 3.5, Postsecondary Education, of the PRIA.

TABLE 23—PROJECTED 10-YEAR COSTS FOR COURSE REMEDIATION [230]

[Millions]

Institution type	Public university	Community college	Total
Year 1	$0	$0	$0
Year 2	0	0	0
Year 3	2,473	1,104	3,577
Year 4	1,069	748	1,817
Year 5	609	326	936
Year 6	609	326	936
Year 7	609	326	936
Year 8	609	326	936
Year 9	609	326	936
Year 10	609	326	936
PV, 3% discount rate	6,147	3,245	9,391
PV, 7% discount rate	5,051	2,658	7,708
Annualized cost, 3% discount rate	721	380	1,101
Annualized cost, 7% discount rate	719	378	1,097

e. Elementary and Secondary Class or Course Content Remediation

Under the proposed rule, password-protected course content (*e.g.,* content provided through third-party learning management systems) in a public elementary or secondary school generally must be made accessible when a student with a disability is enrolled in the course or when a student is enrolled whose parent has a disability. This section summarizes the Department's analysis of the costs for elementary and secondary education institutions to make this content accessible, which is discussed in depth in Section 3.6, Elementary and Secondary Course Content Remediation, of the PRIA. Much of the methodology used is similar to that for course remediation costs for postsecondary education. The Department estimates that annualized costs with a 3 percent discount rate for elementary and secondary education institutions are $195 million. Additionally, these institutions will incur some O&M costs after implementation.

NCES publishes a list of all public schools in the United States with enrollment counts by grade level for kindergarten (grade K) through 12th grade.[231] Best available estimates suggest 66 percent of all schools (public and private) have an LMS and the Department assumed that this number will not change significantly in the next 10 years in the presence or absence of this rule.[232] The Department made this assumption due to a lack of available data, and the Department notes that even if there were an increase in the percent of schools with an LMS, this would increase both costs and benefits, likely resulting in a nominal impact to the net benefits of the rule. Using these data, the number of public schools with an LMS was computed by grade level. The Department estimated the number of unique classes or courses offered per school and per grade level, and then used this value to calculate the total number of LMS classes or courses that must be remediated in each school.[233]

[230] *See* Section 3.5, Postsecondary Education, in the accompanying PRIA for the Department's methodology.

[231] Institute of Education Sciences, *ELSI Elementary/Secondary Information System 2020–21 Public School Student Enrollments by Grade,* National Center for Education Statistics, *https://nces.ed.gov/ccd/elsi/default.aspx.* A Perma archive link was unavailable for this citation.

[232] Frank Catalano, *Pandemic Spurs Changes in the Edtech Schools Use, From the Classroom to the Admin Office,* EdSurge (Jan. 2021), *https://www.edsurge.com/news/2021-01-26-pandemic-spurs-changes-in-the-edtech-schools-use-from-the-classroom-to-the-admin-office* [*https://perma.cc/N2Y3-UKM2*].

[233] To the extent that the percentage of public schools with an LMS is lower than the percentage

Continued

Table 24 presents the assumptions for the number of unique LMS classes or courses offered per grade level, based on the Department's best professional judgment. The number of unique classes or courses is lower for earlier grade levels [234] and increases in higher grade levels as education becomes more departmentalized (*i.e.,* students move from teacher to teacher for their education in different subjects) and schools generally introduce more elective offerings as students progress toward grade 12.[235]

TABLE 24—CALCULATION OF ELEMENTARY AND SECONDARY CLASS OR COURSE REMEDIATION COSTS, BY GRADE LEVEL

Grade level	Number of schools [a]	Number of schools with an LMS [b]	Number of LMS courses per grade level	Number of courses to remediate	Cost to remediate a year-long course	Total cost (millions)
K	52,155	34,422	1	34,422	$182	$6.3
1	52,662	34,757	1	34,757	182	6.3
2	52,730	34,802	1	34,802	182	6.3
3	52,661	34,756	1	34,756	182	6.3
4	52,363	34,560	1	34,560	182	6.3
5	50,903	33,596	7	235,172	364	85.7
6	35,032	23,121	7	161,848	364	59.0
7	29,962	19,775	7	138,424	364	50.5
8	30,161	19,906	7	139,344	364	50.8
9	23,843	15,736	14	220,309	994	219.0
10	24,200	15,972	14	223,608	994	222.3
11	24,322	16,053	14	224,735	994	223.4
12	24,304	16,041	14	224,569	994	223.2
Total	N/A	N/A	N/A	N/A	N/A	1,165.4

[a] This represents the number of schools with nonzero enrollment in the listed grade level. As such, a single school can be represented on multiple rows.
[b] This represents the number of schools with an LMS and nonzero enrollment in the listed grade level.

As discussed in its assessment of postsecondary education costs, the Department estimated costs to remediate a single postsecondary course using two estimates from Farr et al. (2009) [236] and the NCDAE GOALS Course Case Study.[237] Those papers also estimate the cost of remediating a ''simple'' college course. The Department assumes that a high school course is equivalent in its complexity to a ''simple'' college course and used estimates on time spent on homework to scale course costs for different grade levels. For a more complete discussion of course cost estimates, please see Section 3.6 of the accompanying PRIA. Summing across all grade levels yields total costs of $1.2 billion. Table 25 presents the costs incurred in the first 10 years following promulgation of the rule, by entity type. For each year after completing class or course remediation, the Department assumed elementary and secondary school districts would incur an O&M cost equal to 10 percent of the initial remediation cost. The Department assumes costs will not be incurred until the year required by the rule (Year 4 for small entities and Year 3 for large entities) because classes or courses would not be remediated until necessary. The Department expects that elementary and secondary classes or courses will be remediated at a faster rate than postsecondary courses, given that the proposed rule generally requires elementary and secondary educational web content to be accessible if requested by *either* the child or their parent(s), whereas postsecondary course provisions in the rule do not provide for parent(s) to request accessible web content. As such, the Department expects that virtually all class or course content will be remediated by elementary and secondary educational institutions in the first year required under the rule.

TABLE 25—PROJECTED 10-YEAR COURSE REMEDIATION COSTS

[Millions]

Time period	Cost for small school districts	Cost for large school districts	Total costs
Year 1	$0	$0	$0
Year 2	0	0	0
Year 3	0	551	551
Year 4	614	55	670
Year 5	61	55	117

of private schools, the analysis presented here overestimates the true elementary and secondary class or course remediation costs.

[234] Standardized curricula and relatively lower mean enrollments in earlier grade levels tend to decrease the number of unique class or course offerings per grade level, which would reduce the number of LMS classes or courses that must be remediated.

[235] According to NCES, in the 2017–2018 school year, 24 percent of elementary school classes were departmentalized, compared to 93 percent of middle schools and 96 percent of high schools. *National Teacher and Principal Survey,* NCES, *https://nces.ed.gov/surveys/ntps/tables/ntps1718_fltable06_t1s.asp* [*https://perma.cc/8XAK-XK4L*].

[236] Beverly Farr et al., *A Needs Assessment of the Accessibility of Distance Education in the California Community College System Part II: Costs and Promising Practices Associated with Making Distance Education Courses Accessible,* MPR Associates, Inc. (May 2009), *https://files.eric.ed.gov/fulltext/ED537862.pdf* [*https://perma.cc/LFT7-R2CL*].

[237] Cyndi Rowland et al., *GOALS Cost Case Study: Cost of web accessibility in higher education,* Gaining Online Accessible Learning through Self-Study, (Dec. 2014), *https://www.ncdae.org/documents/GOALS_Cost_Case_Study.pdf* [*https://perma.cc/UH6V-SBTU*].

TABLE 25—PROJECTED 10-YEAR COURSE REMEDIATION COSTS—Continued

[Millions]

Time period	Cost for small school districts	Cost for large school districts	Total costs
Year 6	61	55	117
Year 7	61	55	117
Year 8	61	55	117
Year 9	61	55	117
Year 10	61	55	117
PV, 3% discount rate	842	818	1,660
PV, 7% discount rate	692	692	1,384
Annualized cost, 3% discount rate	99	96	195
Annualized cost, 7% discount rate	99	99	197

f. Costs for Third-Party Websites and Mobile Apps

Some government entities use third-party websites and mobile apps to provide government services, programs, and activities. The Department estimated costs to modify existing third-party websites that are used to provide government services. Third-party costs related to mobile apps are unquantified because the Department was unable to find existing data or literature on the subject.

These numbers should be interpreted with caution because they include significant uncertainty. Limited information exists regarding the number of third-party websites and mobile apps employed by government entities. Additionally, little research has been conducted assessing how government entities use third-party website and mobile app services.

To estimate costs incurred from third-party website compliance, the Department used a convenience sub-sample of the full sample of government entities. This sub-sample includes 106 government entities and was not stratified to ascertain representativeness among various government entities. The Department used SortSite inventory reports to identify third-party websites that provide government services on behalf of sampled government entities. Counts were then adjusted to reflect that some third-party websites are used by more than one government. For each government entity type, the Department calculated the ratio of third-party websites in the sample to total government websites in the sample. Across all entity types, the average ratio is 0.042, or 4.2 percent.

The Department reviewed the literature for reputable estimates of the average cost of modifying a third-party website that provides government services to the public for WCAG 2.1 AA compliance. In the absence of existing reputable estimates, the Department opted to use average government website testing and remediation costs generated in this study as an approximation. Government website testing and remediation cost estimates for each government entity type were multiplied by the third-party to government website ratios to estimate costs from third-party website compliance with WCAG 2.1 AA.

In aggregate, there are estimated to be 0.04 third-party websites for every government website. If all costs were passed along to governments, governments would incur additional costs for remediating third-party websites equivalent to about 4 percent of the costs to test and remediate their own websites. The present value of total 10-year costs incurred from third-party website compliance is estimated to be $671.7 million at a discount rate of 3 percent and $587.8 at a discount rate of 7 percent. These values are displayed in Table 26.

TABLE 26—PROJECTED TOTAL COSTS OF REMEDIATING THIRD-PARTY WEBSITES

[Millions]

Time period	Total costs (all entities)
Year 1	$165.2
Year 2	181.9
Year 3	112.1
Year 4	41.6
Year 5	41.6
Year 6	41.6
Year 7	41.6
Year 8	41.6
Year 9	41.6
Year 10	41.6
PV of 10-year costs, 3% discount rate	671.7
Annualized costs, 3% discount rate	78.7
PV of 10-year costs, 7% discount rate	587.8
Annualized costs, 7% discount rate	83.7

g. Sensitivity and Uncertainty Analyses of Costs

The Department's cost estimates rely on a variety of assumptions based on literature and other information that, if changed, could impact the cost burden to different government entities. To better understand the uncertainty behind its cost estimates, the Department performed several sensitivity analyses on key assumptions in its cost model. A full summary of the Department's high and low-cost estimates is in Table 28. Other assumptions not altered here also involve a degree of uncertainty and so these low and high estimates should not be considered absolute bounds.

For website testing and remediation costs, the Department adjusted its estimate of the effectiveness of automated accessibility checkers such as SortSite at identifying accessibility errors. In its primary analysis, the Department relied on its own manual assessment of several web pages to estimate the fraction of remediation time that the errors SortSite caught accounted for among all errors present. This approach found that SortSite caught errors corresponding to 50.6 percent of the time needed to remediate a website, leading to a manual adjustment factor of 1.98. This manual adjustment factor was multiplied by the remediation time estimated using the SortSite output for each website in the sample. Vigo, Brown, and Conway (2013), by contrast, found that SortSite correctly identified 30 percent of the accessibility errors on a given website.[238] This finding is not

[238] Markel Vigo et al., *Benchmarking Web Accessibility Evaluation Tools: Measuring the Harm of Sole Reliance on Automated Tests,* International Cross-Disciplinary Conference on Web Accessibility (May 2013), *https://www.researchgate.net/profile/Markel-Vigo/publication/262352732_Benchmarking_web_accessibility_evaluation_tools_Measuring_the_harm_of_sole_reliance_on_automated_tests/links/56333eee08ae911fcd4a99a7/Benchmarking-web-accessibility-evaluation-tools-*

Continued

necessarily inconsistent with the results of the Department's analysis, however, since the paper's authors merely count instances of errors, without considering the relative severity of errors. Nevertheless, the Department conservatively replicated its analysis using the 30 percent estimate for SortSite's comprehensiveness, which amounts to an adjustment factor of 3.33. This altered assumption resulted in a 10-year total website testing and remediation cost of $19.2 billion at a 3 percent discount rate, which is $7.2 billion more than the primary estimate of $12.0 billion. The analysis for estimating costs of remediating third-party websites was replicated using the same altered assumption of SortSite's comprehensiveness, resulting in a 10-year total third-party website testing and remediation cost of $1.1 billion. This is $400 million more than the primary estimate of $672 million.

The Department also reexamined its assumptions concerning PDFs that State and local government entities would choose to remediate. In the primary analysis, it was assumed that only those PDFs that had last been modified prior to 2012 would be removed or archived rather than remediated. This assumption resulted in an estimate that 15 percent of PDFs currently hosted on government websites would be taken down or archived. To approximate an upper bound on the number of PDFs government entities would choose to archive, the Department reconducted its website cost analysis with the assumption that 50 percent of PDFs on State and local government entities' websites would be archived or removed rather than remediated. This calculation resulted in website costs of $11.6 billion discounted at 3 percent over 10 years, $311 million less than the primary estimate of $12.0 billion. Once again, the analysis for estimating costs of remediating third-party websites (described in Section VI.A.4.f of this preamble) was replicated using this altered PDF archival rate, resulting in a 10-year total third-party website testing and remediation cost of $654 million. This is $17 million less than the primary estimate of $672 million.

For postsecondary course remediation cost, the Department calculated costs over an increased timeline to generate a low-cost estimate. In its initial calculations, the Department estimated disability prevalence using SIPP data, calculated that the majority of classes will be remediated in the first year following the implementation of the rule, and determined that any outstanding classes will be remediated in the second year. However, the prevalence rates used from SIPP data are higher estimates than estimates from the American Community Survey (''ACS''). If the true disability prevalence of the college population is lower than was estimated for these analyses, then fewer courses will need remediation per year. The Department found that in a scenario where one third of courses are remediated per year, the annualized cost at a 3 percent discount rate is $992 million, $109 million less than its primary estimate.[239]

To generate a high-cost estimate for higher education, the Department evaluated a higher per-course remediation cost. In its primary estimates, the Department used data from two studies that estimated costs to make a course accessible. These studies were conducted in 2009 and 2014 respectively, and the online landscape of postsecondary education has changed since then. COVID–19 and the subsequent distance learning at higher education institutions may have increased the amount of course content that is offered through online portals. If this is the case, it is possible that there is more content that needs to be remediated than there was at the time of the studies on which the Department bases its course cost estimates, and that because of that there is less accessible course content.[240] To account for this, the Department used the higher estimates for complex course remediation given in Farr et al. (2009) and the GOALS Cost Case Study from the NCDAE to estimate a cost of $1,894 per course (compared with $1,690 in the primary estimate), and an O&M cost of $284 per course (compared with $253 in the primary estimate). Under these conditions, the Department found the annualized cost of course content remediation to be $1.21 billion, $112 million more than its primary estimates.

To estimate class or course remediation costs for elementary and secondary institutions, the Department made assumptions about the number of LMSs that students interface with at each grade level. In addition, the Department had to estimate the average cost to remediate each of those LMS's content to be compliant with WCAG 2.1 Level AA. The Department performed a sensitivity analysis on these assumptions to create upper and lower bounds on cost.

For the upper bound, the Department increased the number of LMSs that students interact with in each semester. The Department raised the assumption from 1 LMS to 2 for students in grades K–4, from 7 LMSs to 10 in grades 5–8, and from 14 LMSs to 20 in grades 9–12. In addition, the Department created a continuum of costs between its low estimate of $182 and its high estimate of $994, allocating costs that increase linearly with each subsequent grade level, and effectively raising the average cost to remediate class or course content. These changes raised the annualized cost with a 3 percent discount rate from $195 million to $312 million.

For the lower bound, the Department adjusted the same parameters downwards. The Department kept the same estimate of one LMS for grades K–4, decreased the number of LMSs for grades 5–6 from seven to five, and decreased the number of LMSs for grades 9–12 from 14 to 10. For class or course remediation costs, the Department halved the estimated costs to remediate a class for all grades. When applying these changes, the annualized cost with a 3 percent discount rate decreased from $195 million dollars to $75 million dollars.

The Department conducted sensitivity analyses to assess the mobile apps cost model by varying the assumption that the cost to test and modify an existing mobile app for accessibility is equal to 65 percent of the cost to build an ''average'' mobile app. In the sensitivity analysis the Department assumed that State and local government entities mostly control either ''simple'' or ''complex'' mobile apps, rather than ''average'' mobile apps. Simple mobile apps are less costly to build than the average mobile app. The expected cost of building a simple mobile app is estimated to be $50,000, compared with $105,000 for an average mobile app.[241] The cost of testing and modifying a simple mobile app for accessibility is assumed to be 65 percent of the cost to build a simple mobile app, equal to $32,500. Using this assumption based on simple mobile apps, PV of total mobile app testing and remediation

Measuring-the-harm-of-sole-reliance-on-automated-tests.pdf . A Perma archive link was unavailable for this citation.

[239] The Department chose ⅓ to create a scenario with a more flexible remediation timeline, which implies that all courses get remediated within three years instead of two.

[240] Conversely, it is also possible that a shift to online learning has made the higher education community more aware of web accessibility issues, and therefore increased the rate of WCAG 2.1 compliance.

[241] SPD Load, *How Much Does It Cost to Develop an App in 2022? Cost Breakdown, https://spdload.com/blog/app-development-cost/* [*https://perma.cc/Y2RM-X7VR*].

costs decreases from $597.8 million to $285.7 million.

Conversely, complex mobile apps are costlier to build than both simple mobile apps and the ''average'' mobile app. The expected cost of building a complex mobile app is $300,000, compared with $105,000 for the average mobile app.[242] The cost to test and modify a complex mobile app for accessibility is assumed to be 65 percent of the cost to build a complex mobile app, equal to $195,000. Using this assumption based on complex mobile apps, PV of total mobile app testing and remediation costs increase from $597.8 million to $1.1 billion.

The parameters changed for each analysis can be found in Table 27, and the total aggregated lower and higher estimates can be found in Table 28. Based on the Department's sensitivity analyses, total 10-year costs discounted at 7 percent would likely be between $18.4 and $29.5 billion.

The Department's sensitivity analysis parameters are presented in Table 27, and the Department's sensitivity analyses of total costs are presented in Table 28.

TABLE 27—SENSITIVITY ANALYSIS PARAMETERS

Cost	Bound	Variations
Higher education course remediation.	Lower estimate	Increased remediation timeline.
Higher education course remediation.	Higher estimate	Higher course cost.
Website costs	Lower estimate	Increased rate of PDF archival.
Website costs	Higher estimate	Lower effectiveness of automated accessibility checkers.
Mobile app costs	Lower estimate	Assume government apps are ''simple.''
Mobile app costs	Higher estimate	Assume government apps are ''complex.''
Elementary and secondary class or course remediation costs.	Lower estimate	Assume fewer LMS classes or courses, lower class or course cost.
Elementary and secondary class or course remediation costs.	Higher estimate	Assume more LMS classes or courses, higher class or course cost.

TABLE 28—SENSITIVITY ANALYSES OF TOTAL COSTS

[Millions]

Time period	Primary	High estimate	Low estimate
Year 1	$3,361	$5,462	$3,145
Year 2	3,646	5,935	3,422
Year 3	6,402	8,986	4,030
Year 4	3,270	3,756	2,716
Year 5	1,836	2,485	2,835
Year 6	1,836	2,485	1,743
Year 7	1,836	2,485	1,743
Year 8	1,836	2,485	1,743
Year 9	1,836	2,485	1,743
Year 10	1,836	2,485	1,743
PV of 10-year costs, 3% discount rate	24,302	34,420	21,712
Average annualized costs, 3% discount rate	2,849	4,035	2,545
PV of 10-year costs, 7% discount rate	20,724	29,527	18,407
Average annualized costs, 7% discount rate	2,951	4,204	2,621

h. Cost to Revenue Comparison

To consider the relative magnitude of the estimated costs of this proposed regulation, the Department compares the costs to revenues for State and local government entities. Because the costs for each government entity type are estimated to be well below 1 percent of revenues, the Department does not believe the rule will be unduly burdensome or costly for public entities.[243] Costs for each type and size of government entity are estimated to be well below this 1 percent threshold.

The Department estimated the proportion of total local government revenue in each local government entity type and size using the 2012 U.S. Census Bureau's database on individual local government finances.[244] To evaluate which government entities continue to be small, the Department applied the U.S. Census's Bureau's population growth rates by State to the population numbers in the individual local government finances data to estimate 2020 population levels.[245]

To calculate population estimates for independent school districts, the Department used a methodology that is inconsistent with the population provisions in the proposed rule's regulatory text because the local government finances data only include enrollment numbers, not population

[242] *Id.*

[243] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*].

[244] U.S. Census Bureau, *Historical Data* (Oct. 2021), *https://www.census.gov/programs-surveys/cog/data/historical-data.html* [*https://perma.cc/UW25-6JPZ*]. The Department was unable to find more recent data with this level of detail.

[245] U.S. Census Bureau, *Historical Population Change Data (1910–2020)* (Apr. 26, 2021), *https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html* [*https://perma.cc/RYQ3-VX9Q*]. Population numbers in the 2012 data are from different years, so the Department applied a growth rate based on the specified date for each entity.

numbers. Detailed information on this methodology can be found in the full PRIA.

The Department applied these proportions of governments in each entity type to the total local government revenue estimate from the U.S. Census Bureau's State and Local Government Finances by Level of Government and by State: 2020, updated to 2021 dollars.[246] Table 29 contains the average annualized cost using a 3 percent and 7 percent discount rate,[247] 2020 annual revenue estimates, and the cost-to-revenue ratios for each entity type and size. The costs are less than 1 percent of revenues in every entity type and size combination, so the Department believes that the costs of this proposed regulation would not be overly burdensome for the regulated entities.

Costs for postsecondary institutions were analyzed separately from other government entities. For public universities, which tend to be State dependent, the Department has included costs with State governments to ensure the ratio of costs to revenues is not underestimated. For community college independent districts, the Department has revenue data.

TABLE 29—COST-TO-REVENUE RATIOS BY ENTITY TYPE AND SIZE[248]

Type of government entity	Size	Average annualized cost (millions) 3% discount rate	Average annualized cost (millions) 7% discount rate	Annual revenue (millions) [a]	Cost to revenue 3% discount rate (%)	Cost to revenue 7% discount rate (%)
State	Small	N/A	N/A	N/A	N/A	N/A
State	Large	$867	$877	$2,846,972	0.03	0.03
County	Small	20	21	65,044	0.03	0.03
County	Large	126	135	448,212	0.03	0.03
Municipality	Small	342	362	184,539	0.19	0.20
Municipality	Large	100	108	524,589	0.02	0.02
Township	Small	244	257	55,819	0.46	0.48
Township	Large	8	9	12,649	0.07	0.07
Special district	N/A	73	77	278,465	0.03	0.03
School district [b]	Small	366	384	330,746	0.12	0.12
School district [b]	Large	208	218	311,614	0.07	0.07
Territory	Small	0	0	1,243	0.02	0.02
Territory	Large	1	1	38,871	0.00	0.00
Public university [c]	N/A	N/A	N/A	N/A	N/A	N/A
Community college [d]	N/A	163	166	38,445	0.44	0.45

[a] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), *https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html* [*https://perma.cc/QJM3-N7SG*]. Inflated to 2021 dollars using GDP deflator.
[b] Excludes colleges and universities.
[c] Almost all public universities are State-dependent; costs included in the State entity type.
[d] Census of Governments data include revenue numbers only for independent community colleges. The costs included correspond to the proportion of the total number of community colleges that are independent.

5. Benefits Analysis

a. Summary of Benefits for Persons With and Without Relevant Disabilities

Websites and mobile apps are common resources to access government services, programs, and activities. For example, during a 90-day period in summer 2022, there were nearly 5 billion visits to Federal Government websites.[249] Aggregate data are unavailable for State and local government entities' websites, but based on the analysis in Section 2 of the PRIA, the Department estimates there are roughly 109,900 public entity websites, and based on the analysis in Section 4.3.2 of the PRIA, the Department estimates these websites have 22.8 billion annual visits. Unfortunately, services, programs, and activities that State and local government entities provide online are not always fully accessible to individuals with disabilities. Conformance with WCAG 2.1 Level AA would increase availability of these resources to individuals with disabilities that affect web and mobile app access (*i.e.,* vision, hearing, cognitive, and manual dexterity disabilities). These individuals are referred to as ''individuals with relevant disabilities'' or ''individuals with certain types of disabilities.'' Conformance would also result in benefits to individuals without these disabilities because accessible websites incorporate features that benefit all users, including individuals with other types of disabilities and individuals who do not have disabilities.

This section summarizes the benefits of conformance with WCAG 2.1 Level AA for both individuals with and without relevant disabilities. The Department calculated the primary types of disabilities impacted by WCAG 2.1 Level AA and prevalence rates for each disability type. The Department also considered how individuals without relevant disabilities may benefit. For purposes of this analysis, ''individuals without relevant disabilities'' are individuals who do not have vision, hearing, cognitive, or manual dexterity disabilities; these may be individuals with other disabilities or

[246] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 20, 2022), *https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html* [*https://perma.cc/QJM3-N7SG*].

[247] The estimated costs for dependent community colleges are not included in this table because the Department is unable to determine how to distribute these entities' costs across the other types of State and local entities. Additionally, it is unclear if all public college and university revenue (*e.g.,* tuition and fees) are included in the revenue recorded for the State or local entities on which the school is dependent. Finally, the low cost-to-revenue ratio for the independent community colleges indicate that these would not increase the cost to revenue above 1 percent for any entity type and size.

[248] *See* Section 3.9, Cost to Revenue Comparison, in the accompanying PRIA.

[249] General Services Administration Digital Analytics Program, *https://analytics.usa.gov/* [*https://perma.cc/2YZP-KCMG*] (data retrieved on Aug. 8, 2022). While this rule will not apply to the Federal Government, this statistic is provided for analogy to show the proliferation of government services offered online.

individuals with no disability. The Department then monetized benefits where applicable. These monetized benefits are predominantly associated with time savings. The Department estimates that average annualized benefits will total $8.9 billion, using a 7 percent discount rate, and $9.3 billion using a 3 percent discount rate. Finally, the Department qualitatively described additional benefits that could not be quantified.

b. Types of Disabilities Affected by Accessibility Standards

Accessibility standards can benefit individuals with a wide range of disabilities, including vision, hearing, cognitive, speech, and physical disabilities. The Department focused on those with vision, hearing, cognitive, and manual dexterity disabilities because WCAG 2.1 Level AA success criteria more directly benefit people with these disability types.[250] However, the Department emphasizes that benefits for other disability types are also important and that excluding those disabilities may underestimate benefits. Additionally, disability prevalence rates may underestimate the number of people with a disability due to underreporting. As part of its analysis, the Department estimated that 19.9 percent of adults have a relevant disability for purposes of this analysis. Table 30 presents prevalence rates for each of these four types of disability.

The number of individuals with disabilities impacted by this rule may be smaller or larger than the numbers shown here. According to the Pew Research Center, 27 percent of people have a disability, as compared to the 19.9 percent figure used in this analysis.[251] Conversely, not all individuals with vision, hearing, cognitive, or manual dexterity disabilities may be impacted by the proposed rulemaking. For example, ''cognitive disabilities'' is a broad category and some people with cognitive disabilities may not experience the same benefits from web accessibility that others do.

The Department recognizes that accessibility can also produce significant benefits for individuals without relevant disabilities. For instance, many individuals without physical disabilities enjoy the benefits of physical accessibility features currently required under the ADA. For example, curb ramps, other ramps, and doors with accessible features can be helpful when pushing strollers or dollies. In the web context, experts have recognized that accessible websites are generally better organized and easier to use even for persons without relevant disabilities.[252] This can result in benefits to the general public. The population of persons without relevant disabilities is derived as the remainder of the population once individuals with the four disabilities discussed above are removed. The Department estimates that there are 202.3 million Americans without relevant disabilities.

Companions [253] may also benefit from this proposed rulemaking because they will not need to spend as much time assisting with activities that an individual with a disability can now perform on their own. Companions can then spend this time assisting with other tasks or engaging in other activities. Estimates on the number of companions vary based on definitions, but according to the AARP, there are 53 million ''unpaid caregivers'' in the United States.[254] This number includes companions to those with disabilities other than disabilities applicable to web accessibility. There are also 4.7 million direct care workers in the United States.[255] Benefits to companions are not quantified, but they are discussed further in Section VI.A.5.d of this preamble.

TABLE 30—DISABILITY PREVALENCE COUNTS, SIPP 2021

Disability type	Prevalence rate (%)	Number (millions)	Cumulative prevalence rate [a] (%)	Cumulative number [a] (millions)
Vision	4.8	12.2	4.8	12.2
Hearing	7.5	19.0	6.1	15.3
Cognitive	10.1	25.5	6.7	16.9
Manual dexterity	5.7	14.3	2.3	5.7
None of the above	80.1	202.3	80.1	202.3

See U.S. Census Bureau, Survey of Income and Program Participation—About this Survey (Aug. 2022), *https://www.census.gov/programs-surveys/sipp/about.html* [*https://perma.cc/Z7UH-6MJ8*]; *see also* Section 4.2, Types of Disabilities Affected by Accessibility Standards, in the accompanying PRIA for more details on the Department's findings.

[a] Individuals with multiple qualifying disabilities are counted within the first disability category listed (*e.g.,* if someone has a cognitive and vision disability, they are included in the vision disability prevalence rate).

c. Monetized Benefits

The Department monetized five benefits of accessible public entity websites and mobile apps (Figure 1). The Department's conclusions are described in this summary, and more detail about its methodology and assumptions are included in Section 4.3, Monetized Benefits, in the accompanying PRIA. The five monetized benefits and their estimated monetary value are:

- Time savings for current users of State and local government entities' websites ($4.2 billion per year),
- Time savings for those who switch modes of access (*i.e.,* switch from other modes of accessing State and local government entities' services, programs,

[250] *See* W3C®, *Introduction to Web Accessibility, https://www.w3.org/WAI/fundamentals/accessibility-intro/* (Mar. 31, 2022) [*https://perma.cc/79BA-HLZY*].

[251] Susannah Fox & Jan Lauren Boyles, *Disability in the Digital Age,* Pew Research Center (Aug. 6, 2012), *https://www.pewinternet.org/2012/08/06/disability-in-the-digital-age/* [*https://perma.cc/9RBM-PD78*].

[252] *See* W3C®, *The Business Case for Digital Accessibility* (Nov. 9, 2018), *https://www.w3.org/WAI/business-case/* [*https://perma.cc/K5AF-UYWS*].

[253] A companion may refer to a family member, friend, caregiver, or anyone else providing assistance.

[254] AARP National Alliance for Caregiving, *Caregiving in the United States 2020,* AARP (May 14, 2020), *https://www.aarp.org/ppi/info-2020/caregiving-in-the-united-states.html* [*https://perma.cc/QBQ2-L94W*]. The term ''unpaid caregiver'' as used in the AARP report is comparable to this analysis' use of the term companion to refer to family members, friends, caregivers, or anyone else providing assistance.

[255] PHI, *Understanding the Direct Care Workforce, https://www.phinational.org/policy-research/key-facts-faq/* [*https://perma.cc/9DNN-XL23*].

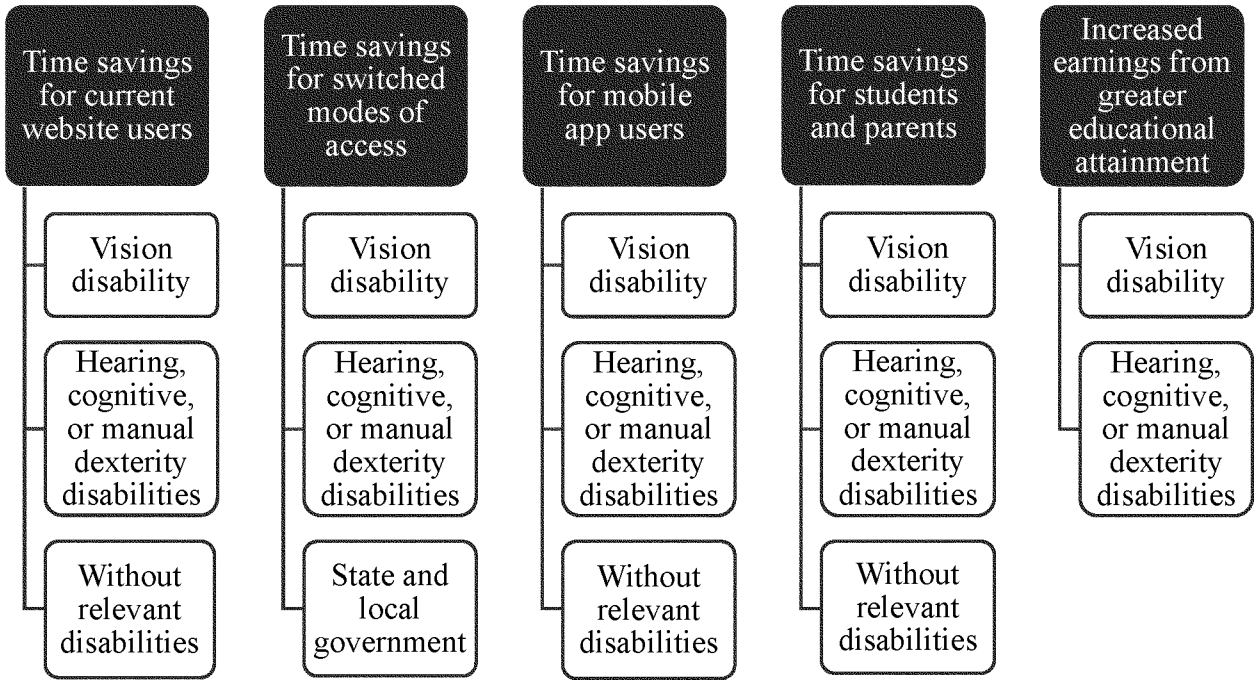
and activities such as phone or mail to the public entities' website) or begin to participate (did not previously partake in the State and local government entities' services, programs, or activities) ($917.4 million per year),

- Time savings for current mobile app users ($390.1 million per year),
- Time savings for students and their parents ($5.1 billion per year), and
- Earnings from additional educational attainment ($262.8 million per year).[256]

All five types of benefits are applicable for those with a relevant disability. For individuals without a relevant disability, benefits are limited to time savings for current users of State and local government entities' websites, current users of mobile apps, and educational time savings. For State and local government entities, monetized benefits include time savings from reduced contacts (*i.e.,* fewer interactions assisting people with disabilities). After calculating current benefit levels for each benefit type, the Department projected benefits over a 10-year period and took into consideration the implementation period. The Department also conducted sensitivity analyses and calculated benefits for regulatory alternatives.

In total, the Department estimated benefits of $8.9 billion per year on an average annualized basis, using a 7 percent discount rate. On a per capita basis, this equates to $35 per adult in the United States.[257]

Figure 1: Flow Diagram Summarizing Beneficiaries and Benefit Components



i. Projected 10-Year Benefits

During the implementation period, benefits will be lower. The proposed rule allows either two or three years for implementation, depending on the public entity's population. With the exclusion of educational benefits (discussed below), the Department believes benefits will fully accrue beginning in Year 4 but that some benefits will exist during the three implementation years as websites and mobile apps become more accessible. The Department assumes that in Year 1 benefits are 27 percent of the level of benefits once compliance is complete; in Year 2 benefits increase to 53 percent; and in Year 3 benefits increase to 80 percent (Table 31).[258]

For course remediation time savings, the Department assumed no benefits would accrue until the implementation period is complete because courses will not be remediated until remediation is requested,[259] and it is unknown in advance which courses will need to be remediated. Therefore, in Year 3, once small entities are affected, 63 percent of potential benefits for postsecondary students will accrue and 53 percent of potential benefits for elementary and secondary students will accrue. In Year 4, full benefits are reached.[260]

[256] Even after the implementation period, the size of the annual benefit increases over time as more cohorts graduate with additional educational attainment. $262.8 million represents the annual benefit to one graduating class.

[257] The Census Bureau estimates 257.9 million adults in the United States in 2020. U.S. Census Bureau, *National Demographic Analysis Tables: 2020* (Mar. 2022), *https://www.census.gov/data/tables/2020/demo/popest/2020-demographic-analysis-tables.html* [*https://perma.cc/7WHV-7CPM*].

[258] The Department assumed benefits accrue at a steady rate over the implementation period. For example, for large entities, benefits increase from 33 percent in Year 1, to 66 percent in Year 2, and 100 percent in Year 3. For small entities, benefits increase from 25 percent in Year 1, to 50 percent in Year 2, to 75 percent in Year 3, and 100 percent in Year 4. The benefits will be 100 percent accrued in Year 3 for large entities and Year 4 for small entities because at the beginning of those years, the implementation period will be over. These accrual rates are weighted by the number of government websites for small versus large governments. Eighty percent of websites are for small entities, despite websites being less common among small entities, because the number of small governments is much larger than the number of large governments.

[259] There are circumstances where courses must be remediated in the absence of a request, such as where an institution should know about the need for accessible materials. This is described in detail in the corresponding section of the preamble.

[260] The Department does not know which institutions are associated with small or large governments. Therefore, the Department assumed that four-year institutions are large entities and community colleges are small entities. For elementary and secondary schools, the Department used the share of students in independent school districts who are in small versus large districts.

For educational attainment, benefits do not accrue until after the additional education is obtained. For simplicity, benefits are assumed to begin in Year 5, after two years of implementation followed by two years of additional educational attainment. The amount of time needed to obtain additional education varies based on the degree, but the Department believes two years is an appropriate average. For example, to move from a high school degree to some college or an associate's degree would take approximately two years. Similarly, to move from some college or an associate's degree to a bachelor's degree would also take approximately two years. The Department only incorporated two years of implementation because most public colleges are under the purview of large governments with a two-year implementation period. Average annualized educational attainment benefits only include additional earnings over this 10-year period, not over the course of a lifetime.

TABLE 31—TIMING OF BENEFITS
[Millions]

Year	Total benefit (million)	Non-education accrual rate (%)	Non-education benefits (millions)	Postsec. accrual rate (%)	Postsec. benefits [a] (million)	Elementary/ secondary accrual rate (%)	Elementary/ secondary benefits [a] (million)	Educational attainment accrual	Education attainment benefits (million)
Year 1	$1,619	27	$1,619	0	$0	0%	$0	0%	$0.0
Year 2	3,239	53	3,239	0	0	0	0	0%	0.0
Year 3	7,756	80	4,858	63	1,447	53	1,452	0%	0.0
Year 4	11,125	100	6,068	100	2,303	100	2,754	0%	0.0
Year 5	11,387	100	6,068	100	2,303	100	2,754	1 cohort	263
Year 6	11,650	100	6,068	100	2,303	100	2,754	2 cohorts ...	526
Year 7	11,913	100	6,068	100	2,303	100	2,754	3 cohorts ...	788
Year 8	12,176	100	6,068	100	2,303	100	2,754	4 cohorts ...	1,051
Year 9	12,439	100	6,068	100	2,303	100	2,754	5 cohorts ...	1,314
Year 10	12,702	100	6,068	100	2,303	100	2,754	6 cohorts ...	1,577

[a] Benefits may begin accruing during the implementation period, but for simplicity, the Department excluded benefits here for these years. The Department only incorporated two years of implementation because most public colleges are under the purview of large governments with a two-year implementation period.

ii. Sensitivity Analysis of Benefits

The benefits calculations incorporate some assumptions and sources of uncertainty. Therefore, the Department has conducted sensitivity analyses on select assumptions to demonstrate the degree of uncertainty in the estimates. Other assumptions not altered here also involve a degree of uncertainty and so these low and high estimates should not be considered absolute bounds.

Average annualized benefits using a 7 percent discount rate are estimated to be $8.9 billion under the primary conditions. Using the low estimate assumptions, they are $6.4 billion and under the high estimate assumptions they are $14.7 billion (Table 32). The variations used for each benefit type are shown in Table 33.

TABLE 32—AVERAGE ANNUALIZED BENEFITS SENSITIVITY ANALYSIS
[Millions] [a]

Beneficiary	Low estimate	Primary	High estimate
Time savings—current users	$2,688.7	$3,416.1	7,284.1
Time savings—new users	170.3	753.5	1,177.3
Time savings—governments	83.6	493.3	578.1
Time savings—mobile apps	252.1	320.4	683.1
Time savings—education	3,043.7	3,504.4	3,803.5
Educational attainment	141.2	449.5	1,167.5
Total	6,379.7	8,937.2	14,693.6

[a] 10-Year average annualized benefits, 7 percent discount rate.

TABLE 33—ASSUMPTIONS AND DATA SOURCES VARIED FOR SENSITIVITY ANALYSIS

Beneficiary	Estimate type	Variations
Time savings—current users	Low	ACS data for prevalence rates, instead of SIPP.
Time savings—current users	High	Same time reduction (24%) for all disabilities.
Time savings—current users	High	Exclude ''n/a'' from SEMRUSH output.
Time savings—new users	Low	ACS data for prevalence rates, instead of SIPP.
Time savings—new users	Low	Usage gap only closes by 75%.
Time savings—new users	Low	Lower transaction time (19 minutes instead of 25).
Time savings—new users	Low	Fewer transactions (6 instead of 8).
Time savings—new users	High	Higher transaction time (31 minutes instead of 25).
Time savings—new users	High	More transactions (10 instead of 8).
Time savings—governments	Low	ACS data for prevalence rates, instead of SIPP.
Time savings—governments	Low	Usage gap only closes by 75%.
Time savings—governments	Low	Lower transaction time (7.5 minutes instead of 10).
Time savings—governments	Low	Fewer transactions (7.5 instead of 6).
Time savings—governments	High	Higher transaction time (12.5 minutes instead of 10).
Time savings—governments	High	More transactions (4.5 instead of 6).
Time savings—mobile apps	Low	ACS data for prevalence rates, instead of SIPP.

TABLE 33—ASSUMPTIONS AND DATA SOURCES VARIED FOR SENSITIVITY ANALYSIS—Continued

Beneficiary	Estimate type	Variations
Time savings—mobile apps	High	Same time reduction (24%) for all disabilities.
Time savings—mobile apps	High	Exclude ''n/a'' from SEMRUSH output.
Time savings—education	Low	ACS data for prevalence rates, instead of SIPP.
Time savings—education	High	Same time reduction (24%) for all disabilities.
Educational attainment	Low	ACS data for prevalence rates, instead of SIPP.
Educational attainment	Low	Smaller share of achievement gap closed.
Educational attainment	High	Benefits begin in Year 3, instead of Year 5.
Educational attainment	High	Larger share of achievement gap closed.

For current website users, the Department altered three assumptions—one for the low estimate and two for the high estimate. First, disability prevalence rates are much lower using ACS data than SIPP data. As explained in Section 2.2 of the accompanying PRIA, the Department believes the SIPP estimates are more appropriate, but ACS numbers are used here for sensitivity. Using ACS data reduces the average annual benefits from $3.4 to $2.7 billion. For the high estimate, rather than assuming the time reduction for individuals with hearing, cognitive, or manual dexterity is equivalent to individuals without a hearing disability, the Department assumes the reduction is equivalent to individuals with vision disabilities. The Department also excluded websites for which SEMRUSH, an online marketing and research tool,[261] did not provide data, rather than assuming values of zero. These two variations increase benefits from $3.4 billion to $7.3 billion.

For new website users and cost savings to governments, the Department altered four assumptions. First, once again, ACS prevalence rates were used in lieu of SIPP estimates. Second, rather than assuming website usage becomes equivalent for individuals with and without relevant disabilities, the Department assumed this gap only closes by 75 percent. Third, the average time spent per transaction was reduced or increased by 25 percent for the low estimate and high estimate, respectively. Fourth, the average number of transactions per year was reduced or increased by 25 percent for the low estimate and high estimate, respectively. Incorporating these alternative assumptions reduces the benefits for new users to $170.3 million when the transactions are reduced or increases the benefits to $1.2 billion when the transactions are increased, from $753.5 million. For cost savings to governments, benefits decrease to $83.6 million when transactions are reduced or increase to $578.1 million when the transactions are increased, from $493.3 million.

For mobile app users, the Department altered three assumptions. These are the same assumptions that were discussed above for current website users (ACS prevalence data, time reduction for individuals with other disabilities, and exclusion of websites not analyzed by SEMRUSH). After making these calculations, benefits either decrease to $252.1 million or increase to $683.1 million from $320.4 million.

For time savings for students and parents, the Department altered two assumptions. The low estimate uses ACS data for prevalence rates instead of SIPP. The high estimate uses a 24 percent time savings for those with hearing, cognitive, and manual dexterity disabilities instead of 21 percent. After making these calculations, benefits decrease to $3.0 billion or increase to $3.8 billion from $3.5 billion.

For benefits of additional educational attainment, the Department altered three assumptions. First, ACS prevalence rates were used instead of SIPP. Second, benefits begin to accrue in Year 3 rather than Year 5. Third, the Department changed the share of the educational achievement gap that would be closed from 10 percent to 5 and 15 percent. After making these calculations, benefits decrease to $141.2 million or increase to $1.2 billion from $449.5 million.

d. Unquantified Benefits

This rulemaking is being promulgated under the ADA—a Federal civil rights law. Congress stated that a purpose of the ADA is ''to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'' [262] This proposed rule is intended to further the ADA's broad purpose by helping to eliminate discrimination against people with disabilities in public entities' web content and mobile apps that are made available to the public or are used to offer their services, programs, and activities. Access to such services, programs, and activities is critical to furthering the Nation's goal, as articulated in the ADA, to ensure ''equality of opportunity, full participation, independent living, and economic self-sufficiency'' for people with disabilities.[263] This access is also critical to promoting the exercise of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, petitioning, and due process of law. This proposed rule, therefore, implicates benefits like dignity, independence, and advancement of civil and constitutional rights for people with disabilities. Such benefits can be difficult or impossible to quantify yet provide tremendous benefit to society. The January 20, 2021, Presidential Memorandum titled ''Modernizing Regulatory Review'' [264] states that the regulatory review process should fully account for regulatory benefits that are difficult or impossible to quantify. Many of the benefits in this proposed rule are exactly the type of benefits contemplated by the Presidential Memorandum.

These benefits are central to this proposed rule's potential impact as they include concepts inherent to any civil rights law—like equality—that will be felt throughout society and personally by individuals with disabilities. Consider, for example, how even a routine example of access to a web-based form could impact a person with a disability. When the online form is accessible, the person with a disability can complete the form (1) at any time they please, even after normal business hours; (2) on their own; (3) without needing to share potentially private information with someone else; and 4) quickly, because they would not need to coordinate a time to complete the form with a companion. Importantly, this is the experience people without relevant disabilities have when accessing online government services. This proposed rule is intended to ensure that people with

[261] For information on this application, see *https://www.semrush.com/features/* [*https://perma.cc/ZZY5-U42Z*].

[262] 42 U.S.C. 12101(b)(1).

[263] *Id.* 12101(a)(7).

[264] 86 FR 7223 (Jan. 20, 2021).

disabilities have the same opportunity to participate in and receive the benefits of the services, programs, or activities that State and local government entities make available to members of the public online.

There are many benefits of this proposed rule—like equality and dignity—that have not been monetized in the PRIA due to limited data availability and inherent difficulty to quantify. Those benefits are discussed here qualitatively. The Department requests comments and data that could assist in quantifying these important benefits so that the Department can also represent them in a way consistent with this proposed rule's costs. The Department recognizes the significant benefits of this rule and the impact the rule will have on the everyday lives of people with disabilities. Thus, the Department seeks the public's assistance in better quantifying the benefits that are discussed qualitatively in this section.

This section's description of the proposed rule's unquantified benefits first discusses benefits to individuals, followed by benefits to State and local government entities.

- Benefits to individuals include, among others:
  - Increased independence, flexibility, and dignity;
  - Increased privacy;
  - Reduced frustration;
  - Decreased assistance by companions;
  - Increased program participation; and
  - Increased civic engagement and inclusion.
- Benefits to governments include, among others:
  - Increased certainty about the applicable technical standard; and
  - Potential reduction in litigation.

i. Increased Independence, Flexibility, and Dignity

Among the most impactful benefits of this rulemaking are greater independence, flexibility, and dignity for people with disabilities. These unquantified benefits will extend beyond just people with disabilities—many other individuals will benefit from more accessible websites, as described in the PRIA. These benefits are also among the most difficult to quantify, given that they will be felt uniquely by each person and are often experienced in many intangible aspects of a person's life. Because of this, the Department was unable to quantify the monetary benefits of increased independence, flexibility, and dignity that will result from this rulemaking. These unquantified benefits are thus briefly described here. This inability to quantify these benefits does not suggest that the Department considers them any less important.

Accessible public entity websites and mobile apps will enable more people with disabilities to independently access State or local government entities' services, programs, and activities. People with disabilities will be able to directly access websites providing essential governmental information and services, without needing to rely on a companion to obtain information and interact with websites and mobile apps. For example, people with disabilities will be able to independently submit forms and complete transactions, request critical public services, communicate more easily with their local public officials, and apply for governmental benefits. The ability to do each of these tasks independently, without paying an assistant or asking for a companion's assistance, creates a substantial benefit. Additionally, online processing with status updates, automated notifications, and automated reminders generates time savings and convenience that those with disabilities will be better able to access when they can independently enroll in government services through websites as a result of this rule. People with disabilities will thus be able to exercise more independence and control over their interactions with State or local government entities, which are unquantified benefits that will accrue from this rulemaking.

Further, this rulemaking will provide increased flexibility for people with disabilities. This is another benefit that is difficult to quantify, so the Department describes it here. Because of this rulemaking, people with disabilities will be better able to access State or local government entities' services, programs, or activities on their own time and at their convenience, without needing to wait for assistance from a companion or a State or local government entity's employee. The ability to conduct certain transactions on a public entity's website, such as paying a utility bill, renewing a business license, or requesting a special trash pickup, gives individuals the ability to conduct these transactions at a time most convenient to them. This greater flexibility should lead to overall improved use of a person's time, as measured by their preferences (thereby enhancing what economists refer to as utility). This greater flexibility could also result in cost savings to individuals with disabilities who might have previously paid an assistant or sought the help of a companion to conduct these transactions. Additionally, when websites are inaccessible, people with disabilities might have to make separate arrangements to conduct a transaction by taking time off work or arranging transportation. Because of greater website accessibility, people with disabilities can schedule these transactions or search for information at a time and place most convenient for them, which results in increased benefits.

Finally, individuals with disabilities will benefit from the dignity that is associated with greater independence and flexibility. This is another benefit that is difficult to quantify, so the Department has included it as an unquantified benefit that will result from this rulemaking. When individuals with relevant disabilities do not need to rely on others to conduct transactions and access services, programs, and activities, they are able to act with the independence and flexibility that individuals without relevant disabilities enjoy, which results in greater feelings of dignity. The knowledge that websites and mobile apps are designed to be inclusive of individuals with disabilities can give people with disabilities a greater sense of dignity rooted in the knowledge that their lives are valued and respected, and that they too are entitled to receive the benefits of State or local government entities' services, programs, and activities, without needing to rely on others. The Department was unable to quantify the monetary value of this benefit, but the Department expects individuals with disabilities to benefit from greater dignity as a result of this rulemaking. This benefit is also associated with a greater sense of confidence, self-worth, empowerment, and fairness, which are also benefits that will accrue as a result of this rulemaking.

ii. Increased Privacy

Accessible websites and mobile apps allow individuals with disabilities to conduct activities independently, without unnecessarily disclosing potentially private information such as banking details, Social Security numbers, and health information to other people. This is because when individuals with disabilities are able to use an accessible website or mobile app, they can rely on security features to convey information online, rather than potentially sharing information with others, such as companions or public entities' employees. Without accessible websites, people with certain types of disabilities may need to share this sensitive information with others

unnecessarily, which could result in identity theft or misuse of their personal information. Additionally, privacy protects individual autonomy and has inherent value. Even the prospect of identity theft may result in people with disabilities sharing less information or needing to take additional measures to protect themselves from having their information stolen. Because of this, there is a benefit that is difficult to quantify in people with disabilities being able to safely and privately conduct important transactions on the web, such as for taxes, healthcare, and benefits applications. The increased privacy and assurances that information will be kept safe online will benefit people with relevant disabilities, though the Department was unable to quantitatively calculate this benefit.

Further, another privacy benefit of this rulemaking is that people with relevant disabilities will have greater access to community resources that require sharing and receiving private information. Sometimes sensitive information may need to be discussed, such as information about physical health, mental health, sexual history, substance use, domestic violence, or sexual assault. When websites are more accessible, people with disabilities will be able to share this information using things like online forms and messaging systems, which reduces the likelihood that an individual with a disability will need to disclose this personal information unnecessarily to a companion or on the phone in the presence of others. Additionally, if people with relevant disabilities can access websites independently, they may be able to seek out community resources without needing to involve a companion or a State or local government entity's employee unnecessarily, which enhances the ability of people with these disabilities to privately locate information. For example, if a person with a disability is seeking to privately locate resources offered by a public entity that would enable them to leave an abusive relationship safely, accessible websites will allow them to search for information with greater privacy than seeking out resources in person, on the phone, or by mail, which they may not be able to do without seeking assistance from, or risking being detected by, their abuser. These benefits were not calculated quantitatively due to the difficulty of placing a value on added privacy, but the Department anticipates people with disabilities would nonetheless greatly benefit from the privacy implications of this rule.

iii. Reduced Frustration

Potentially in addition to the significant unquantified benefits discussed above, another impactful benefit of this rulemaking that may be difficult to quantify is reduced frustration for people with disabilities. Inaccessible websites and mobile apps create significant frustration for individuals with certain types of disabilities who are unable to access information or complete certain tasks. In addition to the inconvenience of not being able to complete a task, this frustration can lead to a lower-quality user experience. For example, Pascual et al. (2014) assessed the moods of sighted, low vision, and blind users while using accessible and inaccessible websites and found greater satisfaction with accessible websites.[265] This frustration appears to be particularly common for individuals with disabilities. Lazar et al. (2007) documented the frustrations users who are blind experience when using screen readers, finding, for example, that on average users reported losing 30.4 percent of time due to inaccessible content.[266] Furthermore, some people with vision disabilities may be unable to complete a required task altogether. For example, if an individual with low vision is filling out an online form but the color contrast between the foreground and background on the ''submit'' button is not sufficient, or if an individual who is blind is filling out a form that is not coded so that it can be used with a screen reader, they may be unable to submit their completed form. The inability to complete a task independently or without any barriers can be extremely frustrating and significantly reduce the overall quality of the user experience. The frustration that individuals with disabilities experience while accessing services, programs, and activities that public entities offer on their websites and mobile apps would be significantly reduced if the content was made accessible.

It is difficult to quantify this reduction in frustration in monetary costs, but it may already partially be captured in the quantitative estimates framed above as time savings. The Department believes the ability to complete tasks and engage with the services, programs, and activities offered by public entities on websites and mobile apps can make a significant improvement in the quality of the lives of people with relevant disabilities by reducing the frustration they experience.

iv. Decreased Assistance by Companions

In addition to the significant benefits discussed above, when individuals with disabilities are able to access websites and mobile apps independently instead of relying on a companion for assistance, both individuals with disabilities and their companions will benefit in other ways that are difficult to quantify.

If people with disabilities previously relied on supports such as family members or friends to perform these tasks, the quality of these relationships may be improved. If a person with a disability no longer needs to request assistance, they can spend that time together with their loved ones socializing or doing activities that they prefer, instead of more mundane tasks like filling out tax forms. People with relevant disabilities will have an increased opportunity to relate to their companions as equals, rather than needing to assume a dependent role in their relationships when they need help from others to complete tasks online. Requests for assistance, and the manner in which those requests are fulfilled by others, can sometimes cause stress or friction in interpersonal relationships; when individuals can complete tasks independently, those strains on relationships may be reduced.

If people with relevant disabilities previously paid companions to assist them with online tasks, they will be able to save or spend this money as they choose. They will also be able to save the time and effort associated with finding paid companions who are willing and able to assist with intermittent, often low-paid work.

If State agencies were providing a personal care assistant or home health aide to assist an individual with a disability, it is possible that some of that companion's time could be reallocated to assist a different person with a disability, because the same amount of assistance would not be needed to complete tasks online. This could reduce government spending for home- and community-based services. It may also increase the number of direct care workers who are available to assist people with disabilities.

---

[265] Afra Pascual et al., *Impact of Accessibility Barriers on the Mood of Blind, Low-Vision and Sighted Users,* 27 Procedia Comput. Sci. 431, 440 (2014), *https://repositori.udl.cat/bitstream/handle/10459.1/47973/020714.pdf?sequence=1* [*https://perma.cc/4P62-B42X*].

[266] Jonathan Lazar et al., *What Frustrates Screen Reader Users on the Web: A Study of 100 Blind Users,* 22(3) Int'l J. of Human–Comput. Interaction 247–269 (2007), *https://web.archive.org/web/20100612034800id_/http://triton.towson.edu/~jlazar/IJHCI_blind_user_frustration.pdf* [*https://perma.cc/29PN-45GR*].

Companions will also benefit when they do not need to provide assistance. Family members or friends will be able to do other things with the time that they would have spent helping someone with a disability. These may be activities that they enjoy more, that earn income, or that benefit society in other ways. Paid companions will be able to spend their time on other tasks such as assisting with bathing, toileting, or eating. All of these benefits are difficult to quantitatively calculate, but they are nonetheless benefits that would accrue from the rule.

v. Increased Program Participation

Section 4.3 of the PRIA indirectly quantified the benefits of increased access to services, programs, and activities by calculating the benefit from people changing how they access those services to using websites and mobile apps, which the Department referred to as switching modes. However, the Department believes that there are unquantified benefits associated with increased program participation that are difficult to quantify, which are described briefly here.

Inaccessible websites may prevent persons with relevant disabilities from accessing information or using State or local government services, programs, and activities that others without relevant disabilities have access to online. While people with disabilities may nonetheless access government services, programs, and activities despite barriers due to inaccessible websites, there will be other times when people with disabilities are too discouraged by these barriers and thus do not participate in services, programs, and activities. This rulemaking will reduce those barriers to access, which will result in fewer individuals with disabilities being deterred from participating in State or local government services, programs, or activities. Further, there may be some State or local government services, programs, or activities that individuals with disabilities would simply not have been aware of due to an inaccessible website, that they may now choose to participate in once they have access to the website or mobile app providing those services. This could result in a benefit of increased program participation, which will allow people with relevant disabilities to take advantage of services, programs, or activities that could improve their lives. The Department believes there is great intangible benefit to people with disabilities being able to connect to services, which will result in greater feelings of engagement and belonging in the community. There will also be a tangible benefit to increased program participation that will likely reduce inequality. For example, increased program participation could result in increased benefit payouts, sidewalk repairs, and trash pickups for people with disabilities, which would reduce inequality between people with disabilities and people without relevant disabilities.

vi. Increased Civic Engagement and Inclusion

Increased program participation in many civic activities will result in an unquantified benefit of greater community involvement, which will allow people with relevant disabilities to advocate for themselves and others and participate more actively in the direction of their communities. For example, if more people with disabilities can independently access information about proposed legislative and policy changes and contact local civic leadership about their views, they might be more likely to become actively involved in civic activities within their communities. Further, they may be able to access information to inform their democratic participation, such as by locating election resources and procedures for accessible voting. By facilitating this kind of civic engagement, this rule will promote the exercise of fundamental constitutional rights, such as the rights to freedom of speech, assembly, association, and petitioning. Aside from these benefits, governments also provide opportunities for social engagement, recreation, and entertainment, which will further enable people with relevant disabilities to feel more engaged and connected with their communities. This engagement is a benefit both to people with these disabilities and to people without relevant disabilities who will be able to connect with others in their community more easily. All of these benefits are difficult to quantify monetarily, but the Department nonetheless believes they will result in significant benefits for people with disabilities and for American communities.

vii. Increased Certainty About What Constitutes an Accessible Website Under the ADA and Potential Reduction in Litigation

Although the ADA applies to the services, programs, and activities that State and local government entities offer via the web, the ADA's implementing regulations currently do not include specific technical standards. The Department has consistently heard from public entities that they desire guidance on how to specifically comply with the ADA in this context. Adopting WCAG 2.1 Level AA as the technical standard for web and mobile app accessibility will reduce confusion and uncertainty by providing clear rules to public entities regarding how to make the services, programs, and activities they offer to the public via their websites and mobile apps accessible. Although the resulting increased certainty from adopting a technical standard is difficult to quantify, the Department believes it is an important benefit that will make public entities more confident in understanding and complying with their ADA obligations.

Further, increased certainty regarding how to make websites and mobile apps accessible may reduce litigation costs for public entities. Similar to how specific standards in the physical environment enable businesses to identify and resolve accessibility issues, the adoption of WCAG 2.1 Level AA as a technical standard will enable public entities to determine if their websites or mobile apps are out of compliance with the ADA and resolve any instances of noncompliance, resulting in greater accessibility without litigation. The Department recognizes that more specific technical standards could lead to an increase in litigation as there will be a clearer way to demonstrate that public entities are not in compliance. However, the ability to more easily determine noncompliance will allow the public entity to proactively resolve any compliance issues. Thus, although it is difficult to know the exact impact that a clear technical standard will have on total litigation costs, the Department believes that the potential for reduced litigation costs is a significant benefit for public entities that should be accounted for in this analysis.

6. Costs and Benefits of Regulatory Alternatives

The Department estimated costs and benefits for several possible alternatives to the proposed rule. These alternatives are described in Table 34, and a full explanation of the Department's methodology can be found in Section 5, Regulatory Alternatives, of the accompanying PRIA.

TABLE 34—REGULATORY ALTERNATIVES CONSIDERED [267]

Stringency	Alternative
Less stringent	3 years for implementation for large entities; 4 years for implementation for small entities.
Less stringent	Conformance with WCAG 2.1 Level A required.
Less stringent	Conformance with WCAG 2.0 Level AA required.
Rule as Proposed	Conformance with WCAG 2.1 Level AA required.
More stringent	1 year for implementation for all entities.
More stringent	1 year for implementation for large entities; 3 years for implementation for small entities.
More stringent	Conformance with WCAG 2.1 Level AAA required.

a. Costs of Regulatory Alternatives

To estimate the impact to website, mobile app, and course remediation costs of lengthening the required implementation timeline, the Department adjusted its assumptions about the pace at which entities would incur initial testing and remediation costs. In this analysis, the Department projected 10-year costs assuming large entities would incur 33 percent of their initial costs in each of the first three years and small entities would incur 25 percent of their initial costs in each of the first four years after the promulgation of the rule.

To estimate the costs of requiring conformance only with WCAG 2.1 Level A, the Department duplicated its website cost methodology while omitting from consideration any errors that violate WCAG 2.1 Level AA success criteria only. Accessibility errors that violated both WCAG 2.1 Level A and WCAG 2.1 Level AA success criteria were retained.

WCAG 2.1 introduced 12 new success criteria for WCAG 2.1 Levels A and AA.[268] To estimate the costs of requiring WCAG 2.0 Level AA rather than WCAG 2.1 Level AA standards, the Department replicated its website cost methodology while omitting any errors classified under one or more of these new success criteria.

To estimate the costs of shortening the implementation timeline for the proposed rule to one year for all entities, the Department retained its primary calculations but assumed that the full burden of the initial costs would be borne in Year 1. The Department then generated a second alternative timeline with a one-year implementation timeline for large entities, and a three-year implementation timeline for small entities. For these alternatives, the primary costs remain the same, but the year that they begin to accrue is changed.

The Department believes that requiring compliance with WCAG 2.1 Level AAA would prove infeasible, or at least unduly onerous, for some entities. Level AAA, which is the highest level of WCAG conformance, includes all of the Level A and Level AA success criteria and also contains additional success criteria that can provide a more enriched user experience, but are the most difficult to achieve for web developers. The W3C® does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA success criteria for some content.[269] For those reasons, the Department did not quantify costs of requiring WCAG 2.1 Level AAA. Table 35 shows the projected 10-year costs of these alternatives.

TABLE 35—PROJECTED TOTAL 10-YEAR COSTS FOR REGULATORY ALTERNATIVES

[Millions] [270]

Time period	Longer time frame	WCAG 2.1 Level A	WCAG 2.0 Level AA	Rule as proposed	Shorter time frame opt. 1 [a]	Shorter time frame opt. 2 [a]
Year 1	$2,387	$3,095	$3,082	$3,361	$8,344	$5,046
Year 2	2,582	3,380	3,365	3,646	5,526	6,402
Year 3	2,803	6,275	5,402	6,402	2,717	4,304
Year 4	6,030	3,262	2,817	3,270	1,836	2,389
Year 5	3,270	1,831	1,600	1,836	1,836	1,836
Year 6	1,836	1,831	1,600	1,836	1,836	1,836
Year 7	1,836	1,831	1,600	1,836	1,836	1,836
Year 8	1,836	1,831	1,600	1,836	1,836	1,836
Year 9	1,836	1,831	1,600	1,836	1,836	1,836
Year 10	1,836	1,831	1,600	1,836	1,836	1,836
PV of 10-year costs, 3% rate	22,721	23,620	21,286	24,275	26,238	25,806
Average annualized costs, 3% rate	3,162	2,795	2,522	2,872	3,102	3,052
PV of 10-year costs, 7% rate	18,579	20,093	18,174	20,701	22,898	22,298
Average annualized costs, 7% rate	2,712	2,860	2,587	2,947	3,260	3,174

[a] Option 1 is a compliance time frame of one year for all entities. Option 2 is a compliance time frame of one year for large entities and three years for small entities.

[267] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.

[268] These are standards 1.3.4, 1.3.5, 1.4.10, 1.4.11, 1.4.12, 1.4.13, 2.1.4, 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 4.1.3. More information is available at: W3C®, *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[269] *See* W3C®, *Understanding Conformance, Understanding Requirement 1* (Aug. 19, 2022), *https://www.w3.org/WAI/WCAG21/Understanding/conformance* [*https://perma.cc/9ZG9-G5N8*].

[270] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.

b. Benefits of Regulatory Alternatives

A variety of assumptions were used to estimate benefits for these regulatory alternatives. For the alternative compliance time frames, the Department adjusted only the benefit accrual rates to reflect the alternative time frames. Table 36 shows the 10-year average annualized benefits decrease to $7.7 billion from $8.9 billion with the longer time frame and increase to either $10.7 billion or $9.7 billion with the shorter time frames (using a 7 percent discount rate).

TABLE 36—AVERAGE ANNUALIZED BENEFITS, REGULATORY ALTERNATIVES

[Millions] [271] [a]

Beneficiary	Longer time frame	WCAG 2.1 Level A	WCAG 2.0 Level AA	Rule as proposed	Shorter time frame opt. 1 [b]	Shorter time frame opt. 2 [b]
Time savings—current users	$3,171.6	$2,696.9	$3,416.1	$3,416.1	$3,882.6	$3,469.8
Time savings—new users	699.6	170.3	170.3	753.5	856.4	765.3
Time savings—governments	458.0	83.6	83.6	493.3	560.7	501.1
Time savings—mobile apps	297.4	252.9	320.4	320.4	364.1	325.4
Time savings—education	2,775.4	2,766.6	3,504.4	3,504.4	4,384.2	4,070.8
Educational attainment	313.4	224.7	224.7	449.5	614.1	597.6
Total	7,715.4	6,195.1	7,719.5	8,937.2	10,662.1	9,730.0

[a] 10-Year average annualized benefits, 7 percent discount rate.
[b] Option 1 is a compliance time frame of one year for all entities. Option 2 is a compliance time frame of one year for large entities and three years for small entities.

For the WCAG conformance level, the alternative assumptions were less straightforward to calculate. For time savings for current website users, current mobile app users, and postsecondary students, the Department used the ratio of the number of success criteria under the different standards to adjust benefit levels. Because the literature used to assess the benefits of compliance with WCAG 2.1 Level AA in the primary analysis was based on compliance with WCAG 2.0 Level AA, the Department set benefits for compliance with WCAG 2.0 Level AA equal to the benefits in the primary analysis. For WCAG 2.1 Level A, the Department multiplied primary benefits by 0.79 (based on the ratio of the number of success criteria in WCAG 2.1 Level A to the number of success criteria in WCAG 2.0 Level AA, or 30/38).[272]

For time savings to new users and State and local government entities, the Department used the low and high estimates for the less stringent and more stringent conformance level alternatives, respectively. For benefits of higher educational attainment, the Department simply multiplied by 0.5 and 1.5 respectively for the less stringent and more stringent alternatives. The basis for this is the gap in educational achievement closing by 5 percent or 15 percent, rather than 10 percent (the same alternative assumptions as used in the sensitivity analysis).

B. Preliminary Regulatory Flexibility Act (''PRFA'') Analysis Summary

As directed by the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, as well as Executive Order 13272, the Department is required to consider the potential impact of the proposed rule on small entities, including small businesses, small non-profit organizations, and small governmental jurisdictions. This process helps agencies to determine whether a proposed rule is likely to impose a significant economic impact on a substantial number of small entities and, in turn, to consider regulatory alternatives to reduce the regulatory burden on those small entities.This proposed rule applies to all small governmental jurisdictions. The Department's analysis leads it to conclude that the impact on small governmental jurisdictions affected by the proposed rule will not be significant, as measured by annualized costs as a percent of annual revenues. The Department presents this Preliminary Regulatory Flexibility Analysis for review and comment.

1. Why the Department is Considering Action

Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or denied the benefits of the services, programs, or activities of a State or local government. The Department has consistently made clear that this requirement includes *all* services, programs, and activities of public entities, including those provided via the web. It also includes those provided via mobile apps. In this NPRM, the Department proposes technical standards for web and mobile app accessibility to give public entities greater clarity in exactly how to meet their ADA obligations and to help ensure equal access to government services, programs, and activities for people with disabilities.

Just as steps can exclude people who use wheelchairs, inaccessible web content can exclude people with a range of disabilities from accessing government services. For example, the ability to access voting information, find up-to-date health and safety resources, and look up mass transit schedules and fare information may depend on having access to web content and mobile apps. With accessible web content and mobile apps people with disabilities can access government services independently and privately.

2. Objectives of and Legal Basis for the Proposed Rule

On July 26, 1990, President George H.W. Bush signed into law the ADA, a comprehensive civil rights law prohibiting discrimination on the basis of disability.[273] Section 204(a) of the ADA directs the Attorney General to

[271] *See* Section 5, Regulatory Alternatives, in the accompanying PRIA for the Department's methodology.

[272] WCAG 2.0 Level AA has 38 success criteria, and WCAG 2.1 Level A has 30. WGAG 2.0 Level AA is used as the baseline because that is the standard used by Sven Schmutz et al., *Implementing Recommendations From Web Accessibility Guidelines: A Comparative Study of Nondisabled Users and Users with Visual Impairments,* 59 Human Factors and Ergonomics Soc'y 956 (2017), *https://doi.org/10.1177/0018720817708397*. A Perma archive link was unavailable for this citation.

[273] 42 U.S.C. 12101–12213.

issue regulations implementing part A of title II but exempts matters within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.[274] Title II, which this rule addresses, applies to State and local government entities, and, in part A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.

Accordingly, the Department is proposing technical requirements to enable public entities to fulfill their obligations under title II to provide access to all of their services, programs, and activities that are provided via the web and mobile apps. The Department believes the requirements described in the NPRM are necessary to ensure the ''equality of opportunity, full participation, independent living, and economic self-sufficiency'' for individuals with disabilities set forth in the ADA.[275]

3. Number of Small Governments Affected by the Rulemaking

The Department has examined the impact of the proposed rule on small entities as required by the RFA. For the purposes of this analysis, impacted small public entities are independent State and local governmental units in the United States that serve a population less than 50,000.[276] Based on this definition, the Department estimates a total of 88,000 small entities. This estimate includes the governments of counties, municipalities, townships, school districts, and territories with populations below 50,000 in the 2020 Census of Governments.[277] No State governments qualify as small. All special district governments [278] are included in this analysis because total population for these public entities could not be determined and the Department wants to ensure small governments are not undercounted.

The Census of Governments includes enrollment numbers for school districts, but not population counts. To approximate population, the Department multiplied the enrollment numbers by the ratio of the estimated total population to school age population, by county.[279] The Department notes that this method of estimating population of independent school districts is inconsistent with the population provisions in the proposed rule's regulatory text because the local government finances data only include enrollment numbers, not population numbers. Postsecondary educational institutions are considered as separate institutions because their funding sources are different from those of traditional State and local government entities. While public postsecondary educational institutions receive funding from State and local tax revenue, they also receive funding from tuition and fees from students and sometimes from endowments. Public universities are excluded from this analysis because these tend to be State-dependent institutions and all States have populations greater than 50,000. Independent community colleges were removed from school district counts and included separately. These were combined with counts of dependent community colleges from the National Center for Education Statistics (''NCES'').[280]

4. Impact of the Proposed Rule on Small Governments

The Department calculated costs and benefits to small governments. The Department also compared costs to revenues for small governments to evaluate the economic impact to these governments. The costs are less than 1 percent of revenues for every entity type, so the Department believes that the costs of this proposed regulation would not be overly burdensome for the regulated small governments.[281] These costs include one-time costs for familiarization with the requirements of the rule; the purchase of software to assist with remediation of the website or mobile app; the time spent testing and remediating websites and mobile apps to comply with WCAG 2.1 Level AA; and elementary, secondary, and postsecondary education course content remediation. Annual costs include recurring costs for software licenses and remediation of future content.

The Department performed analyses to estimate the costs to test and remediate inaccessible websites; mobile apps; and elementary, secondary, and postsecondary education course content. These analyses involved multistage stratified cluster sampling to randomly select government entities, government entity websites, and government entity mobile apps. The Department selected samples from each type and size (small or large) of government entity, estimated each type of remediation cost, and then extrapolated the costs to the population of government entities in each government type and size combination. Annualized total costs for small governments over a 10-year period are estimated at $1.5 billion assuming either a 3 percent or 7 percent discount rate (Table 37). Additional details on how these costs were estimated are provided in Section VI.A.4 of this preamble.

The most recent revenue data available are from the U.S. Census Bureau's State and Local Government Finances by Level of Government and by State: 2020.[282] However, these data do not disaggregate revenue by entity type or size. Therefore, the Department first estimated the proportion of total local government revenue in each local government entity type and size using the 2012 U.S. Census Bureau's database on individual local government

[274] 42 U.S.C. 12134(a). Sections 229(a) and 244 of the ADA direct the Secretary of Transportation to issue regulations implementing part B of title II, except for section 223. *See* 42 U.S.C 12149; 42 U.S.C. 12164.

[275] 42 U.S.C. 12101(a)(7).

[276] 5 U.S.C. 601(5); Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Aug. 2017), *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/C57B-YV28*].

[277] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), *https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_Individual_Unit_File.zip, Fin_PID_2020.txt file* [*https://perma.cc/QJM3-N7SG*].

[278] The proposed rule defines ''special district government'' as ''a public entity—other than a county, municipality, or township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates.'' A special district government may include, for example, a mosquito abatement district, utility district, transit authority, water and sewer board, zoning district, or other similar governmental entities that operate with administrative and fiscal independence.

[279] U.S. Census Bureau, *Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2019* (Oct. 2021), *https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-detail.html* [*https://perma.cc/SV98-ML2A*].

[280] Institute of Education Sciences, *Summary Tables,* National Center for Education Statistics, *https://nces.ed.gov/ipeds/SummaryTables/* [*https://perma.cc/9SS9-D9T2*].

[281] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*].

[282] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables* (Sept. 2022), *https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html* [*https://perma.cc/QJM3-N7SG*].

finances.[283] The Department then multiplied these proportions of the total local government revenues in each entity type by the 2020 total local government revenue to calculate the 2020 revenue for the small entities in each government type. Revenue data for the small territories are from the U.S. Government Accountability Office.[284] The Department then multiplied these 2020 revenue numbers by the ratio of the 2021 GDP deflator to the 2020 GDP deflator to express these revenues in 2021 dollars.[285] See Section VI.A.3.h for additional details on how these revenue numbers were derived.

Table 37 contains the costs and revenues per government type, and cost-to-revenue ratios using a 3 percent and 7 percent discount rate. The costs are less than 1 percent of revenues for every entity type, so the Department believes that the costs of this proposed regulation would not have a significant economic impact on small entities affected by the proposed rule.[286]

TABLE 37—NUMBER OF SMALL ENTITIES AND RATIO OF COSTS TO GOVERNMENT REVENUES

Government type	Number of small entities	Average annual cost per entity (3%) [c]	Average annual cost per entity (7%) [c]	Total 10-year average annual costs (3%) (millions)	Total 10-year average annual costs (7%) (millions)	Annual revenue (millions)	Ratio of costs to revenue (3%)	Ratio of costs to revenue (7%)
County	2,105	$9,601.6	$10,150.5	$20.2	$21.4	$65,044.3	0.03	0.03
Municipality	18,729	18,269.9	19,314.5	342.2	361.7	184,538.9	0.19	0.20
Township	16,097	15,135.0	15,990.6	243.6	257.4	55,818.9	0.44	0.46
Special district	38,542	1,893.1	1,991.4	73.0	76.8	278,465.3	0.03	0.03
School district [a]	11,443	31,964.3	33,559.1	365.8	384.0	330,746.4	0.11	0.12
U.S. territory	2	116,995.3	124,261.1	0.2	0.2	1,242.5	0.02	0.02
CCs [b]	960	449,163.1	455,942.1	431.2	437.7	N/A	N/A	N/A
CCs—independent	231	449,163.1	455,942.1	103.8	105.3	11,340.2	0.91	0.93
Total (includes all CCs)	87,878	16,798.0	17,515.5	1,476.2	1,539.2	N/A	N/A	N/A
Total (only independent CCs)	87,149	13,181.3	13,848.1	1,148.7	1,206.8	927,196.7	0.12	0.13

[a] Excludes community colleges, which are costed separately.
[b] Includes all dependent community college districts and the small independent community college districts. Revenue data are not available for the dependent community college districts.
[c] This cost consists of regulatory familiarization costs (discussed in Section VI.A.4.a of this preamble), government website testing and remediation costs (Section VI.A.4.b), mobile app testing and remediation costs (Section VI.A.4.c of this preamble), postsecondary education course remediation costs (Section VI.A.4.d of this preamble), elementary and secondary education course remediation costs (Section VI.A.4.e), and costs for third-party websites (Section VI.A.4.f of this preamble) averaged over ten years.

The Department quantified six types of benefits in the Preliminary Regulatory Impact Analysis.[287] However, only one of these types of benefits directly impacts State and local government entities' budgets. Improved website accessibility will lead some individuals who accessed government services via the phone, mail, or in person to begin using the public entity's website to complete the task. This will generate time savings for government employees. The Department assumed that for each of the 13.5 million new users of State and local government entities' websites, there will be six fewer transactions that require government personnel's time, and each of these will save the government about 10 minutes of labor time. This results in 13.5 million hours saved. To determine the share associated with small governments, the Department multiplied by 80 percent, which is the share of websites associated with small governments.

The cost of this time is valued at the median loaded wage for ''Office and Administrative Support Occupations'' within Federal, State, and local governments. According to the 2021 OEWS, the median hourly wage rate is $22.19.[288] This was multiplied by two to account for benefits and overhead.[289] This results in a loaded hourly wage rate of $44.38 per hour. Multiplying 13.5 million hours by 80 percent and $44.38 per hour results in time savings to small State and local government entities of $478.9 million. Assuming lower benefits during the implementation period [290] results in average annualized benefits of $404.0 million and $393.3 million using a 3 percent and 7 percent discount rate, respectively.

[283] U.S. Census Bureau, *Historical Data* (Oct. 2021), *https://www.census.gov/programs-surveys/cog/data/historical-data.html* [*https://perma.cc/UW25-6JPZ*]. The Department was unable to find more recent data with this level of detail. Population counts were adjusted for estimated population growth over the applicable period.

[284] GAO, *U.S. TERRITORIES: Public Debt Outlook-2021 Update* (June 2021), *https://www.gao.gov/assets/gao-21-508.pdf* [*https://perma.cc/7Z2W-K8ZG*].

[285] Bureau of Economic Analysis, *Table 1.1.9. Implicit Price Deflators for Gross Domestic Product* (last updated Nov. 30, 2022), *https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1910=x&0=-99&1921=survey&1903=13&1904=2015&1905=2021&1906=a&1911=0* [*https://perma.cc/KNK8-EM6L*].

[286] As noted above and as a point of reference, the United States Small Business Administration advises agencies that a potential indicator that the impact of a proposed regulation may be ''significant'' is whether the costs exceed 1 percent of the gross revenues of the entities in a particular sector, although the threshold may vary based on the particular types of entities at issue. The Department estimates that the costs of this rulemaking for each government entity type are far less than 1 percent of revenues. *See* Small Bus. Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 19 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf* [*https://perma.cc/MZW6-Y3MH*]. Dependent community college costs (community colleges that are operated by a government entity rather than being an independent school district) are not compared to revenues. Revenues are not available directly for these community colleges, and the Department is unable to determine how to distribute these entities' costs across the State and local government entity types. Additionally, it is unclear if all public college and university revenue (*e.g.,* tuition, fees) is included in the revenue recorded for the State or local entities on which the school is dependent.

[287] *See* Section 4, Impact of the Proposed Rule on Small Governments, of the accompanying PRFA for more details.

[288] U.S. Bureau of Labor Statistics, *May 2021 National Industry-Specific Occupational Employment and Wage Estimates* (last updated Mar. 2022), *https://www.bls.gov/oes/current/naics2_99.htm#43-0000* [*https://perma.cc/SGS7-9GXP*].

[289] Department of Justice guidance was unavailable, so the Department used guidance from a different agency that frequently engages in rulemakings. U.S. Dep't of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, *Guidelines for Regulatory Impact Analyses* (2016), *https://aspe.hhs.gov/reports/guidelines-regulatory-impact-analysis* [*https://perma.cc/7NVQ-AG8S*].

[290] *See* Section VI.A.5.c.i.

5. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Proposed Rule

The Department has determined that there are no other Federal rules that are either in conflict with this proposed rule or are duplicative of it. The Department recognizes that there is a potential for overlap with other Federal nondiscrimination laws because entities subject to title II of the ADA also are subject to title I of the ADA, which prohibits discrimination on the basis of disability in employment. Some public entities subject to title II may also be subject to section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance. The regulation implementing title II of the ADA does not, however, invalidate or limit the remedies, rights, and procedures available under any other Federal, State, or local laws that provide greater or equal protection for the rights of individuals with disabilities (or individuals associated with them). Compliance with the Department's title II regulation, therefore, does not ensure compliance with other Federal laws.

6. Alternatives to the Proposed Rule

The Department has considered three less-restrictive compliance alternatives for small governments. The first is a longer compliance period of four years for small public entities and special district governments, for which the Department adjusted its assumptions as to the pace at which entities would incur initial testing and remediation costs. Additionally, two less restrictive conformance levels were considered: WCAG 2.1 Level A and WCAG 2.0 Level AA. To estimate the costs of requiring conformance only with WCAG 2.1 Level A success criteria, the Department duplicated its website cost methodology discussed in Section VI.A.4.b of this preamble while omitting from consideration any errors that violate WCAG 2.1 Level AA success criteria only. Accessibility errors that violated both WCAG 2.1 Level A and WCAG 2.1 Level AA success criteria were retained. WCAG 2.1 introduced 12 new success criteria for Levels A and AA.[291] To estimate the costs of requiring WCAG 2.0 Level AA rather than WCAG 2.1 Level AA compliance, the Department replicated its website cost methodology from Section VI.A.4.b while omitting any errors classified under one or more of these new success criteria. Costs and benefits of these regulatory alternatives for all governments are presented in Section 5, Regulatory Alternatives, of the accompanying PRIA. Here, the Department summarizes the costs and benefits of these regulatory alternatives for small entities.

Costs for small public entities differ for the regulatory alternatives as explained in Section 6, Alternatives to the Proposed Rule, of the accompanying PRIA. The results are summarized in Table 38.

TABLE 38—AVERAGE ANNUALIZED COSTS FOR SMALL ENTITIES OF REGULATORY ALTERNATIVES, 7 PERCENT DISCOUNT RATE

[Millions] [292]

Government type	Rule as proposed	WCAG 2.1 Level A	WCAG 2.0 Level AA	Longer implementation period
County	$21.4	$21.2	$21.8	$20.6
Municipality	361.7	360.8	366.5	348.9
Township	257.4	256.5	261.5	248.8
Special district	76.8	76.7	86.7	82.9
School district [a]	384.0	383.1	382.5	362.2
U.S. territory	0.2	0.2	0.2	0.2
CCs [b]	437.7	436.5	357.5	392.8
CCs—independent	105.3	105.0	86.0	94.5
Total (includes all CCs)	1,539.2	1,535.1	1,476.8	1,456.4
Total (only independent CCs)	1,206.8	1,203.6	1,205.3	1,158.1

[a] Excludes community colleges, which are costed separately.
[b] Includes all dependent community college districts and the small independent community college districts.

Benefit methodology for regulatory alternatives is explained in Section VI.A.6 of this preamble. Here, the Department applies that same methodology to small entities. Using a longer compliance period, the Department estimates average annualized benefits would be slightly lower because benefits would not accrue as quickly. The Department estimates average annualized benefits of $378.2 million and $365.2 million using a 3 percent and 7 percent discount rate, respectively (compared with $404.0 million and $393.3 million associated with the rule as proposed).

The Department altered four assumptions to estimate the benefits associated with WCAG 2.1 Level A and WCAG 2.0 Level AA. These are the same assumptions altered for the sensitivity analysis in Section VI.A.5.c.ii of this preamble. First, ACS prevalence rates were used in lieu of SIPP estimates. Second, rather than assuming website usage becomes equivalent for individuals with and without relevant disabilities, the Department assumed this gap only closes by 75 percent. Third, the average time spent per transaction was reduced by 25 percent. Fourth, the average number of transactions per year was reduced by 25 percent. Incorporating these alternative assumptions reduces the cost savings for small governments to $68.5 million and $66.7 million using a 3 percent and 7 percent discount rate, respectively (from $404.0 million and $393.3 million associated with the rule as proposed).

[291] These are Success Criteria 1.3.4, 1.3.5, 1.4.10, 1.4.11, 1.4.12, 1.4.13, 2.1.4, 2.5.1, 2.5.2, 2.5.3, 2.5.4, and 4.1.3. Success Criteria 1.3.6, 2.2.6, 2.3.3, 2.5.5, and 2.5.6 were newly introduced at Level AAA. *See* W3C,® *What's New in WCAG 2.1* (Aug. 13, 2020), *https://www.w3.org/WAI/standards-guidelines/wcag/new-in-21/* [*https://perma.cc/W8HK-Z5QK*].

[292] *See* Section 6, Alternatives to the Proposed Rule, in the accompanying PRFA for the Department's methodology.

C. Executive Order 13132: Federalism

Executive Order 13132 requires executive branch agencies to consider whether a proposed rule will have federalism implications.[293] That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, on the relationship between the Federal Government and the States and localities, or on the distribution of power and responsibilities among the different levels of government. If an agency believes that a proposed rule is likely to have federalism implications, it must consult with State and local government officials about how to minimize or eliminate the effects.

Title II of the ADA covers State and local government services, programs, and activities, and, therefore, clearly has some federalism implications. State and local government entities have been subject to the ADA since 1991, and the many State and local government entities that receive Federal financial assistance have also been required to comply with the requirements of section 504 of the Rehabilitation Act. Hence, the ADA and the title II regulation are not novel for State and local governments. This proposed rule will preempt State laws affecting entities subject to the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities. This proposed rule does not invalidate or limit the remedies, rights and procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities.

The Department intends to amend the regulation in a manner that meets the objectives of the ADA while also minimizing conflicts between State law and Federal interests. The Department is now soliciting comments from State and local officials and their representative national organizations through this NPRM. The Department seeks comment from all interested parties about the potential federalism implications of the proposed rule. The Department welcomes comments on the proposed rule's effects on State and local governments, and on whether the proposed rule may have direct effects on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

[293] 64 FR 43255 (Aug. 4, 1999).

D. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (''NTTAA'') directs that, as a general matter, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, which are private, generally nonprofit organizations that develop technical standards or specifications using well-defined procedures that require openness, balanced participation among affected interests and groups, fairness and due process, and an opportunity for appeal, as a means to carry out policy objectives or activities.[294] In addition, the NTTAA directs agencies to consult with voluntary, private sector, consensus standards bodies and requires that agencies participate with such bodies in the development of technical standards when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources.[295]

As discussed previously, the Department is proposing to adopt the Web Content Accessibility Guidelines 2.1 Level AA as the accessibility standard to apply to web content and mobile apps of title II entities. WCAG 2.1 was developed by the W3C®, which has been the principal international organization involved in developing protocols and guidelines for the web. The W3C® develops a variety of technical standards and guidelines, including ones relating to privacy, internationalization of technology, and—as detailed above—accessibility. Thus, the Department believes it is complying with the NTTAA in selecting WCAG 2.1 as the applicable accessibility standard. However, the Department is interested in comments from the public addressing our use of WCAG 2.1.

E. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514–0301 (voice); 1–833–610–1264 (TTY) that the public is welcome to call for assistance understanding anything in this proposed rule. If any commenter has suggestions for how the regulation could be written more clearly, please contact Rebecca B. Bond, Chief, Disability Rights Section, whose contact information is provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

[294] Public Law 104–113, 12(d)(1) (15 U.S.C. 272 note).

[295] *Id.* § 12(d)(2).

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (''PRA''), no person is required to respond to a ''collection of information'' unless the agency has obtained a control number from OMB.[296] This proposed rule does not contain any collections of information as defined by the PRA.

G. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995 [297] excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

H. Incorporation by Reference

As discussed above, the Department proposes to adopt the internationally recognized accessibility standard for web access, the Web Content Accessibility Guidelines (''WCAG'') 2.1 Level AA, published in June 2018, as the technical standard for web and mobile app accessibility under title II of the ADA. WCAG 2.1, published by the World Wide Web Consortium (''W3C®'') Web Accessibility Initiative (''WAI''), specifies success criteria and requirements to make web content more accessible to all users, including persons with disabilities. The Department incorporates WCAG 2.1 Level AA by reference into this rule, instead of restating all of its requirements verbatim. As noted above, to the extent there are distinctions between WCAG 2.1 Level AA and the standards articulated in this rule, the standards articulated in this rule prevail.

The Department notes that when the W3C® publishes new versions of WCAG, those versions will not be automatically incorporated into this rule. Federal agencies cannot incorporate by reference future versions of standards developed by bodies like the W3C®. Federal agencies are required

[296] 44 U.S.C. 3501 *et seq.*

[297] 2 U.S.C. 1503(2).

to identify the particular version of a standard incorporated by reference in a regulation.[298] When an updated version of a standard is published, an agency must revise its regulation if it seeks to incorporate any of the new material.

WCAG 2.1 is reasonably available to interested parties. Free copies of WCAG 2.1 are available online on the W3C®'s website at *https://www.w3.org/TR/WCAG21/* [*https://perma.cc/UB8A-GG2F*]. In addition, a copy of WCAG 2.1 is also available for inspection at the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002 by appointment.

VII. Proposed Regulatory Text

List of Subjects for 28 CFR Part 35

Administrative practice and procedure, Civil rights, Communications, Incorporation by reference, Individuals with disabilities, State and local requirements.

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; sections 201 and 204 of the of the Americans with Disabilities Act, Public Law 101–336, as amended, and section 506 of the ADA Amendments Act of 2008, Public Law. 110–325, 28 CFR part 35 is proposed to be amended as follows—

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Subpart A—General

■ 2. Amend § 35.104 by adding definitions for *Archived web content, Conventional electronic documents, Mobile applications (apps), Special district government, Total population, WCAG 2.1,* and *Web content* in alphabetical order to read as follows:

§ 35.104 Definitions.

* * * * *

Archived web content means web content that—

(1) Is maintained exclusively for reference, research, or recordkeeping;

(2) Is not altered or updated after the date of archiving; and

(3) Is organized and stored in a dedicated area or areas clearly identified as being archived.

* * * * *

Conventional electronic documents means web content or content in mobile apps that is in the following electronic file formats: portable document formats (''PDF''), word processor file formats, presentation file formats, spreadsheet file formats, and database file formats.

* * * * *

Mobile applications (''apps'') means software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.

* * * * *

Special district government means a public entity—other than a county, municipality, or township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates.

* * * * *

Total population means the population estimate for a public entity as calculated by the United States Census Bureau in the most recent decennial Census or, if a public entity is an independent school district, the population estimate as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates.

* * * * *

WCAG 2.1 means the Web Content Accessibility Guidelines (''WCAG'') 2.1, W3C® Recommendation 05 June 2018, *https://www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*]. WCAG 2.1 is incorporated by reference elsewhere in this part (see § 35.200 and 35.202).

Web content means information or sensory experience—including the encoding that defines the content's structure, presentation, and interactions—that is communicated to the user by a web browser or other software. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.

Subpart H—Web and Mobile Accessibility

■ 3. Add new subpart H to read as follows:

Subpart H—Web and Mobile Accessibility

Sec.

§ 35.200 Requirements for web and mobile accessibility.

(a) *General.* A public entity shall ensure that the following are readily accessible to and usable by individuals with disabilities:

(1) Web content that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public; and

(2) Mobile apps that a public entity makes available to members of the public or uses to offer services, programs, or activities to members of the public.

(b) Requirements

(1) Effective two years from the publication of this rule in final form, a public entity, other than a special district government, with a total population of 50,000 or more shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

(2) Effective three years from the publication of this rule in final form, a public entity with a total population of less than 50,000 or any public entity that is a special district government shall ensure that the web content and mobile apps it makes available to members of the public or uses to offer services, programs, or activities to members of the public comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

(3) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the **Federal**

[298] *See, e.g.,* 1 CFR 51.1(f) (''Incorporation by reference of a publication is limited to the edition of the publication that is approved [by the Office of Federal Register. Future amendments or revisions of the publication are not included.'').

Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (''IBR'') material is available for inspection at the U.S. Department of Justice and at the National Archives and Records Administration (''NARA''). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514–0301 (voice) or 1–833–610–1264 (TTY); website: *www.ada.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the World Wide Web Consortium (''W3C®'') Web Accessibility Initiative (''WAI''), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273–2711; email: *contact@w3.org;* website: *www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*].

§ 35.201 Exceptions.

The requirements of § 35.200 of this chapter do not apply to the following:

(a) *Archived web content.* Archived web content as defined in § 35.104 of this chapter.

(b) *Preexisting conventional electronic documents.* Conventional electronic documents created by or for a public entity that are available on a public entity's website or mobile app before the date the public entity is required to comply with this rule, unless such documents are currently used by members of the public to apply for, gain access to, or participate in a public entity's services, programs, or activities.

(c) *Web content posted by a third party.* Web content posted by a third party that is available on a public entity's website.

(d) *Linked third-party web content.* Third-party web content linked from a public entity's website, unless the public entity uses the third-party web content to allow members of the public to participate in or benefit from the public entity's services, programs, or activities.

(e) *Public postsecondary institutions: password-protected course content.* Except as provided in paragraphs (e)(1) and (2) of this section, course content available on a public entity's password-protected or otherwise secured website for admitted students enrolled in a specific course offered by a public postsecondary institution.

(1) This exception does not apply if a public entity is on notice that an admitted student with a disability is pre-registered in a specific course offered by a public postsecondary institution and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 by the date the academic term begins for that course offering. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.

(2) This exception does not apply once a public entity is on notice that an admitted student with a disability is enrolled in a specific course offered by a public postsecondary institution after the start of the academic term and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the course must also comply with the requirements of § 35.200 at the time it is added to the website.

(f) *Public elementary and secondary schools: password-protected class or course content.* Except as provided in paragraphs (f)(1) through (4) of this section, class or course content available on a public entity's password-protected or otherwise secured website for students enrolled, or parents of students enrolled, in a specific class or course at a public elementary or secondary school.

(1) This exception does not apply if the public entity is on notice of the following: a student with a disability is pre-registered in a specific class or course offered by a public elementary or secondary school and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(2) This exception does not apply if the public entity is on notice of the following: a student is pre-registered in a public elementary or secondary school's class or course, the student's parent has a disability, and the parent, because of a disability, would be unable to access the content available on the password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 by the date the term begins for that class or course. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(3) This exception does not apply once a public entity is on notice of the following: a student with a disability is enrolled in a public elementary or secondary school's class or course after the term begins and that the student, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(4) This exception also does not apply once a public entity is on notice of the following: a student is enrolled in a public elementary or secondary school's class or course after the term begins, and the student's parent has a disability, and the parent, because of a disability, would be unable to access the content available on the public entity's password-protected or otherwise secured website for the specific class or course. In such circumstances, all content available on the public entity's password-protected or otherwise secured website for the specific class or course must comply with the requirements of § 35.200 within five business days of such notice. New content added throughout the term for the class or course must also comply with the requirements of § 35.200 at the time it is added to the website.

(g) *Individualized, password-protected documents.* Conventional electronic documents that are: (1) about a specific individual, their property, or their account; and (2) password-protected or otherwise secured.

§ 35.202 Conforming alternate versions.

(a) A public entity may use conforming alternate versions of websites and web content, as defined by WCAG 2.1, to comply with § 35.200 only where it is not possible to make websites and web content directly accessible due to technical or legal limitations.

(b) WCAG 2.1 is incorporated by reference into this section with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (''IBR'') material is available for inspection at the U.S. Department of Justice and at the National Archives and Records Administration (''NARA''). Contact the U.S. Department of Justice at: Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002; ADA Information Line: (800) 514–0301 (voice) or 1–833–610–1264 (TTY); website: *www.ada.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the World Wide Web Consortium (''W3C®'') Web Accessibility Initiative (''WAI''), 401 Edgewater Place, Suite 600, Wakefield, MA 01880; phone: (339) 273–2711; email: *contact@w3.org;* website: *www.w3.org/TR/2018/REC-WCAG21-20180605/* [*https://perma.cc/UB8A-GG2F*].

§ 35.203 Equivalent facilitation.

Nothing in this subpart prevents the use of designs, methods, or techniques as alternatives to those prescribed, provided that the alternative designs, methods or techniques result in substantially equivalent or greater accessibility and usability of the web content or mobile app.

§ 35.204 Duties.

Where a public entity can demonstrate that full compliance with the requirements of § 35.200 would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, compliance with § 35.200 is required to the extent that it does not result in a fundamental alteration or undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.200 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity to the maximum extent possible.

§§ 35.205–35.209 [Reserved]

Dated: July 21, 2023.

Merrick B. Garland,

Attorney General.

[FR Doc. 2023–15823 Filed 8–3–23; 8:45 am]

BILLING CODE 4410–13–P

Reader Aids

Federal Register

Vol. 88, No. 149

Friday, August 4, 2023

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

60–50.....51717
60–300.....51717
60–741.....51717

42 CFR

412.....50986, 51054
417.....50043
418.....51164
422.....50043
423.....50043
424.....51164
455.....50043
460.....50043

45 CFR

620.....50044

Proposed Rules:

146.....51552
147.....51552

46 CFR

169.....51737

47 CFR

14.....50053
64.....51240
73.....51249

Proposed Rules:

1.....50486
63.....50486

48 CFR

Proposed Rules:

1.....51672
2.....51672
4.....51672
5.....51672
7.....51672
9.....51672
10.....51672
11.....51672
12.....51672
13.....51672
15.....51672
18.....51672
23.....51672
26.....51672
36.....51672
37.....51672
39.....51672
42.....51672
52.....51672

49 CFR

192.....50056
195.....50056

50 CFR

622.....50063, 50806
635.....50807
648 .....50065, 50808, 51737
660.....51250

Proposed Rules:

622.....51255
635.....50822, 50829
660.....50830
679.....50097

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List July 31, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.