



FEDERAL REGISTER

Vol. 88

Friday,

No. 197

October 13, 2023

Pages 70885–71272

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. 197

Friday, October 13, 2023

Agriculture Department

See Commodity Credit Corporation

See Forest Service

Army Department

NOTICES

Meetings:

Board of Visitors, United States Military Academy, 70959

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Evaluation of Resources to Support the Identification and Care of Children with Prenatal Substance or Alcohol Exposure in the Child Welfare System, 70992–70993

Tribal Child Support Enforcement Direct Funding Request, 70993

Civil Rights Commission

NOTICES

Meetings:

Commonwealth of the Northern Mariana Islands

Advisory Committee, 70923–70924

Minnesota Advisory Committee, 70925

Puerto Rico Advisory Committee, 70923

U.S. Virgin Islands Advisory Committee, 70922–70923

West Virginia Advisory Committee, 70924

Wyoming Advisory Committee, 70924–70925

Coast Guard

RULES

Safety Zone:

Atlantic Ocean, Jacksonville Beach, FL, 70889–70891

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 70954

Commodity Credit Corporation

NOTICES

Domestic Sugar Program:

FY 2023 Reassignment and FY 2024 Overall Sugar

Marketing Allotment, Cane Sugar and Beet Sugar

Marketing Allotments and Company Allocations,

70920–70922

Comptroller of the Currency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71083–71085

Council of the Inspectors General on Integrity and Efficiency

NOTICES

Senior Executive Service Performance Review Board Membership, 70954–70959

Defense Department

See Army Department

NOTICES

TRICARE Plan Program Changes for Calendar Year (CY) 2024, 70959–70961

Drug Enforcement Administration

NOTICES

Importer, Manufacturer or Bulk Manufacturer of Controlled

Substances; Application, Registration, etc.:

Cambridge Isotope Laboratories, Inc, 71022

Cerilliant Corp., 71023–71027

Chattem Chemicals, Inc., 71021–71022

Curia New York, Inc., 71022–71023

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Meetings:

Environmental Management Site-Specific Advisory Board, Paducah, 70962

Environmental Management Site-Specific Advisory Board, Portsmouth, 70961–70962

Environmental Management Site-Specific Advisory Board, Savannah River Site, 70961

Environmental Protection Agency

NOTICES

Environmental Impact Statements; Availability, etc., 70977

Transfer of Data:

CGI Federal, Inc. and Zachary Piper, LLC; September 2023, 70977–70978

Export-Import Bank

NOTICES

Applications for Long-Term Loans or Financial Guarantees in Excess of \$100 million, 70978

Federal Accounting Standards Advisory Board

NOTICES

Charter Amendments, Establishments, Renewals and Terminations:

Federal Accounting Standards Advisory Board, 70979

Meetings:

Appointments Panel, 70978

Federal Aviation Administration

RULES

Airworthiness Directives:

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier Inc.) Airplanes, 70885–70887

PROPOSED RULES

Airworthiness Directives:

Airbus SAS Airplanes, 70913–70915

Foreign Civil Aviation Authority Certifying Statements; Withdrawal, 70912–70913

Modification of Restricted Areas:

Camp Grayling, MI, 70915–70917

U.S. Agents for Service on Individuals with Foreign

Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations, 70911–70912

NOTICES

Petition for Exemption; Summary:
Hyllo Inc., 71072–71073

Federal Communications Commission**RULES**

Wireless Telecommunications Bureau Conditionally Waives
Certain Aspects of the Wireless Hearing Aid
Compatibility Volume Control Testing Standard,
70891–70897

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 70979–70989

Federal Deposit Insurance Corporation**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 71083–71085

Federal Election Commission**NOTICES**

Filing Dates:
California Senate Special Election, 70989–70990

Federal Emergency Management Agency**NOTICES**

Final Flood Hazard Determinations, 71007–71009
Flood Hazard Determinations, 71005–71007, 71010–71011
Proposed Flood Hazard Determinations, 71009–71010

Federal Energy Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 70967–70969
Application:
Antelope Valley Water Storage, LLC, 70964–70965
Bionics Avionics Energy Design Analysis Lab, Inc., 70975
Honeoye Storage Corp., 70969–70971
Combined Filings, 70966–70967, 70971–70972, 70976–
70977
Environmental Assessments; Availability, etc.:
Louisiana Connector Pipeline Amendment; Port Arthur
Pipeline, LLC, 70965–70966
Environmental Impact Statements; Availability, etc.:
Coosa Hydroelectric Project; Alabama Power Company,
70965
Sabine Pass Liquefaction, LLC, Sabine Pass Liquefaction
Stage V, LLC, Sabine Crossing, LLC; Sabine Pass
Liquefaction Stage 5 Expansion Project, 70972–70975
Extension of Time:
Natural Gas Pipeline Company of America LLC, 70975–
70976
Request Under Blanket Authorization:
Carolina Gas Transmission, LLC, 70963–70964

Federal Financial Institutions Examination Council**NOTICES**

Meetings:
Appraisal Subcommittee, 70991

Federal Highway Administration**NOTICES**

Final Federal Agency Actions:
Proposed Highway Projects in Texas, 71073–71074

Federal Maritime Commission**NOTICES**

Agreements Filed, 70991

Service Contract Inventory Analysis; FY 2020, 70991

Federal Motor Carrier Safety Administration**RULES**

Clarification to the Applicability of Emergency Exemptions,
70897–70909

Federal Reserve System**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 71083–71085
Formations of, Acquisitions by, and Mergers of Bank
Holding Companies, 70991–70992

Federal Transit Administration**NOTICES**

Funding Opportunity:
Accelerating Advanced Digital Construction Management
Systems Program; FY 2022 and 2023, 71074–71081

Food and Drug Administration**RULES****Guidance:**

Prior Notice of Imported Food Questions and Answers
(Edition 4), 70887–70889

PROPOSED RULES**Filing of Food Additive Petition:**

Kerry Inc., 70919
Kerry Ingredients and Flavours Ltd., 70918–70919

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Food and Drug Administration Recall Regulations,
70995–70996

Importation of Prescription Drugs, 70993–70995

Guidance:

Quality Considerations for Topical Ophthalmic Drug
Products, 70997–70998

Forest Service**NOTICES**

Proposed New Recreation Fee Sites; Correction, 70920

Health and Human Services Department

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

NOTICES**Guidance:**

Screening Framework Guidance for Providers and Users
of Synthetic Nucleic Acids, 70998–71003

Meetings:

Biomedical Advanced Research and Development
Authority Industry Day 2023, 71003

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Family Unification Program, 71016–71018
Project Based Vouchers Online Form, 71011–71015
Supportive Housing for the Elderly Application
Submission Requirements, 71015–71016

Industry and Security Bureau**NOTICES**

Order Renewing Temporary Denial of Export Privileges:
Aviastar—TU, 70928–70930
URAL Airlines JSC, 70925–70928

Interior Department

See Land Management Bureau

See National Park Service

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:
Steel Wire Garment Hangers from Taiwan and the
Socialist Republic of Vietnam, 70931
North American Free Trade Agreement, Article 1904:
Binational Panel Reviews: Completion, 70930–70932

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, and Rulings,
etc.:
Aluminum Extrusions from China, Colombia, Dominican
Republic, Ecuador, India, Indonesia, Italy, Malaysia,
Mexico, South Korea, Taiwan, Thailand, Turkey,
United Arab Emirates, and Vietnam, 71020–71021

Justice Department

See Drug Enforcement Administration

Labor Department

See Labor Statistics Bureau

See Occupational Safety and Health Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
ATUS Leave and Job Flexibilities Module, 71028
Nondiscrimination Compliance Information Reporting,
71027–71028

Labor Statistics Bureau**NOTICES**

Meetings:

Technical Advisory Committee, 71028–71029

Land Management Bureau**NOTICES**

Meetings:

Alaska Resource Advisory Council, 71018

National Aeronautics and Space Administration**RULES**

Acquisition Regulation:
Revision of the Definition of Commercial Item;
Correction, 70897

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Generic Clearance for Citizen Science and Crowdsourcing
Projects, 71029–71030

National Endowment for the Humanities**NOTICES**

Meetings:

Humanities Panel, 71030–71031

National Foundation on the Arts and the Humanities

See National Endowment for the Humanities

National Highway Traffic Safety Administration**NOTICES**

Request for Information:

Emergency Medical Services Education Agenda 2050,
71081–71083

National Institutes of Health**NOTICES**

Meetings:

National Eye Institute, 71005

National Institute of Biomedical Imaging and
Bioengineering, 71003–71004

National Institute of General Medical Sciences, 71005
National Institute of Neurological Disorders and Stroke,
71004

National Institute on Aging, 71004–71005

Office of the Director, 71004

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Northeastern United States:

Temporary Measures to Reduce 2023 Atlantic Mackerel
Catch, 70909–70910

NOTICES

Marine Mammals and Endangered Species, 70934–70935

Meetings:

Fisheries of the Gulf of Mexico; Southeast Data,
Assessment, and Review, 70937

Mid-Atlantic Fishery Management Council, 70935–70936

New England Fishery Management Council, 70937–70938

South Atlantic Fishery Management Council, 70932,
70936–70937

Takes of Marine Mammals Incidental to Specified
Activities:

BNSF Railway Bridge Heavy Maintenance Project, King
County, WA, 70932–70934

Geophysical Surveys Related to Oil and Gas Activities in
the Gulf of Mexico, 70935

Taking or Importing of Marine Mammals:

Marine Geophysical Survey of Puerto Rico in the
Northwest Atlantic Ocean, 70938–70954

National Park Service**NOTICES**

Repatriation of Cultural Items:

Peabody Museum of Archaeology and Ethnology, Harvard
University, Cambridge, MA, 71019–71020

National Science Foundation**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 71031–71036

Nuclear Regulatory Commission**NOTICES**

Application:

Nuclear Development, LLC; Tennessee Valley Authority;
Bellefonte Nuclear Plant, Units 1 and 2, 71039–71040

Licenses; Exemptions, Applications, Amendments etc.:

DTE Electric Company; Fermi, Unit 2, 71037–71039

Meetings:

Advisory Committee on Reactor Safeguards, 71036–71037

Occupational Safety and Health Administration**NOTICES**

Charter Amendments, Establishments, Renewals and
Terminations:

Federal Advisory Council on Occupational Safety and
Health, 71029

Postal Regulatory Commission**NOTICES**

New Postal Products, 71040–71041

Presidential Documents**PROCLAMATIONS**

Special Observances:

General Pulaski Memorial Day (Proc. 10651), 71261–71264

International Day of the Girl (Proc. 10652), 71265–71267

ADMINISTRATIVE ORDERS

Syria; Continuation of National Emergency (Notice of October 12, 2023), 71269–71271

Science and Technology Policy Office**NOTICES**

Request for Information:

Development of a Federal Environmental Justice Science, Data, and Research Plan, 71041–71043

Securities and Exchange Commission**PROPOSED RULES**

List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act, 70918

Registration for Index-Linked Annuities:

Form N–4 for Index-Linked and Variable Annuities, 71088–71259

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes: Financial Industry Regulatory Authority, Inc., 71051–71063

MEMX LLC, 71063–71065

Miami International Securities Exchange, LLC, 71063

MIAX Emerald, LLC, 71051

MIAX PEARL, LLC, 71043

Nasdaq ISE, LLC, 71046–71051

NYSE Arca, Inc., 71043–71046

Small Business Administration**NOTICES**

Disaster Declaration:

Alaska, 71066–71067

Hawai'i, 71065–71066

Meetings:

Investment Capital Advisory Committee, 71066

Social Security Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 71067–71069

State Department**NOTICES**

Culturally Significant Objects Imported for Exhibition:

Bellini and Giorgione: In the House of Taddeo Contarini, 71069

Botticelli Drawings, 71069

Meetings:

President's Advisory Council on African Diaspora Engagement, 71069–71070

Surface Transportation Board**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Household Goods Movers' Disclosure Requirements, 71070–71071

System Diagram Maps, 71071

Continuance in Control Exemption:

OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc.; Savannah Industrial Logistics, LLC, 71071–71072

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See Federal Transit Administration

See National Highway Traffic Safety Administration

Treasury Department

See Comptroller of the Currency

Separate Parts In This Issue**Part II**

Securities and Exchange Commission, 71088–71259

Part III

Presidential Documents, 71261–71267

Part IV

Presidential Documents, 71269–71271

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.

3 CFR**Proclamations:**

10651 71263
10652 71265

Administrative Orders:**Notices:**

Notices of October 12,
2023 71271

14 CFR

39 70885

Proposed Rules:

3 70911
21 70912
39 70913
73 70915

17 CFR**Proposed Rules:**

Ch. II 70908
230 71088
232 71088
239 71088
274 71088

21 CFR

1 70887

Proposed Rules:

172 (2 documents) 70918,
70919

33 CFR

165 70889

47 CFR

20 70891

48 CFR

1812 70897
1813 70897
1816 70897
1819 70897
1823 70897
1832 70897
1852 70897

49 CFR

390 70897

50 CFR

648 70909

Rules and Regulations

Federal Register

Vol. 88, No. 197

Friday, October 13, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1992; Project Identifier MCAI–2023–00414–T; Amendment 39–22568; AD 2023–20–09]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a determination that a new airworthiness limitation is necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to establish a new life limit for a certain main landing gear (MLG) retract actuator piston rod. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2023.

The FAA must receive comments on this AD by November 27, 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–2023–1992; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

Gabriel D. Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–1992; Project Identifier MCAI–2023–00414–T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Gabriel D. Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7343; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–56, dated September 26, 2022 (referred to after this as “the MCAI”), to correct an unsafe condition on all MHI RJ Aviation ULC (formerly Bombardier Inc.) Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states MLG fatigue testing that was accomplished at the time of aircraft certification was not performed in accordance with the Qualification Test Plan. According to the MCAI, the pressure impulse testing was repeated on the CL600–2E25 MLG retract actuator using the required load spectrum, and as a result, a “safe life limitation” of 9,300 flight cycles was established for piston rod part number (P/N) 55615–1.

The FAA is issuing this AD to establish a life limit for MLG retract actuator piston rod part number 55615–1. Exceeding this life limit could result in failure of the MLG retract actuator piston in flight, causing an undamped MLG free fall extension, which may result in MLG collapse on landing.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1992.

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is

likely to exist or develop on other products of the same type design.

Requirements of the Final Rule

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate a new life limit of 9,300 flight cycles for MLG retract actuator piston rod P/N 55615–1.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, it is unlikely that the FAA will receive any adverse comments or useful information about this AD from U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no airplanes with this type certificate on the U.S. registry. If an affected airplane is imported and placed on the U.S. Registry in the future, the FAA provides the following cost estimates to comply with this AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes

that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

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

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:

2023–20–09 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22568; Docket No. FAA–2023–1992; Project Identifier MCAI–2023–00414–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (type certificate previously held by Bombardier Inc.) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that a new airworthiness limitation is necessary. The FAA is issuing this AD to establish a life limit for main landing gear (MLG) retract actuator piston rod part number 55615–1. Exceeding this life limit could result in failure of the MLG retract actuator piston in flight, causing an undamped MLG free fall extension. The unsafe condition, if not addressed, could result in MLG collapse on landing.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to establish a life limit of 9,300 flight cycles for the MLG retract actuator piston rod (part of MLG retract actuator 55600), part number 55615–1. The initial compliance time for removing the part from service is at the applicable time specified in paragraphs (g)(1) through (3) of this AD.

Note 1 to paragraph (g): The life limit in paragraph (g) of this AD can be found in Airworthiness Limitation (ALI) Task Number 32–32–05–709 for Configuration B, “Piston Rod, MLG Retractable Actuator (part of MLG Retractable Actuator 55600)” of MHI RJ CRJ700/900/1000 Temporary Revision ALI–0763, dated April 14, 2022 (TR ALI–0763), which specifies an effective date of April 14, 2022.

(1) For a MLG retract actuator piston rod that has accumulated fewer than 4,300 total flight cycles as of April 14, 2022 (phase-in Effective Date of TR ALI–0763): Before accumulating 9,300 total flight cycles.

(2) For a MLG retract actuator piston rod that has accumulated 4,300 total flight cycles

or more and 18,000 total flight cycles or fewer as of April 14, 2022 (phase-in Effective Date of TR ALI-0763): Within 5,000 flight cycles from April 14, 2022, or before exceeding 20,000 total flight cycles, whichever occurs first.

(3) For a MLG retract actuator piston rod that has accumulated more than 18,000 total flight cycles as of April 14, 2022 (phase-in Effective Date of TR ALI-0763): Within 2,000 flight cycles from April 14, 2022.

(h) No Alternative Actions or Intervals

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

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: 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, mail it to the address identified in paragraph (j)(3) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or MHI RJ Aviation ULC Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF-2022-56, dated September 26, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1992.

(2) For more information about this AD, contact Gabriel D. Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7343; email 9-avs-nyaco-cos@faa.gov.

(3) For MHI RJ service information identified in this AD that is not incorporated by reference, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833-990-7272 or direct-dial telephone 450-990-7272; fax 514-855-8501; email thd.crj@mhirj.com; website mhirj.com.

(k) Material Incorporated by Reference

None.

Issued on October 4, 2023.

Victor Wicklund,

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

[FR Doc. 2023-22486 Filed 10-12-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA-2011-N-0179]

Prior Notice of Imported Food Questions and Answers (Edition 4): Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled “Prior Notice of Imported Food Questions and Answers (Edition 4): Guidance for Industry.” The guidance document updates the current version of the guidance by including three additional questions. One question relates to any effect systems recognition or equivalency determinations have on prior notice requirements. The other two questions relate to FDA’s notice to a submitter or transmitter of prior notice of an FDA refusal for inadequate prior notice or hold, if the food article is from a foreign facility that is not registered and addresses the timeframe for making requests for FDA review of such refusal or hold. FDA is also making other technical editorial changes. The guidance announced in this notice finalizes the draft guidance of the same title dated September 13, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on October 13, 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-2011-N-0179 for “Prior Notice of Imported Food Questions and Answers (Edition 4): 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 the guidance to the Division of Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20852. 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:

Peter Ajuonuma, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20852, 301-796-2277, Peter.Ajuonuma@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled “Prior Notice of Imported Food Questions and Answers (Edition 4): Guidance for Industry.” In the **Federal Register** of September 13, 2022 (87 FR 55932), FDA announced the availability of the draft guidance entitled “Prior Notice of Imported Food Questions and Answers (Edition 4): Draft Guidance for Industry.” FDA received no comments on the draft guidance. As a result, we are publishing the guidance as drafted, with minor editorial changes to improve clarity, such as replacing the term “animal feed” with “animal food.” The guidance announced in this notice finalizes the

draft guidance dated September 13, 2022, and replaces “Prior Notice of Imported Food Questions and Answers (Edition 3): Guidance for Industry,” dated June 2016.

FDA continues to believe that it is reasonable to maintain responses to questions concerning prior notice of imported food in a single document that is periodically updated in response to additional questions or regulatory or policy changes. As in the previous editions, the following indicators are used to help users identify revisions: (1) the guidance is identified as a revision of a previously issued document; (2) the revision date appears on the cover of the guidance; (3) the edition number of the guidance is included in its title; and (4) revised or added questions and answers are identified as such in the body of the guidance.

On November 7, 2008, we published a final rule in the **Federal Register** requiring submission to FDA of prior notice of food, including food for animals, that is imported or offered for import into the United States (73 FR 66294). The rule implements section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), which was added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107-188) and requires that FDA receive prior notice of food imported or offered for import into the United States.

On December 16, 2003, FDA issued a guidance entitled “Prior Notice of Imported Food Questions and Answers (Edition 1).” FDA issued a second edition of the guidance on May 3, 2004, and a third edition on June 16, 2016. FDA issued a draft fourth edition, which was published for public comment from September 13, 2022, to November 14, 2022. We are issuing this guidance entitled “Prior Notice of Imported Food Questions and Answers (Edition 4): Guidance for Industry” as a level 1 guidance, finalizing the draft guidance issued on September 13, 2022.

The fourth edition of the prior notice guidance adds three additional questions. One question relates to any effect systems recognition or equivalency determinations have on prior notice requirements. The other two questions relate to FDA’s notice of a refusal under 801(m)(1) of the FD&C Act (in accordance with § 1.283 (21 CFR 1.283)) for inadequate prior notice or a hold under 801(l) (in accordance with § 1.285 (21 CFR 1.285)) if the food article is from a foreign facility that is not registered, as well as address the timeframe for making requests for FDA

review of such a refusal or hold. The guidance is intended to help clarify whether food imported from a country with which FDA has a Systems Recognition Arrangement or equivalence determination is exempted from prior notice requirements. The guidance also clarifies when FDA will provide notice of the refusal or hold to the relevant party, and when the 5-calendar-day clock to request a review of the refusal or hold begins.

We are also making other technical amendments to the guidance due to the expanded capabilities of the U.S. Customs and Border Protection’s (CBP) Automated Broker Interface of the Automated Commercial Environment (ABI/ACE) system and FDA’s 2017 technical amendments to the prior notice rule (82 FR 15627, March 30, 2017), such as replacing references to the Automated Commercial System (ACS) and successor system with the ABI/ACE system, removing references to requirements that certain prior notice submissions be submitted in FDA’s Prior Notice System Interface (FDA PNSI), and updating outdated links and FDA contact information. The fourth edition guidance clarifies that the existence of a Systems Recognition Arrangement with or an equivalence determination of a foreign country does not exempt foods imported from that country from FDA’s prior notice requirements.

FDA’s policy on and practice of communicating prior notice refusals and holds has changed over time. FDA previously stated that we intended to provide notice regarding refusals to carriers. Those carriers could then notify others, such as the entity that hired the carrier to transport the article of food, of a problem with the prior notice (see 73 FR 66294 at 66365). Subsequently, FDA’s Guidance for Industry “Prior Notice of Imported Food Questions and Answers (Edition 3)” was published with the explanation that FDA will communicate the decision to examine articles of food to CBP.

The fourth edition clarifies that notification of these prior notice refusals and holds will be communicated to CBP and provided to the relevant party (*i.e.*, the submitter or transmitter of prior notice) upon arrival of the article. FDA is clarifying its policy because providing advanced notice of a refusal or hold to a submitter or transmitter could create incentives for bad actors, who may attempt to reroute their entries for the purpose of evading FDA requirements and importing unsafe food.

The fourth edition of the guidance also clarifies the 5-calendar-day clock to request a review of these refusals and

holds. Under §§ 1.283(d) and 1.285(j), certain parties may, for the enumerated reasons, request reviews of the prior notice refusals and holds within 5 calendar days of the hold or refusal. The fourth edition clarifies that FDA considers the 5-calendar-day clock to begin when FDA provides notice of the refusal or hold to the submitter or transmitter.

Additionally, in 2016, CBP issued a notice announcing that ABI/ACE would replace ACS as the sole electronic data interchange system authorized by CBP for the processing of electronic entries of FDA-regulated products (see 81 FR 30320, May 16, 2016). ABI/ACE became the successor system to ACS. In 2017, we amended 21 CFR part 1, subpart I to replace references to ACS and successor system with ABI/ACE (see 82 FR 15627). As part of this rulemaking, we eliminated some requirements for submitting prior notice due to the expanded capabilities of ABI/ACE, such as the requirement to submit articles that have been refused under section 801(m)(1) of the FD&C Act or subpart I in FDA PNSI. Further, ABI/ACE can now accommodate entries it previously could not, such as articles of food arriving through international mail. Therefore, to reflect these changes that were implemented in the rulemaking and the expanded capabilities of ABI/ACE, we are replacing references in the prior notice guidance to ACS with the successor system ABI/ACE. In addition, we are providing clarification regarding how persons may submit prior notice for articles of food imported or offered for import by international mail.

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 guidance for industry on the prior notice requirements. 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. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR 1.278 to 1.282 have been approved under OMB control number 0910–0520.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <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>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: October 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22649 Filed 10–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0735]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Jacksonville Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waterways surrounding Jacksonville, Florida during the 2023 Jacksonville Beach Sea and Sky Air Show. The safety zone is necessary to ensure the safety of event participants and spectators. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Jacksonville or a designated representative.

DATES: This rule is effective from 7 a.m. until 5 p.m. on October 20, 2023, through October 22, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0735 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 Marine Science Technician First Class Anthony DeAngelo, Waterways Management Division, Sector Jacksonville, FL, U.S. Coast Guard; telephone 904–714–7631; email Anthony.DeAngelo@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of the event without ample time for the NPRM process. We must establish the safety zone by October 20, 2023, and lack sufficient time to provide for a reasonable comment period and then consider those comments before issuing this rule.

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 contrary to the public interest because immediate action is needed to ensure the safety of the participants and vessels during the 2023 Jacksonville Beach Sea and Sky Air Show.

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 Jacksonville (COTP) has determined that potential hazards associated with the 2023 Jacksonville Beach Sea and Sky Air Show will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the 2023 Jacksonville Beach Sea and Sky Air Show.

IV. Discussion of the Rule

This rule establishes a safety zone on certain waters of Jacksonville, Florida, during the 2023 Jacksonville Beach Sea

and Sky Air Show. The safety zone will be enforced from 7 a.m. until 5 p.m. on October 20, 2023, through October 22, 2023. The safety zone will cover waters within the points starting at 30°18'00" N, 081°23'06" W, then proceeding to the East to point 30°17'54" N, 081°21'54" W, then to the Southeast to point 30°16'12" N, 081°21'34" W, then to the Southwest to point 30°16'06" N, 081°22'43" W, then proceeding to the first point.

No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without first obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners, and/or by on-scene designated representatives.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 following reasons: (1) the temporary safety zone will only be enforced for a total of 10 hours per day, for 3 consecutive days; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

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 1.7 nautical mile perimeter safety zone, lasting the duration of the marine event and thus limited in time and scope. This zone will prohibit entry while in effect. It is categorically excluded from further review under paragraph L60a 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 protestors. 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 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–0735 to read as follows:

§ 165.T07–0735 2023 Jacksonville Beach Sea and Sky Airshow.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean off the coast of Jacksonville Beach, from surface to bottom, that are within the 1.7 nautical mile perimeter that begins at 30°18'00" N, 081°23'06" W, then proceeding to the East to point 30°17'54" N, 081°21'54" W, then to the Southeast to point 30°16'12" N, 081°21'34" W, then to the Southwest to point 30°16'06" N, 081°22'43" W, then proceeding to the first point.

(b) *Definitions.* As used in this section, the term “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 Jacksonville (COTP) in the enforcement of the safety zone.

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

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Jacksonville by telephone at (904) 714–7557, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the

COTP Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP’s designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. until 5 p.m. on October 20, 2023, through October 22, 2023.

Dated: October 6, 2023.

J.D. Espino-Young,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2023–22701 Filed 10–12–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 20–3; DA 23–914; FR ID 133942]

Wireless Telecommunications Bureau Conditionally Waives Certain Aspects of the Wireless Hearing Aid Compatibility Volume Control Testing Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule; limited waiver.

SUMMARY: The Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) recently granted a limited waiver of the Commission’s wireless hearing aid compatibility rules with respect to the volume control technical standard that handset manufacturers use in part to certify handsets as hearing aid-compatible under the 2019 ANSI Standard. The Bureau took this step in response to a petition filed by the Alliance for Telecommunications Industry Solutions (ATIS) seeking waiver of certain aspects of these rules. By conditionally granting the waiver request, the Bureau ensures that handset manufacturers can continue to release new hearing aid-compatible handset models while a new volume control standard is developed that the Commission can adopt into its wireless hearing aid compatibility rules.

DATES: The waiver is effective as of September 29, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eli Johnson, Eli.Johnson@fcc.gov, of the Wireless Telecommunications Bureau,

Competition & Infrastructure Policy Division, (202) 418–1395.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission document, WT Docket No. 20–3, DA 23–914, released on September 29, 2023. The full text of this document is available for public inspection on the FCC’s website at: <https://docs.fcc.gov/public/attachments/DA-23-914A1.pdf>. The document is available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

1. The Bureau grants a limited waiver of § 20.19(b)(1) and (3) of the Commission’s wireless hearing aid compatibility rules with respect to the volume control technical standard that handset manufacturers use in part to certify handsets as hearing aid-compatible under the 2019 ANSI Standard. This action is prompted by a request filed by the Alliance for Telecommunications Industry Solutions (ATIS) seeking waiver of certain aspects of these rules. Under the terms of the time-limited waiver the Bureau grants, a handset may be certified as hearing aid-compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in this Order as well as all other aspects of the 2019 ANSI Standard.

2. Consistent with ATIS’s September 12, 2023, *ex parte* letter (ATIS Ex Parte Letter) and as a condition of this waiver, the Bureau requires a handset to pass the conversational gain test at the 2 Newton (N) force level on all available narrowband and wideband codecs and air interface combinations. With respect to the 8N force level test, the Bureau agrees with the ATIS Ex Parte Letter that this test should be performed, and the Bureau waives the requirement that a handset achieve at least an 18 dB conversational gain. This waiver is conditioned on manufacturers performing the 8N force level test using the same testing parameters that the Bureau is requiring for the 2N force level test and to place on the handset’s package label the resulting conversational gain (even if it is below 18 dB) in a manner consistent with the

Commission's existing hearing aid compatibility labeling rules.

3. With respect to the related receive distortion and noise performance (distortion/noise) and receive acoustic frequency response performance (frequency response) tests, the Bureau agrees with the ATIS Ex Parte Letter that handsets must pass testing using at least one narrowband and one wideband codec of the manufacturer's choosing. The Bureau also accepts ATIS's suggestion that at least one narrowband and one wideband codec must pass testing for distortion/noise and frequency response and tests will be limited to one bit rate and only with those air interfaces associated with the chosen codecs and that the other codecs used for conversational gain at the 2N and 8N force levels are not required to undergo the distortion/noise and frequency response tests. Further, as detailed below, the Bureau accepts ATIS's suggested method to set the volume control setting for testing these other codecs for conversational gain.

4. By taking these steps, the Bureau ensures that when the exclusive use transition period ends on December 5, 2023, new handset models can be certified as hearing aid-compatible using the 2019 ANSI Standard as modified by the conditions established in this Order. These actions allow consumers with hearing loss who use hearing aids or cochlear implants to benefit from wider availability of handsets offering improved hearing aid compatibility under the 2019 ANSI Standard's radio frequency (RF) interference and inductive coupling requirements. In addition, this approach gives consumers assurance that a handset's amplifier/speaker combination will provide improved volume control functionality over narrowband and wideband modes of voice communications, and that consumers have the information that they need to make informed purchasing decisions. The Bureau's actions in this waiver order allows the Commission to move closer to its goal of reaching 100% hearing aid compatibility for wireless handsets, while also creating a path forward for testing to ensure that handsets have volume control capabilities.

5. This waiver is effective immediately upon release of this Order so that manufacturers may afford the benefits of this relief to consumers with hearing loss as soon as feasible. In reliance upon ATIS's representations that efforts are underway to expeditiously develop a new volume control standard through the TIA standards setting process, the Bureau

limits this waiver to a two-year period. During this waiver period, the Bureau will evaluate the effectiveness of the waiver standard in meeting the needs of consumers with hearing loss and take action where appropriate. The Bureau expects that a two-year time limitation for the waiver will encourage all interested parties to work together to rapidly develop an improved volume control standard that the Commission can incorporate into its rules in the future. To ensure this outcome, the Bureau conditions this waiver in part on ATIS filing a status letter on the development of a new volume control standard with the Bureau on the one-year anniversary of the release date of this Order. The two-year waiver period will run from the release date of this Order and ends 24 months after the release date of this Order.

I. Background

6. The Commission's wireless hearing aid compatibility rules require handset manufacturers to ensure that at least 85% of the total number of handset models that they offer are certified as hearing aid-compatible. Handsets are considered to be hearing aid-compatible if they meet certain ANSI technical standards that the Commission has incorporated by reference into the wireless hearing aid compatibility rules. Before 2017 the Commission's wireless hearing aid compatibility rules addressed acoustic and inductive coupling, but in 2017 the Commission modified its wireless hearing aid compatibility rules by adopting a volume control requirement similar to the requirement for wireline phones. The Commission determined that the objectives of section 710 of the Communications Act would be served by modifying the Commission's acoustic coupling provisions for wireless handsets to include a volume control requirement designed to accommodate consumers with hearing loss who use hearing aids or cochlear implants and those with hearing loss who do not use these devices. The Commission affirmed its belief that a volume control requirement that specifies certain levels of amplification as an element of hearing aid compatibility is just as necessary for wireless handsets as it is for wireline phones in order to ensure the provision of effective telecommunication services for people with hearing loss.

7. While the Commission adopted a wireless volume control requirement in 2017, the Commission did not adopt a specific wireless volume control technical standard. Instead, the Commission noted that an industry

approved technical standard was nearing completion and, once the Commission adopted this standard into its rules, compliance with this standard would constitute compliance with the Commission's new wireless volume control requirement. The Commission suggested that this standard could include: (1) the use of conversational gain for measuring receive loudness; (2) the establishment of minimum value(s) for the acceptable maximum volume(s); (3) the use of a Head and Torso Simulator (HATS); and (4) the use of two force levels for holding the handset next to the ear—2N force for people who use hearing aids, and 8N force for people who do not use hearing aids.

8. In September 2019, the ANSI Committee petitioned the Commission to replace the existing 2011 ANSI Standard referenced in the Commission's rules for handset certification with the new 2019 ANSI Standard. The ANSI Committee oversees the development of the ANSI wireless hearing aid compatibility technical standard, and the committee is composed of handset manufacturers and testing laboratories, among other groups. While the 2011 and the 2019 ANSI Standards address acoustic and inductive coupling between wireless handsets and hearing aids, the new standard also includes the wireless volume control technical standard referenced by the Commission in 2017. The 2019 ANSI Standard specifically incorporates by reference the TIA 5050 Standard for volume control and requires handsets to meet this standard along with the rest of the 2019 ANSI Standard in order for a handset to be certified as hearing aid-compatible under this standard.

9. The TIA 5050 Standard establishes a volume control testing methodology which defines conversational gain as the acoustic output level of speech from a handset relative to the acoustic level that would be present in a face-to-face conversation with two people one meter apart. To be compliant with this standard, a handset must undergo testing at 2N and 8N force levels with each force level requiring the passing of three interrelated tests. The 2N test requires a handset to demonstrate at least 6 dB of conversational gain while also meeting certain distortion/noise and frequency response requirements. The 8N force level test requires a handset to demonstrate at least 18 dB of conversational gain while also meeting the same distortion/noise and frequency response requirements.

10. In February 2021, the Commission adopted the 2019 ANSI Standard and the related TIA 5050 Standard and made

these standards the exclusive wireless hearing aid compatibility certification standards after a two-year transition period that at the time was set to end on June 5, 2023. In adopting the 2019 ANSI Standard, the Commission noted that this standard was broadly supported by both industry and consumer groups. Further, the Commission observed that the 2019 ANSI Standard “for the first time . . . incorporates a volume control requirement that will provide significant benefits to persons with hearing loss, whether or not they use hearing aids.”

11. On December 16, 2022, ATIS filed a petition requesting that the Commission grant a limited interim waiver of § 20.19(b)(1) and (b)(3) of the Commission’s wireless hearing aid compatibility rules for all entities subject to these rules to allow handsets to be certified under the 2019 ANSI Standard as hearing aid-compatible using a reduced volume control testing methodology. ATIS asserts that the existing volume control testing standard is fundamentally flawed because it uses a pulsed-noise signal, which it claims is insufficiently voice-like to be compatible with many modern codecs. ATIS states that the standard’s use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard.

12. ATIS’s Waiver Petition requests that the Commission allow handsets to be certified as hearing aid-compatible if they meet the 2019 ANSI Standard’s acoustical and inductive coupling standards in full and meet a reduced volume control standard that would only require a handset to: (1) pass conversational gain for all available codecs and air interface combinations at the 2N level, and (2) obtain passing results for at least one of the handset’s available codecs for the distortion/noise and frequency response requirements. Additionally, it requests that the Commission limit the codecs to be tested to those that are within the scope of the TIA 5050 Standard, which includes narrowband and wideband codecs, and that the Commission completely waive the 8N force level test. Finally, it requests that the waiver remain in place until the new volume control technical standard that is being developed through the TIA process becomes effective.

13. At the same time that ATIS filed its waiver petition for a reduced volume control testing standard, the HAC Task Force filed its Final Report setting forth its recommendations for how the Commission can achieve its goal of requiring that all new handsets be

certified as hearing aid-compatible. The HAC Task Force is an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers that formed for the purpose of reporting to the Commission on whether requiring 100% of new handsets to be certified as hearing aid-compatible is an achievable objective. Part of the HAC Task Force’s Final Report on how the Commission can achieve its 100% objective includes a recommendation that the Commission adopt ATIS’s reduced volume control testing methodology and maintain it until the Commission has an opportunity to adopt a new volume control standard that is presently being developed through the TIA process.

14. Similarly, ATIS’s waiver petition cites data from the HAC Task Force’s Final Report to support its description of the issues experienced in relation to the testing methodology for volume control. Testing data included in the HAC Task Force’s Final Report indicates that for the distortion/noise test the pulse noise signal passed through the Adaptive Multi-Rate (AMR) codec to produce unintended noise and distortion of the signal. Conversely, testing data included with the Final Report indicates that this problem did not exist when testing was conducted on the Enhanced Voice Services (EVS) codec. As a potential solution, the Final Report indicates that the TIA 5050 Standard’s requirement that testing be done using any air interface but generally limited to using the AMR codec could be modified or reinterpreted to allow any codec and air interface combination to be used for the distortion/noise and frequency response measurements.

15. On March 23, 2023, the Bureau released a Public Notice seeking comment on ATIS’s waiver petition that established a 45-day comment period that closed on May 18, 2023. The Public Notice sought comment on ATIS’s waiver petition within the context of the Commission’s commitment to attaining 100% hearing aid compatibility for all covered wireless handsets, as soon as achievable, as well as the Commission’s previous finding that a volume control requirement is necessary “to ensure the provision of effective telecommunications for people with hearing loss.” In addition to seeking comment on ATIS’s waiver petition, Commission staff have met on an *ex parte* basis with the HAC Task Force on multiple occasions and with the Hearing Loss Association of America (HLAA). HLAA claims to be “the nation’s leading organization representing consumers

with hearing loss,” serves as Co-Chair of the HAC Task Force, and supports the HAC Task Force Final Report recommendations.

16. On April 14, 2023, the Bureau released an order extending the transition period for exclusive use of the 2019 ANSI Standard and the related TIA 5050 Standard from June 5, 2023, as originally established by the Commission, to December 5, 2023. The Bureau took this step to ensure that handset manufacturers can continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considers ATIS’s waiver petition. The Bureau stated that continuing to allow new handset models to be certified as hearing aid-compatible is essential as the Commission moves to its goal of all handsets being hearing aid-compatible.

17. Finally, in the ATIS Ex Parte Letter, ATIS reiterates and clarifies its volume control testing proposals contained in its waiver petition, and partially revises its proposals. Consistent with its original proposal, ATIS reiterates its suggestion that testing at the 2N force level should require passing of conversational gain for all available narrowband and wideband codecs and air interface combinations. With respect to the 8N force level test, however, ATIS modifies its original proposal and suggests that testing at this force level be done on all available narrowband and wideband codecs and air interface combinations; but that the requirement of at least an 18 dB conversational gain passing rate be waived; and that the resulting conversational gain from testing be placed on the handset’s package label. Further, ATIS suggests a modification for its proposal for the distortion/noise and frequency response tests. It proposes obtaining “passing results for at least one of the device’s narrowband *and* one wideband codecs for the distortion and frequency response,” instead of its original suggestion that a passing result would only have to be obtained for one narrowband *or* one wideband codec. ATIS clarifies, however, that testing of the chosen narrowband and wideband codecs for the distortion/noise and frequency response tests should be limited to one bit rate *and* only those air interfaces associated with the chosen codecs. Under its proposal, the other narrowband and wideband codecs used for the 2N and 8N force level conversational gain tests are not required to undergo distortion/noise and frequency response testing.

II. Discussion

18. Section 1.3 of the Commission's rules (47 CFR 1.3) provides that the Commission may "on its own motion or on petition" waive a rule "for good cause shown, in whole or in part, at any time." The Commission may find that the "good cause shown" standard is met when: (1) "special circumstances warrant a deviation from the general rule" and (2) "such deviation will serve the public interest." In this case, the Bureau finds good cause to grant ATIS's waiver request under the conditions discussed below. Further, the Bureau finds that the underlying purpose of the rule would not be served by strictly applying all of the requirements at this time since such strict enforcement might have an effect of denying consumers most of the benefits of the latest standard. For this additional reason, the Bureau finds it in the public interest to grant limited relief and, thereby, permit consumers with hearing loss to benefit from the advantages that the 2019 ANSI Standard offers beyond just volume control while at the same time ensuring some volume control benefits.

19. The Bureau finds special circumstances exist that warrant a deviation from the general rule as well as the fact that strict compliance with the volume control testing standard at this time would undermine the general purpose of the hearing aid compatibility rules. Specifically, ATIS asserts that there are "significant and material problems with the methodology used for testing volume control" that render compliance with the 2019 ANSI Standard functionally impossible given that the standard requires compliance with the TIA 5050 Standard. According to ATIS, the problem relates to § 20.19(b)(3)(i) of the Commission's wireless hearing aid compatibility rules even though handset manufacturers never addressed this rule in their filed comments when the Commission was considering adopting the 2019 ANSI Standard and the related TIA 5050 Standard. This provision provides that "a handset is hearing aid-compatible if it meets the 2019 ANSI standard for all frequency bands that are specified in the ANSI standard and all air interfaces over which it operates on those frequency bands. . . ." In turn, the 2019 ANSI Standard specifies that in order for a handset to meet the standard's volume control requirements the handset must meet the requirements of the TIA 5050 Standard. The TIA 5050 Standard specifies that handsets must be tested for volume control using one AMR narrowband codec and one AMR

wideband codec or the next closest codec if the AMR narrowband or wideband codec is not available in combination with any available air interface of the manufacturer's choosing that supports the codec being tested.

20. While the TIA 5050 Standard generally limits testing to one AMR narrowband and one AMR wideband codec in combination with an air interface of the manufacturer's choosing, ATIS asserts that this is not the case in practice because of the testing guidance the Office of Engineering and Technology (OET) Laboratory Division has issued. ATIS states that OET's testing guidance effectively requires a handset to pass the Commission's volume control standard on all available codecs and air interface combinations even though the TIA 5050 Standard does not specify this approach. According to ATIS, this situation results from OET's guidance requiring handset manufacturers to investigate and document "worst-case test conditions and results." ATIS states that this all air interface/frequency/codec testing requirement results in a testing standard that handsets cannot pass because the TIA 5050 Standard does not use a speech-like signal that can pass substantially unchanged through all possible speech codecs.

21. In support of its argument, ATIS states that all of the handsets that it tested using the 2019 ANSI Standard failed to pass this standard. Specifically, ATIS states that it tested eighteen handset models that had recently been certified as hearing aid-compatible using the 2011 ANSI Standard and all of these handsets failed to pass the 2019 ANSI Standard because of the Commission's all air interface/frequency/codec testing requirement reflected in OET's Knowledge Database (KDB) Volume Control Guidance document. According to ATIS, the tested handsets represented a range of handset models offered by manufacturers, with models being offered at a range of price points, having multiple form factors, and having multiple chip set providers.

22. No party filed comments opposing ATIS's request for a reduced volume control testing methodology on an interim basis until a full volume control testing methodology can take effect. Commenters echo ATIS's statement that the current volume control testing methodology is flawed and needs to be modified so consumers with hearing loss can benefit from other aspects of the 2019 ANSI Standard. The unanimous supporters of ATIS's waiver request include HLAA, an advocacy organization which represents

consumers with hearing loss. In addition to these comments, handset manufacturers' most recent compliance filings reveal that not a single handset has been certified as hearing aid-compatible under the 2019 ANSI Standard. Rather, these reports indicate that all of the handsets that manufacturers are currently offering have been certified as hearing aid-compatible using the 2011 ANSI Standard.

23. Based on these special circumstances and the fact that the underlying purpose of the hearing aid compatibility rules would be frustrated by strict adherence to the volume control testing standard, the Bureau finds it in the public interest to take action to ensure that handset manufacturers can certify handsets as hearing aid-compatible under the 2019 ANSI Standard and consumers with hearing loss can benefit from the advantages that the 2019 ANSI Standard offers, including some volume control benefits. While ATIS is requesting that the Commission waive certain aspects of the volume control testing methodology as an interim measure, ATIS is not requesting a waiver of the 2019 ANSI Standard's acoustic and inductive coupling requirements. The Bureau agrees with ATIS and commenters that by waiving certain aspects of the volume control testing methodology, it allows consumers who use hearing aids or cochlear implants to receive the benefits of the 2019 ANSI Standard's heightened RF interference requirements, and the Bureau allows consumers who use telecoils to receive the benefits of the 2019 ANSI Standard's improved inductive coupling requirements. In addition, the 2019 ANSI Standard offers other consumers benefits, including coverage of new technologies and devices, and an expanded frequency range. As commenters observe, granting the waiver request will allow consumers with hearing loss to fully benefit from the improvements that the 2019 ANSI Standard offers that go beyond those related to volume control.

24. *2N Force Level Conversational Gain Test.* With these benefits in mind, for the conversational gain test at the 2N force level the Bureau accepts ATIS's proposal as clarified in the ATIS Ex Parte Letter and condition this waiver on handsets having to pass testing using all available narrowband and wideband codecs and air interface combinations. Further, the Bureau requires handset manufacturers to place the lowest conversational gain that results from this testing on the handset's package label in a manner consistent with the

hearing aid compatibility labeling rules. This approach is consistent with ATIS's waiver request. It is also consistent with the Commission's package labeling requirements, which require the lowest conversational gain that results from testing the various combinations of narrowband and wideband codecs and air interfaces to be placed on the package label in order to avoid an inflated test result being placed on the label. In addition, commenters universally support ATIS's 2N force level test proposal as well as all other aspects of ATIS's waiver testing proposals.

25. *8N Force Level Conversational Gain Test.* As ATIS suggests in the ATIS Ex Parte Letter, manufacturers will continue to be required to conduct the 8N force level conversational gain test, but the Bureau waives the requirement that the test achieve at least an 18 dB passing rate. Under this approach, manufacturers are required to perform the 8N force level test using the same testing parameters as established for the 2N force level test, and must place the resulting conversational gain (even if it is below 18 dB) on the handset's package label in a manner consistent with the existing hearing aid compatibility labeling rules. This decision is consistent with one of the stated reasons that the Commission adopted a handset volume control requirement, which is not only to aid consumers with hearing loss who use hearing devices, but also to aid consumers with hearing loss who do not use hearing devices. The approach the Bureau adopts for the 8N force level test is consistent with this objective and gives consumers with hearing loss who do not use hearing aids the relevant information that they need to make informed handset purchasing decisions.

26. *Distortion/Noise and Frequency Response Tests.* With respect to the related distortion/noise and frequency response tests at the 2N and 8N force levels, the Bureau accepts ATIS's suggestions set forth in the ATIS Ex Parte Letter. Consistent with the ATIS Ex Parte Letter, the Bureau conditions this waiver on handsets having to pass testing using at least one narrowband and one wideband codec of the manufacturer's choosing. Further, the Bureau accepts ATIS's suggestion that the chosen narrowband and wideband codecs will be tested using one bit rate and with only those air interfaces associated with the chosen codecs. The Bureau also accepts ATIS's suggestion that only the chosen narrowband and wideband codecs will be tested for distortion/noise and frequency response and the other codecs used for testing for

conversational gain at the 2N and 8N force levels are not required to undergo the distortion/noise and frequency response tests. In this regard, the Bureau accepts ATIS's "alternative method" for determining the volume control setting for purposes of testing the other codecs for conversational gain and for reporting those test results consistent with that method.

27. This approach follows the TIA 5050 Standard's requirement that handsets pass testing using one narrowband and one wideband codec. This approach also gives assurance that a handset's amplifier/speaker combination will meet consumer expectations over both narrowband and wideband modes of voice communications as envisioned by the current standard. At the same time, the decision to accept ATIS's proposed modification and allow manufacturers to choose which narrowband and wideband codecs to test gives manufacturers more flexibility than the TIA 5050 Standard, which specifies the narrowband and wideband codecs to be tested. The Bureau accepts ATIS's suggestion on this point given the testing methodology flaw seen when testing an AMR codec.

28. ATIS's proposal to give manufacturers flexibility to choose any codec for testing appears linked to the data in the HAC Task Force's Final Report that handsets cannot pass the distortion/noise and frequency response tests using certain codecs. In particular, the data relied upon by ATIS indicates that handsets cannot pass the distortion/noise test when tested using the AMR codecs specified in the TIA 5050 Standard. ATIS asserts that the developers of the TIA 5050 Standard did not attempt to resolve the technical difficulty of developing a test signal with speech-like characteristics that could pass substantially unchanged through all possible speech codecs or that would evaluate the end-to-end transparency of the various speech codecs.

29. The HAC Task Force's Final Report, however, includes data from two unnamed manufacturers indicating that four of their handsets were able to pass the distortion/noise part of the volume control testing standard using an EVS wideband codec as opposed to an AMR wideband codec. The Bureau is concerned that if manufacturers choose to test just narrowband codecs, the tested handsets will fail to demonstrate the performance of their speaker/amplifier combinations when a wideband voice codec is used. As a result, for the distortion/noise and frequency response tests at the 2N and

8N force level, rather than requiring testing of both narrowband and wideband AMR codecs, as generally required by the TIA 5050 Standard, the Bureau requires that handsets pass testing of at least one narrowband codec and one wideband codec of the manufacturer's choosing, as discussed above.

30. For the distortion/noise and frequency response tests at the 2N and 8N force levels, manufacturers must choose codecs that are within the scope of the TIA 5050 Standard, which include narrowband and wideband codecs, but these codecs do not necessarily have to be AMR codecs. That is, the Bureau is not limiting the codecs that manufacturers can choose for testing to just AMR narrowband and AMR wideband codecs as defined in sections 4.5.1 and 4.5.2 of the TIA 5050 Standard. While manufacturers may choose to test AMR narrowband and AMR wideband codecs, they can also choose EVS narrowband and EVS wideband codecs or any other narrowband or wideband codecs that are within the scope of the TIA 5050 Standard. If a handset does not have a wideband codec or the handset only has an AMR wideband codec, then the test report must document this fact and the passing requirement under these circumstances for the wideband codec test is waived. The passing results for the distortion/noise and frequency response tests must be reported in the handset's test report.

31. *Revised Volume Control KDB Guidance.* To help in this matter, OET, in coordination with the Bureau, will issue a revised KDB guidance document for volume control testing consistent with this Order. This revised KDB guidance will address the technical testing requirements for the conversational gain, distortion/noise, and frequency response requirements that are part of the conditions of this Order. The KDB guidance will also address the reporting requirements for the test data required under the conditions of this Order. Manufacturers and testing laboratories are expected to fully follow the KDB guidance's testing instructions as issued. These testing requirements are to ensure the best listening experience for consumers with hearing loss as possible under this waiver.

32. *Labeling Requirements.* The Bureau reminds handset manufacturers that the Commission's hearing aid compatibility labeling rules require certain information to be placed on a handset's package label and additional information be provided in the handset's package insert and user

manual. The handset package labeling rules require that a handset that is certified as hearing aid-compatible state on the handset's package label that the handset is hearing aid-compatible. In addition, if the handset is certified under a standard that includes volume control requirements, such as under the 2019 ANSI Standard, the label must specify the handset's conversational gain with and without hearing aids. These requirements give consumers the most pertinent information on a handset's package label and allow consumers to determine if the conversational gain of the handset meets their needs.

33. In addition, for handsets certified as meeting volume control testing requirements, the Commission's rules require that package inserts and user manuals for these kinds of handsets provide an explanation of the handset's volume control capabilities and how special testing circumstances such as those permitted by this Order affect those functions. Consumers must have this information to ensure they can purchase handsets that best meet their individual needs. Since the Bureau is waiving certain aspects of the all air interface/frequency/codec volume control testing approach, consumers must be informed as to how this change affects the volume control capabilities of a handset they are considering that has been certified as hearing aid-compatible under the conditions of this Order. The Bureau requires package inserts and user manuals for these type of handsets to state which codecs and air interface combinations were used to pass testing for conversational gain and for the related distortion/noise and frequency response tests and which codecs and air interfaces were not tested. Consumers must be able to understand the volume control capabilities of tested operations and non-tested operations and what this means in terms of the volume control differences between the two types of operations.

34. *Benchmark Compliance.* Pursuant to this Order, the Bureau allows handsets that pass the volume control testing requirements set forth above, as well as the rest of the 2019 ANSI Standard's testing requirements, to be certified as hearing aid-compatible under the 2019 ANSI Standard and the related TIA 5050 Standard. Handsets that satisfy all of these requirements may be marketed as meeting the Commission's hearing aid compatibility requirements and counted as hearing aid-compatible for benchmark deployment purposes. The same is true for handsets that meet the above testing requirements through the permissive

change process. These types of handsets can also be marketed as meeting the Commission's hearing aid compatibility requirements and counted as hearing aid-compatible for benchmark deployment purposes. Handset manufacturers, however, must continue to comply with all other aspects of the Commission's wireless hearing aid compatibility rules, including labeling, website posting, and reporting requirements.

35. During the remainder of the exclusive use transition period that ends on December 5, 2023, handset manufacturers may continue to certify handsets as hearing aid-compatible using either the 2011 ANSI Standard or the 2019 ANSI Standard as conditioned by this Order. Handsets certified as hearing aid-compatible under either of these standards may be counted for benchmark deployment purposes. Consistent with established practice, however, handset manufacturers must use one or the other standard for certification purposes and may not mix parts of each standard. After December 5, 2023, handset manufacturers may only certify new handsets as hearing aid-compatible using the 2019 ANSI Standard as conditioned by this Order.

36. *Waiver Time Limit.* The waiver the Bureau adopts becomes effective upon the release date of this Order and will continue to be effective for a two-year period after the release date of this Order. ATIS and commenters have indicated that a new volume control standard is being developed through the TIA process and that they expect the process to move quickly in order to make the new standard available to the Commission to make effective. The Bureau plans to hold parties to this commitment, and the Bureau expects parties to expedite the process for developing a new volume control standard in time for the Commission to adopt the new standard prior to the waiver period expiring. In order to meet this objective, the Bureau encourages parties to work rapidly and cooperatively for the benefit of consumers with hearing loss.

37. The Bureau further conditions this Order on ATIS filing with the Bureau a letter on the one-year anniversary of the release date of this Order. This letter must appraise the Commission on the status of the development of a new volume control standard and any issues that have arisen with respect to the establishment of the new standard. Further, the letter must inform the Bureau as to when the new standard will be made available to the Commission for adoption. This letter should be seen as an opportunity for

ATIS to inform the Commission that parties are on track to petition the Commission to adopt the new standard prior to the waiver period expiring.

38. The Bureau finds that these actions are not only in the public interest but also fully consistent with the underlying purpose of the Commission's wireless hearing aid compatibility rules. These rules are based on the principle that consumers with hearing loss should have the same access to the newest and most advanced handsets as consumers without hearing loss. By waiving certain handset testing requirements under the conditions of this Order, the Bureau ensures that the underlying purpose of the Commission's hearing aid compatibility rules is not frustrated. This Order allows new handsets to be certified under the 2019 ANSI Standard and consumers with hearing loss will be able to enjoy the benefits that these new handsets will be designed to offer. In addition, this decision permits handset manufacturers to be able to certify new handsets as hearing aid-compatible after the exclusive use transition period ends this coming December. As such, these actions are consistent with the underlying purpose of the Commission's hearing aid compatibility rules and avoid that purpose from being frustrated by strict adherence to the volume control testing requirements. In view of the unique and unusual factual circumstances of this case, the Bureau finds that strict application of the volume control testing requirements would be contrary to the public interest.

39. Finally, the Bureau's decision is consistent with the goal of requiring all new handsets to be certified as hearing aid-compatible. The Bureau is encouraged by the members of the HAC Task Force reiterating "their commitment to working towards the goal that all new handsets will meet HAC requirements," including "an applicable volume control standard." The Bureau continues to strive toward the goal of 100% hearing aid compatibility in the near future and the decision to conditionally waive certain aspects of the volume control testing requirements as discussed above is consistent with this objective. This decision allows handset manufacturers to continue the process of certifying all of their handsets as hearing aid-compatible, as many currently do.

40. *Paperwork Reduction Act.* This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new

or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

III. Ordering Clause

41. Accordingly, *it is ordered*, pursuant to sections 4(i), 303(r), and 610 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 710, and §§ 0.331 and 1.3 of the Commission's rules, 47 CFR 0.331 and 1.3, that ATIS's request for a partial waiver of § 20.19(b)(1) and (b)(3) *is granted* to the extent indicated herein.

42. *It is further ordered* that this Order *is effective* upon release and will remain effective for 24 months from the release date of this Order.

43. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Amy Brett,

Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–22561 Filed 10–12–23; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852

[Notice: (23–089)]

RIN 2700–AE71

Federal Acquisition Regulation Supplement: Revision of the Definition of “Commercial Item” (NFS Case 2022–N003); Correction

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule; correction.

SUMMARY: National Aeronautics and Space Administration (NASA) is correcting a final rule that appeared in the *Federal Register* on September 19, 2023. The document issued was to conform the NASA FAR Supplement (NFS) to changes in the Federal Acquisition Regulation (FAR) that reflect an updated “commercial item” definition pursuant to a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

DATES: Effective October 19, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew O'Rourke, NASA HQs, Office of Procurement Management and Policy Division, LP–011, 300 E Street SW, Washington, DC 20456–0001. Telephone 202–358–4560; facsimile 202–358–3082.

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–17720 appearing on page 64384 in the *Federal Register* of Tuesday, September 19, 2023, the following corrections are made:

PARTS 1812, 1813, 1816, 1819, 1823, 1832, and 1852—[Corrected]

■ 1. On page 64385, in the second column, in amendment 2, the instruction “In parts 1812, 1816, 1819, 1823, 1832, and 1852 revise all references to “Commercial Items” to read “Commercial Products and Commercial Services”” is corrected to read “In parts 1812, 1813, 1816, 1819, 1823, 1832, and 1852 revise all references to “Commercial Items” to read “Commercial Products and Commercial Services.””

Dated: October 10, 2023.

Erica Jones,

NASA FAR Supplement Manager.

[FR Doc. 2023–22651 Filed 10–12–23; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2022–0028]

RIN 2126–AC53

Clarification to the Applicability of Emergency Exemptions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA revises the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared. This rule ensures that the relief granted through emergency declarations is appropriate and tailored to the specifics of the circumstances and emergencies being addressed. This rule also revises the process for extending automatic emergency regulatory relief where circumstances warrant and allows for potential reporting requirements when

FMCSA issues an extension or modification.

DATES: Effective December 12, 2023.

Comments on the information collection in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by November 13, 2023.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than November 13, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Sinniger, Regulatory Law Division, Office of the Chief Counsel, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 570–8062, Kathryn.sinniger@dot.gov. If you have questions on viewing material in the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this final rule as follows:

- I. Availability of Rulemaking Documents
- II. Comments on the Information Collection
- III. Executive Summary
 - A. Purpose and Summary of the Regulatory Action
 - B. Summary of Major Provisions
 - C. Costs and Benefits
- IV. Abbreviations
- V. Legal Basis
- VI. Discussion of Proposed Rulemaking and Comments
 - A. Proposed Rulemaking
 - B. Comments and Responses
- VII. Changes From the NPRM
- VIII. Section-by-Section Analysis
- IX. Severability
- X. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. Congressional Review Act
 - C. Regulatory Flexibility Act (Small Entities)
 - D. Assistance for Small Entities
 - E. Unfunded Mandates Reform Act of 1995
 - F. Paperwork Reduction Act (Collection of Information)
 - G. E.O. 13132 (Federalism)
 - H. Privacy
 - I. E.O. 13175 (Indian Tribal Governments)
 - J. National Environmental Policy Act of 1969

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0028/document> and choose the document to review. To view comments, click this final rule, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting

Dockets Operations at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this final rule should be sent within 30 days of publication to www.reginfo.gov/public/do/PRAMain. Find this information collection by clicking the link that reads “Currently under Review—Open for Public Comments” or by entering OMB control number 2126–0077 in the search bar and clicking on the last entry to reach the “comment” button.

III. Executive Summary

A. Purpose and Summary of the Regulatory Action

Section 390.23 of title 49, Code of Federal Regulations (CFR), automatically creates a 30-day exemption from 49 CFR parts 390 through 399 when the President, a Governor, or FMCSA issues a declaration of an *emergency*, as defined in §§ 390.5 and 390.5T, and a motor carrier or driver provides direct assistance to supplement State or local emergency relief efforts in response to that emergency, as those terms are defined in §§ 390.5 and 390.5T.¹

Based on Agency subject matter expertise and input from States, affected localities, industry groups, and others, FMCSA believes most emergencies justify allowing carriers and drivers who provide direct assistance to the emergency response to receive temporary relief from the normal hours of service (HOS) limits, so that they may deliver critical supplies and services to the communities in need as quickly and safely as possible. However, other safety regulations, including the driver qualification requirements of part 391, vehicle inspection requirements of part 396, parts and accessories required by part 393, and other operating requirements such as prohibitions on operating while ill or fatigued in part 392, often have no direct bearing on the motor carrier's ability to provide direct assistance to the emergency relief effort.

Safety regulations ensure that the companies, vehicles, and drivers meet the minimum requirements to operate safely. While temporary relief from some regulations may be necessary during an emergency, waiving every regulation in parts 390 through 399 could negatively impact the safety of commercial motor vehicles (CMVs) operating on the roadways. Although the Agency has no detailed quantitative information that suggests that past or existing emergency exemptions have in fact negatively impacted road safety, it also has no information suggesting that exemptions from all safety regulations in Parts 390–399 in the event of an emergency is necessary to enable the provision of emergency relief. FMCSA is committed to ensuring that the operation of CMVs in interstate commerce is conducted as safely as practicable and, therefore, presumes that its promulgated safety regulations should remain in effect absent a specific showing that exemption is necessary.

In order to provide clarity on which emergency exemptions are necessary during an emergency, FMCSA is narrowing the automatic applicability of § 390.23 to the HOS limits in §§ 395.3 and 395.5, which set the basic HOS limits for property-carrying and passenger-carrying vehicles, respectively. This change clarifies that carriers and drivers are not authorized to overlook other important safety requirements while performing direct assistance to emergency relief efforts. By limiting the scope, today's rule clarifies that the Federal Motor Carrier Safety Regulations (FMCSRs) not relevant to most emergency situations remain in effect while retaining the Agency's flexibility to tailor emergency regulatory relief to the specific circumstances of an emergency.

B. Summary of Major Provisions

This rule changes definitions in §§ 390.5 and 390.5T. It modifies the definition for *emergency* to clarify that emergency regulatory relief under § 390.23 generally does not apply to economic conditions that are caused by market forces, including shortages of raw materials or supplies, labor strikes, driver shortages, inflation, or fluctuations in freight shipment or brokerage rates, unless such conditions or events cause an immediate threat to human life and result in a declaration of an emergency. This rule also removes the definition of *emergency relief* as that term is no longer used in § 390.23 and amends the definition of *direct assistance* to incorporate the essential components of the *emergency relief* definition. This rule moves the

definition of *residential heating fuel* from the text of § 390.23 and places it in the definition sections, §§ 390.5 and 390.5T. These reorganizational changes simplify the text in § 390.23 without changing the regulation's meaning.

This rule revises § 390.23 in several ways. Presidential declarations of emergency will continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399. The rule limits the duration and scope of the automatic regulatory relief that takes effect upon a regional declaration of emergency by a Governor, a Governor's authorized representative, or FMCSA, however. The automatic regulatory relief applies for 14 days, as opposed to 30 days, and exempts CMV drivers only from the HOS regulations in §§ 395.3 and 395.5, as opposed to all regulations in parts 390 through 399. This change both shortens the time the automatic regulatory relief is in place and limits the scope of the relief provided, ensuring any impact on safety continues to be minimized during the period of the automatic regulatory relief. FMCSA revised this provision from the NPRM at the suggestion of commenters who expressed concern that the proposed 5-day emergency exemption period would be too short to provide emergency relief, and also too little time for FMCSA to receive and evaluate information on whether a longer FMCSA-issued emergency exemption was warranted. FMCSA believes that most emergency declarations expire within 5 days, but it is aware that climate change has impacted both the number and severity of storms that often give rise to regional declarations of emergency. Providing for 14 days of automatic relief will allow emergency relief efforts in these severe weather scenarios to continue unabated, without fear that there will be a lapse between the automatic regulatory relief and any FMCSA action to extend or reinstate the regulatory relief. Additionally, for those emergencies that do not require an extended response period, the regulation provides that the exemption period triggered by a Governor-issued emergency declaration will end upon cessation of the emergency declaration or 14 days, whichever is sooner.

Section 390.23 maintains the statutory requirement from the Reliable Home Heating Act (49 U.S.C. 31136 note) that when a Governor declares a state of emergency due to a shortage of residential heating fuel, the automatic regulatory relief lasts for a period of 30 days and exempts any motor carrier or driver operating a CMV to provide residential heating fuel in the geographic area so designated as under

¹ Section 390.5 of title 49 is currently suspended and replaced by 49 CFR 390.5T, however the definitions for the listed terms are identical in both sections.

a state of emergency from all regulations in parts 390 through 399. Consistent with the statute, the initial automatic exemption may be extended two times by the Governor, for a total of 90 days, if the Governor determines that the emergency shortage has not ended.

Third, for local emergencies under section 390.23(c), the automatic regulatory relief is limited by this rule to the HOS regulations in §§ 395.3 and 395.5. This regulatory relief is already limited to 5 days, thus no change to the length of the automatic relief is needed. This change ensures that any impact on safety continues to be minimized during the period of the automatic regulatory relief.

Finally, this rule simplifies the language in § 390.25, allowing FMCSA to extend and modify the automatic regulatory relief outlined in § 390.23, either on its own volition or upon request. All requests for modifications and extensions must be made via email. FMCSA will still establish a time limit for the extended or modified emergency exemption, and the Agency may place any restrictions upon the emergency relief. This final rule adds, specifically, that FMCSA may include reporting requirements as one of these restrictions. FMCSA is requesting approval from OMB for a collection of information as part of this rulemaking.

C. Costs and Benefits

The Agency does not expect this rule will result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes in this rule have already been in practice through modifications to previous automatic exemptions, including those related to the Coronavirus Disease 2019 (COVID-19) emergency. FMCSA presents a qualitative analysis of the potential costs and benefits of limiting emergency exemptions, as there is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond HOS waivers.

Limiting the automatic regulatory relief to the HOS regulations in §§ 395.3 and 395.5, as opposed to all the FMCSRs in 49 CFR parts 390 through 399, may result in costs to certain motor carriers and drivers who currently rely on the automatic regulatory relief, beyond the HOS regulations. However, as most emergency exemptions are either issued or modified to be limited to cover only the HOS regulations, including the COVID-19 emergency exemption, the Agency believes this change will not result in incremental costs relative to the baseline.

Because automatic regulatory relief is decreasing from 30 days to 14 days in the case of regional emergencies, the rule may result in an increase in the number of extension requests from motor carriers and drivers. An increase in the number of extension requests would increase the burden on drivers and motor carriers to prepare and submit extension requests, as well as the burden on the Agency to review and respond to them. FMCSA presents a quantitative analysis of the impacts of this rule for individuals who request extensions to exemptions via email.

IV. Abbreviations

AASHTO American Association for State Highway and Transportation Officials
 AECC Arkansas Electric Cooperatives Corporation
 AECEI Arkansas Electric Cooperatives, Inc.
 AHAS Advocates for Highway and Auto Safety
 ANPRM Advance Notice of Proposed Rulemaking
 ATA American Trucking Associations
 CBI Confidential Business Information
 CE Categorical Exclusion
 CFR Code of Federal Regulations
 CMV Commercial Motor Vehicle
 COVID-19 Coronavirus Disease 2019
 CRASH Citizens for Reliable and Safe Highways
 CVSA Commercial Vehicle Safety Alliance
 IDOT Iowa Department of Transportation
 DOT U.S. Department of Transportation
 EEI Edison Electric Institute
 EMA Energy Marketers of America
 E.O. Executive Order
 FHP Florida Highway Patrol—Office of Commercial Vehicle Enforcement
 FMA Fuel Merchants Association of New Jersey
 FHWA Federal Highway Administration
 FMCSA Federal Motor Carrier Safety Administration
 FMCSRs Federal Motor Carrier Safety Regulations
 FPMA Florida Petroleum Marketers Association
 FR Federal Register
 HOS Hours of Service
 MCS Montana Department of Transportation—Motor Carrier Services Division
 MEMA Mississippi Emergency Management Agency
 MMTA Maine Motor Transport Association
 NAICS North American Industry Classification System
 ND State of North Dakota
 NEFI National Energy & Fuels Institute
 NPGA National Propane Gas Association
 NPRM Notice of Proposed Rulemaking
 NWRA National Waste & Recycling Association
 OIRA Office of Information and Regulatory Affairs
 OMB Office of Management and Budget
 OOIDA Owner-Operator Independent Drivers Association
 PATT Parents Against Tired Truckers
 PTA Privacy Threshold Assessment

SBA Small Business Administration
 SC Shippers Coalition
 SWANA Solid Waste Association of North America
 TSC Truck Safety Coalition
 UMRA Unfunded Mandates Reform Act of 1995
 U.S.C. United States Code

V. Legal Basis for the Rulemaking

Under 49 U.S.C. 31136(a)(1), DOT is required to adopt regulations to ensure that “commercial motor vehicles are maintained, equipped, loaded, and operated safely,” but in accordance with 31136(e) may “grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.” Section 31315(a) of 49 U.S.C. provides that the Secretary may grant waivers or exemptions from compliance in whole or in part with a regulation issued under section 31136 in certain situations. Section 31502(e) of 49 U.S.C. provides that certain regulations issued under 49 U.S.C. 31502 or 31136 shall not apply to the driver of a utility service vehicle during an emergency period, as declared by an elected official of one or more State or local governments having jurisdiction.

Title 49 U.S.C. 31136 note requires that the Secretary issue the regulations found within this document as 49 CFR 390.23(a)(1)(ii)(B).

Finally, 49 U.S.C. 31133 provides that the Secretary of Transportation may perform other acts the Secretary considers appropriate. These responsibilities and authorities have been delegated by the Secretary to FMCSA. (49 U.S.C. 113 and 49 CFR 1.87)

VI. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

On December 8, 2022, FMCSA published in the **Federal Register** (Docket No. FMCSA–2022–0028, 87 FR 75206) an NPRM titled “Clarification to the Applicability of Emergency Exemptions.” The NPRM proposed to revise, remove, and add definitions to reflect other changes proposed to the emergency exemption rules. These changes included removing an obsolete term, moving the definition of one term to the definition section, and revising two definitions.

FMCSA also proposed to shorten, in certain situations, the duration and limit the scope of the initial, automatic regulatory relief triggered by an emergency declaration. Under the NPRM, the scope of relief would be limited to specific provisions of the HOS regulations, unless the emergency

declaration is made by the President under the authority of 42 U.S.C. 5191(b). As proposed, the relief would be limited to a period of 5 days, unless the emergency declaration is made by the President under the authority of 42 U.S.C. 5191(b). Presidential declarations would continue to trigger a 30-day exemption from all FMCSRs in parts 390 through 399.

The NPRM proposed that any party, including a State or local official, could request additional relief and/or an extension from FMCSA. The Agency would evaluate any such request and approve, modify, or deny the request, as appropriate. No formal request or form would be required to request relief. Requests would be submitted to FMCSA's emergency declaration email inbox (*FMCSAdeclaration@dot.gov*). FMCSA would also have retained independent authority to extend or modify the emergency relief.

FMCSA also proposed adding language to § 390.25 to expressly note that one of the conditions FMCSA may include when extending/modifying an emergency declaration exemption is to collect information from those carriers and drivers relying upon the regulatory relief.

B. Comments and Responses

FMCSA solicited comments concerning the NPRM for 60 days ending February 6, 2023. Twenty-nine comments were received, from the following parties: American Association of State Highway and Transportation Officials (AASHTO), Arkansas Electric Cooperative Corporation (AECC), Arkansas Electric Cooperatives, Inc. (AECI), Advocates for Highway and Auto Safety (AHAS), American Trucking Associations (ATA), Citizens for Reliable and Safe Highways (CRASH), Commercial Vehicle Safety Alliance (CVSA), Edison Electric Institute (EEI), Energy Marketers of America (EMA), Florida Highway Patrol—Office of Commercial Vehicle Enforcement (FHP), Florida Petroleum Marketers Association, Inc. (FPMA), Fuel Merchants Association of New Jersey (FMA), Iowa Department of Transportation (IDOT), Montana Department of Transportation—Motor Carrier Services Division (MCS), Mississippi Emergency Management Agency (MEMA), Maine Motor Transport Association (MMTA), the State of North Dakota (ND), National Energy & Fuels Institute, Inc. (NEFI), National Propane Gas Association (NPGA), National Waste & Recycling

Association (NWRA), Oncor² Owner-Operator Independent Drivers Association (OOIDA), Parents Against Tired Truckers (PATT), Powell Transportation Co., Inc., Shippers Coalition (SC), Solid Waste Association of North America (SWANA), Suburban Propane, Truck Safety Coalition (TSC), and two private citizens.³ The Agency also received a letter signed by twenty-seven Members of Congress, which was added to the docket.

Request To Extend Comment Period

One commenter, EMA, requested an extension of the comment period, citing a lack of awareness on the part of State associations. However, several States and associations submitted comments to the docket prior to its closing date, including a second, substantive comment from EMA. FMCSA ensured that the docket would stay open beyond February 6, 2023, so all interested parties would have time to file their comments. FMCSA considered all comments it received, whether those comments were filed in the docket before or after February 6, 2023. For these reasons, FMCSA did not extend the comment period.

General Comments

The majority of commenters agreed with the proposal to limit the automatic exemption to the HOS requirements triggered by a declaration of emergency. Most of the commenters who agreed with the idea of limiting the application of the automatic emergency exemption to the HOS requirements had additional comments, which are addressed below. Seven commenters opposed all aspects of the NPRM.

Reason for Making Changes

Five commenters questioned FMCSA's stated reasons for proposing changes to the emergency exemption regulations. NPGA noted that "the stated basis for this rulemaking lacks evidence, and evidence to the contrary is provided by FMCSA itself." NEFI recommended that FMCSA analyze safety data from the COVID-19 emergency declaration to see if there was a rise in fatigue related incidents prior to making any changes. OOIDA, EMA, FPMA, and the Members of Congress all noted a lack of evidence

that the current emergency exemption rules impact safety.

FMCSA acknowledges that there is no specific quantitative evidence that the current emergency exemption rules have led to a degradation of safety. Data collected during the COVID-19 emergency declaration was of limited scope and does not allow for a specific safety impact analysis of those carriers operating under the emergency exemption. However, it is generally accepted that driver fatigue increases risk of safety incidents, and that one of the leading causes of driver fatigue is driving for too long and working long hours without adequate opportunities for restorative sleep. FMCSA is committed to ensuring the safety of commercial vehicle transportation, both for CMV drivers and for others sharing the roads with CMVs. The FMCSRs exist in order to ensure safety, and there is published research that indicates the FMCSRs overall have a solid safety basis. (See research studies on the Safety Measurement System, the Behavior Analysis and Safety Improvement Categories from which are rooted in the FMCSRs).⁴ Any time FMCSA agrees to lower a safety standard by issuing an exemption, there must be a compelling reason. While responding to emergency situations is a compelling reason to issue relief from some FMCSRs, FMCSA does not believe that it is a compelling reason to exempt motor carriers and drivers from all FMCSRs. Nor does it provide a compelling reason to extend that relief for a longer period than is necessary to respond. In the absence of specific data showing an increased safety risk for CMVs operating under an emergency exemption, FMCSA determined that the potential for increased safety risk under the current emergency exemption regulation, as reflected by the removal of all FMCSR requirements during an emergency exemption, was enough to warrant the changes made by this rule.

Additionally, in recent years FMCSA saw emergency declarations from state Governors or their representatives that do not warrant the emergency exemptions from the Federal regulations in § 390.23. Examples include an emergency exemption covering all interstate shipments of goods during the month of December, to counteract supply chain issues and help increase the supply of toys and other items for Christmas, and an exemption for all shipments of gasoline to encourage

² Oncor submitted their comment after the comment period officially closed via an email, which FMCSA placed in the docket for this rulemaking.

³ One commenter submitted a duplicate comment, which contained numerous attachments that were not included in their initial filing. FMCSA counted these two comments as one.

⁴ "The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)" from January 2014, available in the docket for this rulemaking.

more travel after the pandemic. FMCSA considered the increase in the number of inappropriate emergency declarations as another reason to initiate this rulemaking, to clarify those instances when emergency exemptions are appropriate.

Limitation of Regional Exemption to 5 Days

Twenty-two commenters opposed shortening the duration of the automatic exemption triggered by regional emergency declarations by governors, their authorized representative, or FMCSA. These commenters included Powell Transportation, MMTA, CVSA, AASHTO, SC, MCS, IDOT, FHP, AECC/AEC, MEMA, Suburban Propane, ATA, NPGA, NWRA, SWANA, EEI, NEFI, OOIDA, EMA, FPMA, and the Members of Congress. These commenters noted that 5 days may not be long enough to deal with certain emergencies, citing various examples of emergencies from recent years, where emergency relief efforts extended beyond 5 days. They noted that the effects of climate change make it likely that storms will become more frequent and stronger, requiring longer response times. Many added that a 5-day exemption does not provide enough time for responders to plan and prepare for a response before they might need to pause to ensure that the exemption will be extended to cover their entire response time. Additionally, they argued that this shortened time period will require responders to focus on requesting an extension at the very time when they should be focusing on relief efforts. ATA suggested that the duration for these regional emergency exemptions be revised to 14 days; NWRA suggested 15 days. They argued that this would still be a shorter period than is currently in regulation but would be long enough to ensure that most regional emergencies were covered completely without the need for an extension.

As FMCSA stated in the NPRM, the Agency believes most direct assistance to emergencies requiring regulatory relief ends within 5 days. However, FMCSA acknowledges there are circumstances that may result in the need for more time for responders to complete their emergency relief efforts. The Agency also acknowledges that in certain cases, coordination efforts may take longer than a 5-day exemption period would allow. Therefore, FMCSA is revising the duration of the automatic regulatory relief that is triggered by a regional declaration of emergency to 14 days, as suggested by ATA. FMCSA notes that, as is the case now, these exemptions will expire earlier if the

emergency declaration expires before the end of 14 days. Additionally, while this limitation also applies to declarations issued by FMCSA, the Agency retains the ability to issue a modified emergency exemption from day one of an emergency, with an initial expiration beyond 14 days.

One commenter, AWM Associates, thought FMCSA should go further and apply this temporal limit even to Presidential declarations of emergency. FMCSA questions its legal authority to limit Presidential declarations by rulemaking, and it, therefore, declines to make such a change. The Agency notes, however, that the emergency exemption will expire in less than 30 days where the Presidential declaration expires in less than 30 days.

Limitation of Emergency Exemption to HOS Rules

Four commenters questioned the limitation of the automatic exemption to just the HOS rules. The State of North Dakota and OOIDA opposed this change on the basis of a lack of data, a point addressed previously above. IDOT listed several additional FMCSRs from which CMVs might need relief, including medical certificate and DOT number requirements, as well as the CDL requirement waivers that were issued during the COVID-19 emergency declaration. Oncor, an intrastate carrier, noted that they rely on the automatic exemption from rules in parts 391, 392, 393, and 396 when responding to emergencies in other states, noting its efforts in response to several hurricanes that hit Florida in recent years.

FMCSA understands that, in certain situations, there may be a need to grant additional regulatory relief to one or more entities in order to facilitate emergency response. However, the Agency is confident that such relief can be provided using other existing authorities, as was the case of the CDL waivers during the COVID-19 emergency declaration. For this reason, FMCSA is not revising the proposal to include additional regulatory provisions in the automatic emergency regulatory relief. In response to the situation presented by Oncor, FMCSA notes that the regulations covering registration allow for the issuance of temporary authority in emergency situations (§ 365.107T), which would allow intrastate motor carriers to travel interstate when responding to an emergency.

Comments on Changes to Definitions

FMCSA received several requests to revise definitions included in the NPRM. AASHTO and NPGA requested

changes to the definition of *emergencies*. AASHTO requested the definition of *emergencies* be broadened to cover health and cybersecurity emergencies; NPGA requested clarity on the conditions that would constitute an immediate threat to human life, which would allow for emergency regulatory relief even though a declaration is based on economic conditions caused by market forces (as opposed to a natural disaster).

FMCSA believes that the proposed definition could cover health and cybersecurity emergencies, as it retains the phrase “or other occurrence, natural or man-made” found in the current definition. As such, no revision is being made. As for NPGA’s request, FMCSA notes that the term “immediate threat to human life” is intended to be read literally—as was the case during the COVID-19 emergency declaration, as the related emergency exemptions issued were limited to commodities that were tied to human health and safety, such as vaccines, food supplies, public sanitation and hygiene products. They did not cover all commodities, as not all commodities impact human health and safety.

AASHTO also requested that the definition of *direct assistance* be revised to cover shipments of emergency supplies before an event occurs, and to cover debris removal.

FMCSA notes that in some cases, emergency declarations are issued in advance of an event that can be reliably predicted, such as a hurricane, blizzard, or flooding. In those cases, the emergency regulatory relief would also start prior to the event. However, in instances where the emergency declaration is not made prior to the event, FMCSA does not believe it is appropriate for the emergency regulatory relief exemption to start prior to an emergency declaration. FMCSA also notes that there is no reason why debris removal couldn’t be included in the term “essential services,” which is used in the definition of *emergencies*, even if it isn’t included in the list of examples within that definition. So long as the debris in question immediately threatens human life or public welfare, its removal would qualify as direct assistance. However, if the debris is not posing such threat, its removal would not qualify.

EMA requested that the term “biodiesel blends” be added to the definition of *residential heating fuels*, to ensure that carriers transporting those fuels are included in the statutory exemption. FMCSA disagrees with this change as it creates redundancy in the definition. The term “heating oil,” as

previously discussed in the rule, has already been defined and will encompass those “biodiesel blends” that are used for or in “residential heating fuel.” Accordingly, there is no need to specifically include “biodiesel blends” as an example of a “heating oil” that could be used as a residential heating fuel.

Comments on Requests for Exemption Extensions/Modifications

Three commenters questioned the proposed requirement that requests for extension and modification of an emergency exemption be made using a specified email address (FMCSADeclarations@dot.gov). EMA requested that the current procedures, using phone numbers, be retained. EEI had several questions on how the new procedure would work, including what would happen if the end of an automatic exemption occurs on a weekend or holiday, how long FMCSA will need to respond to the request, and what basis FMCSA will use to make their decision. NPA questioned whether FMCSA would be able to respond in a timely manner to a “flood of email requests.”

FMCSA disagrees with the suggestion that extension and modification requests be made via telephone calls. The Agency believes it will be easier for motor carriers and CMV drivers to remember one email address than it is to know which service center should be called, and to have access to the correct phone number at that service center, as the current regulation requires. Additionally, FMCSA will have several individuals continuously monitor the single email address, ensuring continuity of coverage through weekends and holidays, and ensuring that it can respond in a timely manner. FMCSA notes that the extension of the automatic emergency exemption for regional declarations from 5 days to 14 days will also mitigate against the need for numerous extension requests.

In regard to what information needs to be included in a request, this final rule requires only a “detailed explanation of the need for an extension or modification;” because disasters that spur emergency declarations are universal only in their uniqueness, FMCSA does not want to provide a prescriptive list of elements to include in a request. FMCSA encourages an interested party to include all facts and rationale as they deem relevant. As noted in this final rule, “FMCSA will determine if such relief is necessary by evaluating the circumstances of the ongoing emergency, the need for relief,

and the nature of the relief to be provided.”

Comments on the Reporting Requirement and Information Collection

AHAS requested that FMCSA include reporting requirements in future emergency exemptions and that the Agency commit to sharing data as quickly as possible. Once this final rule takes effect, FMCSA will determine on a case-by-case basis whether or not to include a reporting requirement in any modified and/or extended emergency exemptions. The Agency will follow all current information sharing requirements in regard to the reports, and the data included.

AASHTO questioned FMCSA’s estimates of the administrative burden associated with requesting extensions of emergency exemptions and with the potential reporting requirements on extended/modified emergency exemptions. They commented that they found FMCSA’s estimates to be “unrealistically low” but provided no alternate estimates for the Agency to use. In the absence of an alternative, FMCSA believes that relying upon the estimates developed by Agency experts, which built upon estimates developed when reporting requirements were added to the COVID–19 emergency declaration, is reasonable.

Comments on the Regulatory Evaluation

EEI had several questions on the cost assessment, which are addressed below in the “Regulatory Analyses” section.

Miscellaneous Comments

EEI requested clarification that the changes in this rule would not impact the HOS exemption for utility service vehicles found in §§ 395.1(n) and 395.2. FMCSA confirms that nothing in today’s rule impacts the utility service vehicle HOS exemptions cited. AECC and AECI requested a utility specific exemption to allow for prompt restoration of power. FMCSA notes that the exemptions cited by EEI already exists and covers both AECC and AECI when responding to emergencies within their coverage areas. When responding to emergencies outside of their coverage areas, the automatic exemption in today’s rule should, in most cases, provide adequate time for the restoration of power. Where additional time is needed, this final rule would allow for the extension of the exemption.

NPGA requested that FMCSA declare that State waivers in adjoining States have the same effect as an FMCSA regional waiver. FMCSA notes that this rule only applies to the automatic emergency regulatory relief from

Federal regulations triggered by emergency declarations. Should Governors in neighboring States declare emergencies for the same event (such as a storm), then the automatic emergency relief would be triggered in both States, allowing for a lifting of the HOS restrictions on interstate travel providing direct assistance to the emergency to or from both States.

SWANA requested that solid waste carriers receive a special “carve out” in the same way that home heating does. However, the home heating “carve out” was created by Congress, not FMCSA. Therefore the Agency does not believe it is appropriate to create an additional “carve out” without Congressional action. Additionally, as noted above, certain solid waste removal would qualify as an essential service under the definition of *emergencies* if the solid waste threatens human life or public welfare, making an additional “carve out” unnecessary in the contexts where the solid waste threatens human life or public welfare.

One private citizen commented that FMCSA does not declare emergencies. This is incorrect. While many emergency declarations are made by Presidential, gubernatorial, or other local decree, FMCSA also has authority to issue emergency declarations, in accordance with 49 CFR 390.23(a)(1)(i)(B), and has done so on numerous occasions.

VII. Changes From the NPRM

As noted above in the discussion of comments and responses, this final rule contains changes from the NPRM. In response to the commenters, FMCSA is extending the length of time of the automatic regulatory relief from Federal regulations that is triggered by a regional declaration of emergency by a Governor of a State, their authorized representative, or FMCSA. The NPRM proposed that this period be 5 days, but this final rule extends that to 14 days, and this change can be found in section 390.23(b). FMCSA is also making minor grammatical changes in the definition of “emergency” and in section 390.23.

VIII. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

49 CFR 390.5/49 CFR 390.5T

This final rule changes the definitions found in §§ 390.5 and 390.5T. The definition for *emergency relief* is removed, as this term no longer appears in § 390.23 or § 390.25. FMCSA adds a definition for *residential heating fuel*. The definition previously appeared in

§ 390.23; it is moved to the definition section to make § 390.23 easier to read, and to ensure all definitions appear in one section. The definition itself remains substantively unchanged.

The definition for *direct assistance* is revised to incorporate the definition of *emergency relief*, which is deleted. The definition of *emergency* is revised to clarify what does and does not qualify as an emergency that could trigger the automatic exemptions of § 390.23.

49 CFR 390.23

This final rule makes several revisions to § 390.23. Paragraph (a) is limited to addressing Presidential declarations of emergency issued under 42 U.S.C. 5191(b). These declarations will continue to trigger automatic regulatory relief from parts 390 through 399 for the period of assistance, or 30 days from the declaration, whichever is less.

Paragraph (b) addresses regional declarations of emergencies issued by a Governor, their authorized representative, or FMCSA, and limits the automatic regulatory relief to the HOS regulations in §§ 395.3 and 395.5 for the period of direct assistance or 14 days from the declaration, whichever is less. This paragraph includes an exception for declarations by a Governor of a State when there is an emergency caused by a shortage of residential heating fuel, as required by statute. Residential heating fuel declarations trigger automatic regulatory relief from all regulations in parts 390 through 399, and the Governor may extend the declaration for up to two additional 30-day periods. (49 U.S.C. 31136 note).

Paragraph (c) covers local emergencies, whether declared by a Federal, State, or local government official with authority to declare an emergency. The automatic regulatory relief in this case continues to be limited to a period of 5 days or for the period of assistance (whichever is less), and now provides relief only from the HOS requirements in §§ 395.3 and 395.5 rather than all the FMCSRs.

Paragraph (d) of § 390.23 carries forward the special provision for tow trucks from previous paragraph (a)(3). The emergency regulatory relief provided in this paragraph only applies to the HOS regulations in § 395.3 and lasts for no more than 24 hours. No substantive changes are made except to narrow the provision to granting relief from the HOS restrictions in § 395.3 only.

Paragraph (e) carries forward the provisions in previous paragraph (b), outlining the details of when direct assistance to an emergency effort terminates, and the impact of that

termination on the terms of the emergency regulatory relief, no matter which entity makes the declaration of emergency. Changes to this paragraph are intended only to clarify the rule; no substantive changes are made.

49 CFR 390.25

Paragraph (a) of § 390.25 provides that FMCSA may extend or modify any of the emergency regulatory relief issued under § 390.23 on its own authority, or upon request by an interested party who provides a detailed explanation of the need for an extension or modification through the FMCSA emergency declarations email address (FMCSAdeclaration@dot.gov). This change affords FMCSA greater flexibility to consider requests for extensions of emergency regulatory relief, beyond current language in § 390.25, which is limited to requests from drivers and motor carriers only. Additionally, FMCSA may continue to extend or modify emergency relief upon its own volition. This would include issuing an initial emergency declaration and regulatory relief from Federal regulations that extends beyond 14 days, if the Agency determines such additional time will be necessary.

Paragraph (b) carries forward the pre-existing language requiring any FMCSA official approving an extension to set a new expiration date for the emergency regulatory relief and allowing the FMCSA official to include any other restriction deemed necessary. This final rule adds explicitly that these additional restrictions may include reporting requirements.

IX. Severability

As noted in the Legal Authority section above, Congress mandated that FMCSA adopt regulations to ensure that “commercial motor vehicles are maintained, equipped, loaded, and operated safely,” but that it may also “grant . . . waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.” Consistent with that authority, FMCSA is revising its regulations covering automatic, emergency relief from Federal regulations that is triggered by an emergency declaration. The purpose of this rule is to ensure that the automatic regulatory relief is limited in scope to providing relief from only those regulations most likely to inhibit emergency relief operations during an emergency declaration, and that the automatic relief lasts only as long as is necessary for those providing direct assistance during an emergency declaration. However, FMCSA

recognizes that certain provisions focus on unique scenarios. Therefore, FMCSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule’s unique provisions, FMCSA intends that the remaining provisions would stand, thus allowing FMCSA to continue to fulfill its Congressionally authorized role of promoting safe operation of CMVs.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT’s regulatory policies and procedures. OIRA at OMB determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

Baseline for This Analysis

The Agency does not expect this final rule to result in substantive incremental impacts relative to the baseline established in the FMCSRs. Most of the changes in this rule have already been in practice through modifications to existing exemptions, including the COVID-19 emergency exemption.

Since the publication of the 1992 final rule, the FMCSRs have provided a mechanism for motor carriers and drivers to be exempt from the requirements in parts 390 through 399 following a declaration of a Presidential, regional, or local emergency. Beginning in 2020, the COVID-19 related emergency exemption was utilized to aid with supply chain shortages during the pandemic, as well as with distributing medical products for dealing with COVID-19 (such as tests, treatments, and vaccines). The unprecedented need to continually extend an emergency exemption prompted FMCSA to reevaluate the rule

for exemptions issued in response to an emergency declaration.

In September 2021, FMCSA modified the COVID-19 exemption to narrow the issued relief to just the HOS requirements in §§ 395.3 and 395.5. Based on Agency experience and expertise, and input from industry stakeholders, FMCSA believes the HOS limits are the primary, immediate constraints drivers and carriers face when providing direct assistance during an emergency. As such, any driver operating under the COVID-19 exemption from September 2021 until its expiration in October 2022 was already afforded only HOS-related exemptions and not a broad exemption from all requirements of parts 390 through 399.

Need for This Final Rule

The COVID-19 pandemic highlighted the value of effective exemptions from the HOS rules. This rule emphasizes the need for ensuring that relief granted by emergency declarations is appropriate and tailored to the specific emergency being addressed. FMCSA believes that a blanket relief from all FMCSRs in parts 390 through 399 is not necessary. Most often, motor carriers and drivers of CMVs need relief from only the HOS regulations in §§ 395.3 and 395.5 in order to provide direct assistance to emergency relief efforts.

Uncertainties

FMCSA presents a qualitative analysis of the costs and benefits of limiting emergency exemptions to HOS waivers. There is uncertainty surrounding the number of motor carriers and drivers who currently utilize exemptions beyond the HOS regulations in §§ 395.3 and 395.5, because FMCSA has not previously collected data on the use of the exemptions, and, therefore, cannot quantitatively inform the potential impacts of limiting emergency exemptions. While the Agency did begin collecting data on COVID-19 exemption use in September of 2021, this data is insufficient to quantitatively estimate these impacts. The data provides FMCSA with a basis for the number of respondents to potential data collections on extensions of emergency exemptions, but it does not provide insight into the use of exemptions beyond HOS exemptions. In order to quantify these impacts, the Agency would need historical data on how many motor carriers and drivers operating during emergency declarations use exemptions from the requirements in parts 390 through 399, excluding the HOS regulations in §§ 395.3 and 395.5, as well as data on

how many trips drivers make during those periods. Comprehensive and verifiable data in this area are not currently available to the Agency.

Costs

In narrowing the exemptions to the HOS regulations in §§ 395.3 and 395.5, as opposed to all of parts 390 through 399, this rule will result in costs to certain motor carriers and drivers using those additional exemptions. As mentioned above, FMCSA does not have data to indicate how many carriers and drivers are using emergency-related exemptions beyond the HOS exemptions. However, most emergency exemptions are limited to HOS requirements, including the COVID-19 emergency exemption; therefore, this change will not result in incremental costs relative to the baseline.

As discussed in the Paperwork Reduction Act (PRA) section below, FMCSA estimates that there could be 477 monthly respondents if the Agency adds a reporting requirement to an extension or modification of an exemption as proposed in the NPRM and included in this final rule. This estimate is based on the average number of responses the Agency received from the COVID-19 emergency exemption data collection. This figure represents an upper-bound estimate for the number of motor carriers the Agency expects will be required to report their use of an HOS exemption extension and thus be subject to an information collection. This figure cannot be used to estimate the total number of affected entities, however, because FMCSA does not have information on whether any of the individuals who reported their use of the COVID-19 emergency exemption from the HOS limits would also have relied upon exemptions from other portions of the FMCSRs if a broader exemption had remained in place. Based on comments received on the NPRM, which generally supported limiting emergency relief to the HOS limits, FMCSA does not believe that all 477 respondents would have relied upon relief from requirements beyond the HOS limits. The Agency does not have a means of inferring how many individuals will be affected by the changes proposed in this rulemaking and, therefore, does not use the estimate of 477 respondents as a basis for a quantitative analysis.

The final rule will result in an increase in the number of extension requests from motor carriers and drivers, as the automatic exemption period resulting from a regional declaration of emergency by a Governor will be reduced from 30 to 14 days. This

rule will require individuals to request extensions or modifications to exemptions via email whenever they seek such action from FMCSA. These requests are currently made to local FMCSA offices, but they may be made by any means.

A requirement for drivers and motor carriers to submit extension requests will increase the burden on drivers and motor carriers to prepare and submit such requests, as well as the burden on the Agency to review and respond to them. As mentioned in the PRA section below, the Agency estimates that 50 individuals⁵ will submit requests for extensions per year. These extension requests will take 15 minutes to complete and total to 12.5 hours of labor (50 respondents × 15 minutes). A motor carrier employee equivalent to General and Operations Managers with a loaded hourly wage of \$80.88 will submit the extension request.⁶ As such, there will be a total annual cost of \$1,011 (\$80.88 × 12.5 hours) to submit extension requests. Requests for extensions will take 15 minutes each to review. The requests will be reviewed by a GS-13, step 5 in the Washington, DC area with a loaded hourly wage of \$127.13. The total annual cost to review these extension requests is \$1,589 (\$127.13 × 12.5 hours).⁷

Benefits

While the existing FMCSRs offer relief from safety regulations in parts 390 through 399, FMCSA believes that most exemptions used during emergencies have been related to HOS requirement relief. The Agency has no information that suggests that existing emergency exemptions have negatively impacted road safety, but likewise it has no information suggesting that exemptions from all safety regulations are necessary to provide emergency relief. This rule provides clarity on which exemptions are necessary during an emergency and

⁵ FMCSA consulted with its Crisis Management Center, which is responsible for monitoring emergency declarations. Based on that expertise, the Agency is estimating 50 requests per year.

⁶ The loaded hourly wage is a product of the median hourly wage of a General and Operations multiplied by the fringe benefits rate of 50.5 percent and overhead costs of 21 percent. The median hourly wage of a General and Operations Manager is \$47.16. A General Operations Manager falls under the Bureau of Labor Statistics Occupation Code 11-1021.

⁷ The hourly wage for a GS-13 Step 5 in the Washington, DC region was multiplied by the federal government fringe benefits rate of 45 percent and the federal government overhead rate of 64 percent to arrive at the loaded hourly wage. The hourly wage denoted in the OPM schedule for a GS-13 step 5 is \$60.83. Located at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf (accessed May 16, 2023).

ensures the public continues to benefit from the other important safety requirements in parts 390 through 399. In addition, in requiring that individuals request extensions or modifications to exemptions via email, the Agency will be able to more efficiently track exemption requests.

Comments on the Regulatory Evaluation

EEI disagreed with FMCSA's estimate that 50 individuals would submit requests for extensions annually at an estimated cost of \$1,047⁸ but provided no alternate estimates for the Agency to use. In the absence of an alternative, FMCSA believes that relying upon the estimates developed by Agency experts, which built upon estimates developed when reporting requirements were added to the COVID-19 emergency declaration, is reasonable. EEI asserted that this estimate is "based on current regulations, with no projections based on the impact of the proposed rule." FMCSA disagrees with this assertion based on observations during the COVID-19 exemption. FMCSA's crisis management center predicts, based on past experience, that owners/operators will utilize the exemptions, if available, but would seldom request an extension. It has also been observed that direct assistance to most emergencies is often concluded within 5 days. However, based on the suggestion of commentors, FMCSA has opted to revise the automatic regulatory relief as proposed in the NPRM from 5 to 14 days for regional declaration of emergencies. Providing for 14 days of automatic relief for regional emergencies should serve to abate fears of a lapse between the automatic regulatory relief and any FMCSA action to extend or reinstate the regulatory relief due to federal holidays, weekends, or other circumstances. The regulatory relief for local emergencies is already limited to 5 days, thus no change to the length of the automatic relief is needed, as this period has been observed to be appropriate.

EEI also objected that the regulatory evaluation does not account for possible delays of restoration. This argument erroneously assumes that extensions or modifications will not be made during the automatic relief period and that FMCSA will take no action to extend or reinstate regulatory relief if needed. FMCSA disagrees with this assertion but

considered it in revising the automatic regulatory relief for regional emergencies. FMCSA cannot account for costs in delayed restoration due to lack of available data supporting this claim and the dynamic nature of each emergency.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808)."⁹

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996¹⁰ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

This rule applies to motor carriers and drivers subject to the FMCSRs. Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. The Small Business Administration's (SBA) size standard for a small entity (13 CFR 121.201) differs by industry code. The entities affected by this rule fall into many different industry codes. In order to determine if this rule impacts a significant number of small entities, FMCSA examined the 2012 and 2017

Economic Census data for two different North American Industry Classification System (NAICS) subsectors: Truck Transportation (subsector 484) and Transit and Ground Transportation (subsector 485).

As shown in the table below, the SBA size standards for the national industries under the Truck Transportation and Transit and Ground Transportation subsectors range from \$19.0 million to \$43.0 million in revenue per year.

To determine the percentage of firms that have revenue at or below SBA's thresholds within each of the NAICS national industries, FMCSA examined data from the 2017 Economic Census.¹¹ In instances where 2017 data were suppressed, the Agency imputed 2017 levels using data from the 2012 Economic Census.¹² Boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds. Instead, the SBA threshold generally falls between two different revenue categories. However, FMCSA was able to make reasonable estimates as to the percentage of small entities within each NAICS code.

The percentages of small entities with annual revenue less than the SBA's threshold ranged from 96.3 percent to 100 percent. Specifically, approximately 96.3 percent of Specialized Freight (except Used Goods) Trucking, Long Distance (484230) firms had annual revenue less than the SBA's revenue threshold of \$34 million and would be considered small entities. FMCSA estimates 100 percent of firms in the Mixed Mode Transit Systems (485111) national industry had annual revenue less than \$29 million and would be considered small entities. The table below shows the complete estimates of the number of small entities within the national industries that may be affected by this rule.

¹¹ U.S. Census Bureau. *2017 Economic Census*. Table EC1700SIZEEMPFI—Selected Sectors: Employment Size of Firms for the U.S.: 2017. Available at <https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-48-49.html> (accessed Apr. 25, 2023).

¹² U.S. Census Bureau. *2012 Economic Census*. Table EC1248SSSZ4—Transportation and Warehousing: Subject Series—Etab & Firm Size: Summary Statistics by Revenue Size of Firms for the U.S.: 2012. Available at <https://www.census.gov/data/tables/2012/econ/census/transportation-warehousing.html> (accessed Apr. 25, 2023).

⁸ As described in the cost section, the estimated annual cost for these extensions has been updated to \$1,011 for this final rulemaking.

⁹ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

¹⁰ Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

ESTIMATES OF NUMBER OF SMALL ENTITIES

NAICS code	Description	SBA size standard in millions	Total number of firms	Number of small entities	Percent of all firms
484110	General Freight Trucking, Local	\$34.0	22,066	21,950	99.5
484121	General Freight Trucking, Long Distance, Truckload	34.0	23,557	23,045	97.8
484122	General Freight Trucking, Long Distance, Less Than Truckload.	43.0	3,138	3,050	97.2
484210	Used Household and Office Goods Moving	34.0	6,097	6,041	99.1
484220	Specialized Freight (except Used Goods) Trucking, Local ..	34.0	22,797	22,631	99.3
484230	Specialized Freight (except Used Goods) Trucking, Long Distance.	34.0	7,310	7,042	96.3
485111	Mixed Mode Transit Systems	29.0	25	25	100.0
485113	Bus and Other Motor Vehicle Transit Systems	32.5	318	308	96.9
485210	Interurban and Rural Bus Transportation	32.0	309	302	97.7
485320	Limousine Service	19.0	3,706	3,694	99.7
485410	School and Employee Bus Transportation	30.0	2,279	2,226	97.7
485510	Charter Bus Industry	19.0	1,031	1,013	98.3
485991	Special Needs Transportation	19.0	2,592	2,567	99.1
485999	All Other Transit and Ground Passenger Transportation	19.0	1,071	1,059	98.9

Therefore, FMCSA has determined that this rule would apply to a substantial number of small entities. However, as emergencies are generally infrequent and the primary impact of the rule would be to marginally limit the breadth of the automatic regulatory relief that applies after a regional or local emergency declaration, FMCSA has determined that this rule would not have a significant impact on the affected entities.

Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions.

FMCSA received two comments on the proposed information collection requirements, which are discussed previously. The Agency makes no changes to the proposed requirements as a result of those comments.

The title and description of the information collection, a description of

those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Emergency Declaration Exemption Reporting under 49 CFR 390.25.

OMB Control Number: 2126–0077.

Summary of the Information

Collection: Section 390.25 of 49 CFR, as revised, allows FMCSA to add a reporting requirement to an extension of an emergency exemption, requiring motor carriers operating under the extensions terms to report their continued use of and reliance on the exemption. It also requires that individuals request extensions or modifications to exemptions via an email whenever they seek such action from FMCSA.

Need for Information: The collection of information is necessary for FMCSA to determine the extent to which motor carriers continue to rely upon an extended emergency exemption.

Proposed Use of Information: FMCSA would use the information collected as datapoint to help determine whether to extend emergency exemptions under 49 CFR 390.25.

Description of the Respondents: Motor carriers that operate under the terms of an extended emergency exemption, originally triggered by a declaration of emergency. Individuals who want to request an extension or modification of an emergency exemption.

Number of Respondents: 477 per month.

Frequency of Response: Monthly.

Burden of Response: 15 minutes per response.

Estimate of Total Annual Burden: The public burden for this information collection is estimated to average 1,431 hours per year.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FMCSA will submit a copy of this final rule to OMB for review. OMB has not yet completed its review of this collection. If OMB does not complete its review prior to the effective date set for this final rule, FMCSA will publish a final rule delaying the effective date for § 390.25.

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “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.”

FMCSA has determined that this rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,¹³ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rule would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,¹⁴ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the rulemaking might have on collecting, storing, and sharing personally

identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6.y(4). The categorical exclusion (CE) in paragraph 6.y(4) covers relief during regional and local emergencies. This rule is covered by this CE.

List of Subjects in 49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, FMCSA amends 49 CFR part 390 as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

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

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 2. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
- b. Revise the definitions of “Direct assistance” and “Emergency”;

■ c. Remove the definition of “Emergency relief”;

■ d. Add in alphabetical order a definition for “Residential heating fuel”; and

■ e. Suspend the section indefinitely.

The revisions and addition read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a CMV is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles. *Emergency* does not include events arising from economic conditions that are caused by market forces, including shortage of raw materials (e.g., driver shortages, computer chip shortages, other supply chain issues) or labor strikes, unless such event causes an immediate threat to human life and results in a declaration of an emergency

¹³ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

¹⁴ Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas, Liquefied).

* * * * *

■ 3. Amend § 390.5T as follows:

■ a. Revise the definitions of “Direct assistance” and “Emergency”;

■ b. Remove the definition of “Emergency relief”; and

■ c. Add in alphabetical order a definition for “Residential heating fuel”.

The revisions and addition read as follows:

§ 390.5T Definitions.

* * * * *

Direct assistance means transportation operations in which a motor carrier or driver of a commercial motor vehicle is supplementing State and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency as defined in this section involving transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

* * * * *

Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout, or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their

authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies; or a request by a police officer for tow trucks to move wrecked or disabled motor vehicles. *Emergency* does not include events arising from economic conditions that are caused by market forces, including shortage of raw materials (e.g., driver shortages, computer chip shortages, other supply chain issues) or labor strikes, unless such event causes an immediate threat to human life and results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by FMCSA; or by other Federal, State, or local government officials having authority to declare emergencies.

* * * * *

Residential heating fuel includes heating oil, natural gas, and propane (also known as Liquefied Petroleum Gas or Petroleum Gas, Liquefied).

* * * * *

■ 4. Revise § 390.23 to read as follows:

§ 390.23 Automatic relief from regulations.

(a) *Presidential declaration of emergency.* Parts 390 through 399 of this chapter, or any section thereof, shall not apply to any motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the President of the United States pursuant to 42 U.S.C. 5191(b) during the emergency period or 30 days from the date of the initial declaration of the emergency, whichever is less.

(b) *Regional declarations of emergency.* Except as provided in paragraph (b)(1) of this section, §§ 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by the Governor of a State, their authorized representative, or FMCSA during the emergency period or 14 days from the date of the initial declaration of emergency, whichever is less.

(1) *Residential heating fuel shortages.* Parts 390 through 399 of this chapter, or any section thereof, shall not apply to a motor carrier or driver operating a commercial motor vehicle to provide residential heating fuel in the geographic area designated in an emergency declaration issued by the Governor of a State. If the Governor of

a State declares an emergency caused by a shortage of residential heating fuel and, at the conclusion of the 30-day period immediately following the declaration, determines that the emergency shortage has not ended, and extends the declaration of an emergency for up to two additional 30-day periods, this regulatory relief shall remain in effect up to the end of such additional periods. The total length of the emergency shall not exceed 90 days.

(2) [Reserved]

(c) *Local emergencies.* Sections 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by a Federal, State, or local government official having authority to declare an emergency for the period of such assistance or 5 days from the date of the initial declaration of emergency, whichever is less.

(d) *Tow trucks responding to emergencies.* Section 395.3 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency when a request has been made by a Federal, State, or local police officer for tow trucks to move wrecked or disabled motor vehicles. This regulatory relief shall not exceed the length of the motor carrier's or driver's direct assistance in providing emergency relief or 24 hours from the time of the initial request for assistance by the Federal, State, or local police officer, whichever is less.

(e) *Termination of regulatory relief.*

(1) Upon termination of direct assistance to the emergency relief effort, the motor carrier or driver is subject to all previously exempted sections with the following exception: A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with the previously exempted sections. However, a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least 10 consecutive hours off duty before the driver is required to return to such terminal or location. Having returned to the terminal or other location, the driver must be relieved of all duty and responsibilities.

(2) Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches such driver or commercial motor vehicle to another location to begin operations in commerce.

(3) When the driver has been relieved of all duty and responsibilities upon termination of direct assistance to an emergency relief effort, no motor carrier shall permit or require any driver used by it to drive, nor shall any such driver drive in commerce, until the driver has met the requirements of §§ 395.3(a) and (c) and 395.5(a) of this chapter.

■ 5. Revise § 390.25 to read as follows:

§ 390.25 Extension or Modification of relief from regulations—emergencies.

(a) FMCSA may extend the period of the regulatory relief or modify the scope of emergency relief contained in § 390.23. Interested parties may also request an extension or modification by providing a detailed explanation of the need for an extension or modification of the relief. Any interested party seeking to extend the period of regulatory relief shall send its request to the FMCSA emergency declarations mailbox, FMCSAdeclaration@dot.gov, before the expiration of the period of relief. FMCSA will determine if such relief is necessary by evaluating the circumstances of the ongoing emergency, the need for relief, and the nature of the relief to be provided.

(b) If FMCSA initiates or approves an extension of the regulatory relief, it shall establish a new time limit and may place terms and conditions on motor carriers or drivers relying upon the continued or modified relief. These terms and conditions may include reporting requirements.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

[FR Doc. 2023–22538 Filed 10–12–23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231006–0241]

RIN 0648–BM61

Fisheries of the Northeastern United States; Temporary Measures To Reduce 2023 Atlantic Mackerel Catch

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

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This temporary rule implements interim measures to reduce Atlantic mackerel catch for the remainder of the 2023 fishing year and the beginning of the 2024 fishing year to reduce the likelihood of overfishing based on new assessment information regarding the status of the Atlantic mackerel stock. This action is intended to reduce potential Atlantic mackerel overfishing through the end of 2023 and the beginning of 2024 while the 2024 specifications are developed. We will be collecting comments on the changes in per-trip catch limits to help inform future decisions on this topic.

DATES: Effective October 12, 2023, through April 10, 2024. Comments must be received by November 13, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0119 by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0119 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

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

The supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at <https://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Policy Analyst, (978) 281–9150.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Section 305(c) of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act) allows the Secretary to implement interim measures to reduce or address overfishing. In situations such as this, in which the stock assessment has been delayed, section 305(c) allows the Council to request the Secretary to implement interim measures to address overfishing, until these measures can be replaced by the 2024 Atlantic mackerel specifications. As further described below, NMFS implements this action to reduce the Atlantic mackerel catch for the remainder of 2023 and the beginning of 2024 by reducing mackerel possession limits.

At its July 2023 meeting, the Council’s Scientific and Statistical Committee (SSC) reviewed the preliminary updated Atlantic mackerel stock assessment. This stock assessment is considered preliminary until it can be peer reviewed and then the SSC can make allowable biological catch (ABC) recommendations for 2024 and 2025. The preliminary assessment results showed that the stock is no longer experiencing overfishing, but also showed additional concerns in the rebuilding progress of the stock. Although the change in stock status to no longer experiencing overfishing seems to be a positive development, it follows significant reductions in catch associated with limits NMFS implemented in 2022 and 2023. Subsequent projections from the assessment show additional concerns in the rebuilding progress of the stock, warranting additional action to prevent the stock from once again being subject to overfishing.

The preliminary management track assessment showed an unexpected failure of the Atlantic mackerel stock to rebuild, and updated projections suggest Atlantic mackerel overfishing will occur in 2023 if the full Atlantic mackerel quota is landed. Based on this information, at its August 2023 meeting, the Council requested that NMFS take emergency action to limit the directed Atlantic mackerel fishery for the remainder of the 2023 and until the more conservative 2024 Atlantic mackerel specifications are implemented.

Interim Atlantic Mackerel Measures

Based on the recommendations of the SSC and the request by the Council, this action implements incidental Atlantic mackerel catch limits including 20,000 pounds (lb) (9.08 metric tons (mt)) for all limited access permits and 5,000 lb (2.27 mt) for all open access permits. This is a reduction from the current catch limits of unlimited possession for

Tier 1 permits, 135,000 lb (61.23 mt) for Tier 2 permits, 100,000 lb (45.36 mt) for Tier 3, and 20,000 lb (9.08 mt) for open access permits. We will be collecting comments on the changes in per-trip catch limits to help inform future decisions on this topic.

This temporary rule has an effective period limited by the Magnuson-Stevens Act to 180 days, with a potential extension of an additional 186 days. The stock assessment was peer reviewed in September 2023, and the Council will finalize the 2024 and 2025 Atlantic mackerel specifications at its December 2023 meeting. NMFS will work to implement the 2024 specifications as quickly as possible, likely early spring. However, if the expected rulemaking implementing the 2024 specifications is not in place before the expiration of this rule (180 days following publication), an extension of the interim measure for 186 days will be considered.

Justification for Interim Measures

Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) authorizes the Secretary of Commerce to implement interim measures to address overfishing. This action meets the 305(c) requirements for interim measures because it is necessary to reduce overfishing in 2023, and to minimize the likelihood of overfishing occurring again, while the Council finalizes specifications for 2024 with a reduced ABC.

The results of the preliminary 2023 stock assessment were not expected and the severity of the results could not have been foreseen. Given that the new information only recently became available, the Council could not complete an action to develop new specifications and make necessary adjustments in time for the remainder of the 2023 fishing year or the start of the 2024 fishing year. Because of the unforeseen specifications adjustments necessary to address the recent stock assessment, the Council requested that NMFS take action to reduce potential additional Atlantic mackerel harvest in 2023 and the beginning of 2024 via a reduction in the per-trip catch limits.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an overfishing situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The interim measures in this rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds it is contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). This action reduces the per trip catch limits in the Atlantic mackerel fishery. This adjustment is allowed pursuant to section 305(c) of the Magnuson-Stevens Act in order to reduce the likelihood of overfishing while the Council waits for new and updated information to be finalized. A delay would be contrary to the public interest for the Atlantic mackerel fishery, as delay would likely lead to overfishing. Furthermore, NMFS notes that implementation of these reduced catch limits was discussed at the August 2023 Council meeting, and many fishery stakeholders are anticipating action to reduce mackerel harvest in 2023. This rule is being issued at the earliest possible date, as NMFS only received the Council's Supplemental Information Report for this action on August 18, 2023.

Additionally, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness for this rule. Failure to implement this action as quickly as possible for the 2023 fishing year would likely result in 2023 catch that would cause overfishing, which would have potential negative biological impacts on the stock and make it more difficult to achieve rebuilding by 2032. The Atlantic mackerel fishery is most active during the months of November through February. Given the high-volume nature of the fishery, it is likely that, without putting new catch limit in place immediately, the fleet would capture the full 2023 commercial quota and overfishing would result, contrary to the public interest. Therefore, it is in the public interest to take immediate action to reduce potential mackerel overfishing while the Council develops the 2024 and 2025 Atlantic mackerel specifications.

Therefore, the Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness, and these specifications shall be made effective on October 12, 2023.

This action is being taken pursuant to the Magnuson-Stevens Act's provisions to establish interim measures to address overfishing and has not been designated as significant under Executive Order 12866.

The procedures of the Regulatory Flexibility Act are not applicable to this rule because it is issued without opportunity for prior notice and public comment.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action would not establish any new reporting or record-keeping requirements.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Fishery possession restrictions.

Dated: October 10, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.26, add paragraph (a)(4) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(4) *2023 and 2024 temporary commercial possession restriction.* For the remainder of the 2023 Atlantic mackerel fishing year and until the 2024 Atlantic mackerel specifications are implemented, commercial vessels issued an open or limited access Atlantic mackerel permit must adhere to the following possession limits.

(i) *Limited access fishery.* Vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open access fishery.* Vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

* * * * *

[FR Doc. 2023–22656 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 197

Friday, October 13, 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 3

[Docket No.: FAA–2023–1194; Notice No. 23–07]

RIN 2120–AL85

U.S. Agents for Service on Individuals With Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations; Reopening of Comment Period

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

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This action extends the comment period for the NPRM published on June 12, 2023, titled “U.S. Agents for Service on Individuals with Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations.” The FAA is extending the comment period to allow commenters to review the Privacy Impact Assessment conducted by the Department of Transportation.

DATES: The comment period for the NPRM published on June 12, 2023, at 88 FR 38001, and closed on August 11, 2023, is reopened until October 30, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–1194 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Jessica Kabaz-Gomez, Office of the Chief Counsel, Enforcement Division, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267–7395; email Jessica.Kabaz-Gomez@faa.gov.

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views relating to the Privacy Impact Assessment associated with this rulemaking. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is

possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to 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 the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at www.regulations.gov;
2. Visiting the FAA’s Regulations and Policies web page at www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office’s web page at www.GovInfo.com.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Background

On June 12, 2023, the FAA published an NPRM titled “U.S. Agents for Service on Individuals with Foreign Addresses Who Hold or Apply for Certain Certificates, Ratings, or Authorizations,” in the **Federal Register** (88 FR 38001; Notice No. 23–07). Commenters were instructed to provide comments on or before August 11, 2023 (*i.e.*, 60 days from the date of publication of the NPRM).

Since publication, the FAA has received one request to extend the comment period to provide time to review the associated Privacy Impact Assessment that was not available at the time of publication. The Privacy Impact Assessment was completed on August 23, 2023, and is publicly available on the website of the Department of Transportation¹ and is available on the docket for this rulemaking.

Reopening of Comment Period

The FAA partially grants the petitioners’ requests for an extension of the comment period to comment on the Privacy Impact Assessment. Under the circumstances, the FAA finds that an additional fifteen (15) days will provide sufficient opportunity for the public to comment. Therefore, the comment period for Notice No. 23–07 is reopened until October 30, 2023.

The FAA will not grant any additional requests to further extend the comment period for this rulemaking.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Brandon Roberts,

*Executive Director, Office of Rulemaking,
Federal Aviation Administration.*

[FR Doc. 2023–22635 Filed 10–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No.: FAA–2018–1052; Notice No. 18–09]

RIN 2120–AL10

Foreign Civil Aviation Authority Certifying Statements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published NPRM, “Compliance with applicable regulations,” that proposed excluding its applicability to import products that have been type certificated outside of the United States by a foreign civil aviation authority bilateral partner. These products are validated by FAA consistent with the requirements in the rulemaking, “Issue of type certificate: import products.” The NPRM proposed to eliminate the requirement for redundant compliance statements by both the foreign civil aviation authority and the foreign applicant.

DATES: As of October 13, 2023, the NPRM published on February 22, 2019, at 84 FR 5605 is withdrawn.

FOR FURTHER INFORMATION CONTACT:

Steve Flanagan or Stephen Styskal, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1602; email steve.flanagan@faa.gov; or telephone (206) 231–3144; email stephen.styskal@faa.gov (respectively).

SUPPLEMENTARY INFORMATION:

Background

On February 22, 2019, the FAA published an NPRM titled “Foreign Civil Aviation Authority Certifying Statements” in the **Federal Register**.¹ In the NPRM, the FAA proposed to revise § 21.20, which imposes a requirement on foreign applicants for type certificates (TC) of import products. Existing FAA regulations (*i.e.*, § 21.20) requires all applicants to show compliance with all applicable requirements and to provide the FAA the means by which such compliance has been shown and to provide a statement certifying that the applicant has complied with the applicable requirements. The NPRM asserted that these requirements may be duplicative to the certifying statement that the FAA already requires from the foreign civil aviation authority (FCAA) of the country or jurisdiction with State of Design responsibility for the design approval holder of a product. Under the proposed rule, the FAA would no longer have required the applicant to show compliance, provide the means by which compliance had been shown, or the accompanying statement of compliance from the foreign applicant.

The NPRM comment period closed on April 23, 2019. The FAA received four comments from individual commenters; two generally opposed the proposal and two are considered outside the scope of the proposed rulemaking.

Withdrawal of the NPRM

Section 21.20 was originally promulgated on October 6, 2009, (effective April 14, 2010) as part 21, amendment 21–92. The NPRM issued in 2006 that originally proposed § 21.20 (the “2006 NPRM”) provided background on why the FAA was seeking to add § 21.20. In the 2006 NPRM, the FAA stated that adding proposed § 21.20(a) would emphasize that the applicant is responsible for satisfying all applicable requirements by requiring an applicant for a TC (or an amended or supplemental type certificate (STC)) to show compliance with all applicable requirements and by providing the FAA the means by which such compliance has been shown.

Further, § 21.20(b) requires the applicant to provide a statement certifying that the applicant has complied with the applicable requirements. The preamble to the 2006 NPRM clarified that the statement of compliance would be subject to the then proposed § 21.2 changes related to fraudulent, intentionally false, or misleading statements. The 2006 NPRM did not recognize differences between domestic and foreign TC or STC applicants. The FAA has subsequently determined that the certifying statement by an applicant attesting to its compliance to the applicable requirements in accordance with § 21.20(b) does not serve the same purpose as a statement made by the certifying authority as required by § 21.29(a). Requiring the domestic applicant’s statement in § 21.20 affirms that the applicant is responsible for compliance with all applicable requirements. The certifying statement from the bilateral partner civil aviation authority is what the FAA needs to demonstrate that compliance with § 21.29 has been fulfilled. The two certifying statements serve different purposes.

As the FAA does with domestic applicants, the FAA expects that an FCAA works extensively with its applicants in developing the FCAA’s certifying statement. However, § 21.20 is intended to expedite the domestic applicant’s type certification approval process by ensuring that an applicant’s submission package is complete prior to the FAA making the compliance determination. The FAA finds it advantageous to retain the current rule to expedite certification approval and to ensure applicants demonstrate compliance according to the requirements of § 21.20. The FAA may deny, suspend or revoke a certificate if the applicant’s statement is fraudulent,

¹ <https://www.transportation.gov/individuals/privacy/us-agents-service-individuals-foreign-addresses-who-hold-or-apply>.

¹ 84 FR 5605.

intentionally false, or misleading. Therefore, the FAA proposes to withdraw the FCAA NPRM published in 2009 and thereby maintain the requirement for foreign applicants for type validation to comply with § 21.20.

Conclusion

Withdrawal of Notice No. 18–09 does not preclude the FAA from issuing rulemaking on the subject in the future or commit the FAA to any future course of action. The FAA will make necessary changes to the Code of Federal Regulations through an NPRM with opportunity for public comment in the new rulemaking project.

Therefore, the FAA withdraws Notice No. 18–09, FR Doc. 2018–1052, published at 84 FR 5605 on February 22, 2019.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Lirio Liu,

Executive Director, Aircraft Certification Service.

[FR Doc. 2023–22647 Filed 10–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1994; Project Identifier MCAI–2023–00658–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A321, A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, and A340–300 series airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A340–541 and A340–642 airplanes. This proposed AD was prompted by a report that a production deficiency of some SafeLav gaseous oxygen container (SLGOC) batches was identified during production testing of newly manufactured oxygen containers. This proposed AD would require replacing affected SLGOCs and prohibiting the installation of affected SLGOCs, 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 proposed AD by November 27, 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–2023–1994; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +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–2023–1994.

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

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@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–2023–1994; Project Identifier

MCAI–2023–00658–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 Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: *timothy.p.dowling@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0094, dated May 8, 2023 (EASA AD 2023–0094) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model:

- A318–111, –112, –121, and –122 airplanes;
- A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes;
- A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes;

- A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes;
- A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes; and
- A340–211, –212, –213, –311, –312, –313, –541, –542, –642, and –643 airplanes.

Model A320–215, A340–542, and A340–643 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that a production deficiency of some SLGOC batches was identified during production testing of newly manufactured oxygen containers. Subsequent investigation identified missing heat treatment of the actuation pin of the SLGOC, which could cause its jamming, with consequent failure of oxygen flow activation. This condition, if not corrected, could prevent supplemental oxygen supply in case of decompression in the cabin/lavatory, possibly resulting in injury to lavatory occupants.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1994.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0094 specifies procedures for replacing affected SLGOCs and prohibiting the installation of affected SLGOCs. 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

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0094 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0094 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0094 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0094 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2023–0094. Service information required by EASA AD 2023–0094 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1994 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170	\$4,570	\$4,740	\$3,450,720

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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:

Airbus SAS: Docket No. FAA–2023–1994; Project Identifier MCAI–2023–00658–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 27, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(5) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

(6) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report that a production deficiency of some SafeLav gaseous oxygen container (SLGOC) batches was identified during production testing of newly manufactured oxygen containers. The FAA is issuing this AD to address missing heat treatment of the actuation pin of the SLGOC, which could cause its jamming, with consequent failure of oxygen flow activation. The unsafe condition, if not addressed, could result in lack of supplemental oxygen supply in case of decompression in the cabin/lavatory, possibly resulting in injury to lavatory occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0094, dated May 8, 2023 (EASA AD 2023–0094).

(h) Exceptions to EASA AD 2023–0094

(1) Where EASA AD 2023–0094 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2023–0094.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0094 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* 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 responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph(s) (j)(2) and (i) of this AD, if any service information referenced in EASA AD 2023–0094 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any

substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3667; email: timothy.p.dowling@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0094, dated May 8, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0094, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +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 material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material 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 October 4, 2023.

Victor Wicklund,

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

[FR Doc. 2023–22487 Filed 10–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2023–1972; Airspace Docket No. 22–AGL–39]

RIN 2120–AA66

Modification of Restricted Areas R–4201A and R–4201B; Camp Grayling, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the designated altitudes of restricted area R–4201B, Camp Grayling, MI, by raising the restricted area ceiling

from 9,000 feet mean sea level (MSL) to 23,000 feet MSL to match the ceiling of the adjacent restricted area R-4201A, Camp Grayling, MI. Additionally, this action proposes to make minor administrative changes to the R-4201B time of designation information and the R-4201A and R-4201B using agency information to standardize the format of the information provided describing these restricted areas.

DATES: Comments must be received on or before November 27, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2023-1972 and Airspace Docket No. 22-AGL-39 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Comments on environmental and land use aspects to should be directed to: Major Anthony E. Hylko, Alpena Environmental Manager, Alpena Combat Readiness Training Center (CRTC), Alpena, MI, 49707; email: anthony.hylko.2@us.af.mil or telephone: (989) 354-6212 (comm).

FAA Order JO 7400.10E, Special Use Airspace, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the restricted area airspace at Camp Grayling, MI, to enhance aviation safety and accommodate essential U.S. Army training requirements.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Background

The Alpena Combat Readiness Training Center (CRTC), located in Alpena, MI, is a regional hub for the Air National Guard (ANG) and hosts Department of Defense (DoD) Large Force Exercises (LFE) every year; serving as a deployed location. Activities within the Alpena CRTC airspace complex allow combat air forces to practice weapon attack mechanics, target acquisition, and reaction to simulated surface-to-air threats while coordinating with friendly ground elements.

The Alpena Airspace Complex was originally created to support aircrew training during the buildup for World War II and has continued as a valuable training area for aircrews since. As the development of advanced 4th generation and current 5th generation fighter aircraft progressed, the airspace complex was not updated concurrently to take advantage of the full spectrum of training needs required to meet the changing tactics. In particular, the development of next generation fighters and weapons with advanced sensors and significantly greater standoff capabilities has created the requirement for additional hazardous activities maneuver airspace to set up for the employment of current weapons systems at the Grayling Range restricted areas. The DoD seeks to amend Military Operations Areas (MOA) and restricted areas in the Alpena Airspace Complex to address these changing needs. This proposed rule addresses the proposed changes to 14 CFR part 73 to amend the Grayling Range restricted areas.

The DoD has already initiated proposed changes to the Alpena MOAs as a part of a separate action. At the request of the United States Air Force

(USAF), the FAA circulated a proposal to establish five new MOAs, modify the boundaries of three MOAs, and return one MOA to the National Airspace System (NAS).¹ Mission profiles in the proposed Alpena MOA airspace included typical MOA flight operations conducting tactical combat maneuvering by attack and transport category fixed wing aircraft involving abrupt, unpredictable changes in altitude, attitude, and direction of flight. The FAA accepted comments on the proposed MOA amendments from June 16 to August 3, 2023. These amendments do not require the FAA to conduct rulemaking or amend 14 CFR part 73. Accordingly, the FAA will document the MOA amendments in a separate non-regulatory publication.

Collectively, the proposed changes to the MOAs and the proposed Grayling Range restricted area amendments would support DoD training scenarios designed to ensure air dominance of the airspace over the battlefield. Connecting the proposed Grayling Range R-4201A and R-4201B restricted areas with the proposed Alpena CRTC MOA airspace areas would enable the ANG to host and DoD to conduct training scenarios where fighter aircraft would fight their way into a target area, employ ordnance, and then egress from either low or high altitudes depending on the training threats confronted.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 by amending the Camp Grayling, MI, restricted areas R-4201A and R-4201B. This action would raise the ceiling of R-4201B from 9,000 feet MSL to 23,000 feet MSL to match the adjacent R-4201A ceiling, add a “tie-in” boundary point in the R-4201A boundaries description to ensure a shared R-4201A and R-4201B boundary, and make minor administrative changes to the existing R-4201B time of designation and the R-4201A and R-4201B using agency information.

The proposed amendment to raise the R-4201B ceiling to 23,000 feet MSL would match the restricted area ceiling with the adjacent R-4201A ceiling and connect the eastern boundaries of the two restricted areas equally with two new MOAs proposed to be established as part of the previously published non-rulemaking proposal to amend the Alpena CRTC Airspace Complex. Further, the proposed R-4201B 23,000-

foot MSL ceiling would accommodate additional hazardous activity maneuvering airspace, longer standoff distance capabilities for using advanced targeting pod non-eye-safe combat lasers, and extended munition release distances required in support of current USAF precision guided munitions tactics and training. The proposed amendment to increase the ceiling of R-4201B would also support United States Army requirements for high-angle artillery fires with high-arching trajectories.

The proposed amendment to add an additional boundary point to the existing southern boundary of R-4201A would ensure a shared boundary with the northern boundary of R-4201B. The inclusion of the additional geographic coordinates located at latitude 44°47′00″ N, longitude 84°38′00″ W in the R-4201A description matches the geographic coordinates of the northwest corner of R-4201B and would not change the boundaries alignment for either restricted area.

The proposed administrative change to the existing R-4201B time of designation would not change when the restricted area is available to be scheduled. The proposed change would simply restate the existing times and days when the restricted area may be scheduled consistent with the FAA’s special use airspace description format guidance. Additionally, administrative changes to the R-4201A and R-4201B using agency information would preface the existing using agency with “U.S. Army.” These administrative changes would not affect the scheduling, use, or activities conducted within the restricted areas.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for 14 CFR part 73 continues to read as follows:

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

§ 73.42 Michigan (MI) [Amended]

■ 2. Amend § 73.42 to read as follows:

R-4201A Camp Grayling, MI [Amended]

Boundaries. Beginning at lat. 44°56′00″ N, long. 84°29′00″ W; to lat. 44°47′00″ N, long. 84°29′00″ W; to lat. 44°47′00″ N, long. 84°38′00″ W; to lat. 44°47′00″ N, long. 84°39′00″ W; to lat. 44°56′00″ N, long. 84°39′00″ W; to the point of beginning.

Designated altitudes. Surface to 23,000 feet MSL.

Time of designation. 0800–1600 local time, Tuesday–Saturday; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Army, Commander, Camp Grayling, Grayling, MI.

R-4201B Camp Grayling, MI [Amended]

Boundaries. Beginning at lat. 44°47′00″ N, long. 84°29′00″ W; to lat. 44°41′00″ N, long. 84°29′00″ W; to lat. 44°41′00″ N, long. 84°40′00″ W; to lat. 44°43′00″ N, long. 84°40′00″ W; to lat. 44°43′00″ N, long. 84°38′00″ W; to lat. 44°47′00″ N, long. 84°38′00″ W; to the point of beginning.

Designated altitudes. Surface to 23,000 feet MSL.

Time of designation. 0000–2359 local time, Saturday–Sunday; other times by NOTAM.

Controlling agency. FAA, Minneapolis ARTCC.

Using agency. U.S. Army, Commander, Camp Grayling, Grayling, MI.

* * * * *

Issued in Washington, DC, on October 5, 2023.

Karen L. Chiodini,

Acting Manager, Policy and Regulations Group.

[FR Doc. 2023–22472 Filed 10–12–23; 8:45 am]

BILLING CODE 4910–13–P

¹ Airspace Study No. 23–AGL–361–NR circularized by the Central Service Center Operations Support Group on June 16, 2023, with a public comment period that ended August 3, 2023.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–11252; 34–98699; IA–6454; IC–35030; File No. S7–17–23]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Regulatory Flexibility Act (“RFA”) requires an agency to publish in the **Federal Register**, each year, a list of rules that are to be reviewed in accordance with the RFA during the succeeding 12 months. Based upon its review of rules potentially subject to review under the RFA during the succeeding 12 months, the Securities and Exchange Commission (“Commission”) has determined that no such rules are required to be reviewed. Accordingly, the agency is not publishing a list of rules to be reviewed pursuant to the RFA during the succeeding 12 months.

DATES: October 13, 2023.

FOR FURTHER INFORMATION CONTACT:

Sandra Sojka, General Attorney, Office of the General Counsel, 202–551–4928.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (“RFA”), codified at 5 U.S.C. 601 through 612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within 10 years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is “to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.” 5 U.S.C. 610(a).

The RFA further requires an agency to publish in the **Federal Register**, each year, a list of the rules that are to be reviewed in accordance with the RFA during the succeeding 12 months. 5 U.S.C. 610(c). In determining which rules to include in each year’s rule review list, the Commission analyzes rules adopted in the ninth calendar year prior to the year the rule review list is published, and those rules included in the rule review list are reviewed in accordance with the RFA during the calendar year following the year the rule review list is published. The Commission includes in its rule review lists any rules that may have a

significant economic impact on a substantial number of small entities, but excludes rules that previously have been reviewed, rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature. Based upon an analysis of the rules adopted by the Commission in 2014, the Commission has determined that no such rules are required to be reviewed pursuant to the RFA during the succeeding 12 months. Accordingly, the agency is publishing a list that reflects that there are no rules to be reviewed pursuant to the RFA during the succeeding 12 months.

By the Commission.

Dated: October 6, 2023.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–22605 Filed 10–12–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2023–F–4332]

Kerry Ingredients and Flavours Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Kerry Ingredients and Flavours Ltd., proposing that the food additive regulations be amended to provide for the safe use of vitamin D₃ as a nutrient supplement in powdered drink mixes added to water or carbonated water, excluding drinks or drink mixes that are specially formulated or processed for infants.

DATES: The food additive petition was filed on April 26, 2023.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this document into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food

Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1204.

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 2A4834), submitted on behalf of Kerry Ingredients and Flavours Ltd. by Hogan Lovells US LLP, Columbia Square, 555 13th Street NW, Washington, DC 20004. The petition proposes to amend the food additive regulations in 21 CFR 172.380 “Vitamin D₃,” to provide for the safe use of vitamin D₃ as a nutrient supplement in powdered drink mixes added to water or carbonated water at levels not to exceed 180 international units per 360 milliliters (mL) as consumed, excluding drinks or drink mixes that are specially formulated or processed for infants (Refs. 1 and 2). If calcium is added, calcium is present at levels greater than or equal to 150 milligrams of calcium per 360 mL as consumed (Refs. 1 and 2).

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist that would warrant an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Emails from M. Gradison, to L. Highbarger, March 8, 2023, and March 30, 2023.
2. FDA Memorandum from L. Highbarger, Regulatory Review Branch, March 30, 2023.

Dated: October 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22613 Filed 10–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2003–F–0321]

Kerry Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Kerry, Inc., proposing that the food additive regulations be amended to provide for the safe use of sodium alginate as a stabilizer and thickener in plant protein

products at a level not to exceed 3 percent.

DATES: The food additive petition was filed on August 9, 2023.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this document into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christopher Kampmeyer, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1255.

SUPPLEMENTARY INFORMATION: Under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 3A4836), submitted on behalf of Kerry Inc., by ToxStrategies, LLC, 739 Thornapple Dr., Naperville, IL 60540. The petition proposes to amend the food additive regulations in part 172 (21 CFR

part 172) “Food Additives Permitted for Direct Addition to Food for Human Consumption” to provide for the safe use of sodium alginate as a stabilizer and thickener in plant protein products (as defined in 21 CFR 170.3(n)(33)) at a level not to exceed 3 percent.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and that is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: October 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22637 Filed 10–12–23; 8:45 am]

BILLING CODE 4164–01–P

Notices

Federal Register

Vol. 88, No. 197

Friday, October 13, 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

Forest Service

Proposed New Recreation Fee Sites; Correction

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** of September 21, 2023, concerning new recreation fee sites on the Shoshone National Forest. The document contained incorrect contact information and supplementary information.

Correction

In the **Federal Register** of September 21, 2023, in FR Doc. 2023–20415, on page 65151, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Paul Rau, Outdoor Recreation Planner, 307–578–5140, or paul.rau@usda.gov.

Correction

In the **Federal Register** of September 21, 2023, in FR Doc. 2023–20415, on page 65151, in the third column, correct the second paragraph under **SUPPLEMENTARY INFORMATION** caption to read:

SUPPLEMENTARY INFORMATION: An expanded amenity recreation fee of \$5 per site per night would be charged at the Aspen Glade, Frye Lake, Hugh Otte, Little Popo Agie, and Warm Springs Campground. An expanded amenity recreation fee of \$10 per night would be charged at Brown Mountain, Deer Creek, Jack Creek, Lily Lake, Little Sunlight, Wild Iris, and Wood River Campgrounds. The recreation fee revenues would enhance recreation opportunities, improve customer service, and address maintenance needs. Reservations for the campgrounds could be made online at www.recreation.gov

or by calling 877–444–6777. Reservations would cost \$8.00 per reservation.

Dated: October 5, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–22547 Filed 10–12–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—FY 2023 Reassignment and FY 2024 Overall Sugar Marketing Allotment, Cane Sugar and Beet Sugar Marketing Allotments and Company Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) is issuing this notice to: revise fiscal year (FY) 2023 (crop year 2022) State cane sugar allotments and allocations to sugarcane processors; reassign FY 2023 cane sugar marketing allocations to raw cane sugar imports already anticipated; and announce the FY 2024 (crop year 2023) overall sugar marketing allotment quantity (OAQ), State cane sugar allotments, and sugar beet and sugarcane processor allocations. The actions to revise and reassign apply to all domestic cane sugar marketed for human consumption in the United States from October 1, 2022, through September 30, 2023, and the action to announce the allocations applies to all domestic beet and cane sugar marketed for human consumption in the United States from October 1, 2023, through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Kent Lanclos, telephone, (202) 720–0114; or email, kent.lanclos@usda.gov. Individuals who require alternative means of communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Revisions and Reassignments of FY 2023 Sugar Cane Allotments and Allocations

The Agricultural Adjustment Act of 1938, as amended requires USDA to establish the OAQ at a quantity not less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year. On September 30, 2022, USDA announced the initial FY 2023 OAQ, which was established at 10,646,250 short tons, raw value (STRV), equal to 85 percent of 12,525,000 STRV, the estimated quantity of sugar for domestic human consumption for the year as forecast in the September 2022 World Agricultural Supply and Demand Estimates report (WASDE). The notice was issued in the **Federal Register** on September 30, 2022 (87 FR 59390–59391). USDA requires that 54.35 percent of the OAQ be distributed among beet processors and 45.65 percent be distributed among the sugarcane States and cane processors. The beet and cane sector allotments were distributed to individual processors according to formulas prescribed by the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa–1359jj) and 7 CFR part 1435. In the March 2023 WASDE release, USDA increased the FY 2023 estimate of sugar consumption for food use to 12,600,000 STRV. As a result, USDA increased the FY 2023 OAQ to 10,710,000 STRV, increased the beet sector allotment to 5,820,885 STRV, raised the cane sector allotment to 4,889,115 STRV, and revised beet and cane processor allocations accordingly. This notice was issued in the **Federal Register** notice on April 11, 2023 (88 FR 21704–21606).

In accordance with section 359e of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359ee), after evaluating each sugarcane processor's ability to market its full allocation, USDA is transferring FY 2023 allocations from sugarcane processors with surplus allocation to those with deficit allocation as shown in the table below. USDA has also determined that domestic cane sugar supplies are inadequate to fill the FY 2023 cane sugar marketing allotment.

In accordance with 7 U.S.C. 1359ee(b)(2), USDA is reassigning 100,000 STRV of the deficit to raw cane sugar imports already anticipated, given the absence of any Commodity Credit Corporation (CCC) stocks of sugar. In

Table 1 below, each sugar cane processor's allocation following these changes is shown in the column labeled "Revised Allocations & Allotments" and the amount of change in each cane

processor's allocation in the column labeled "Reassignments." USDA is not reassigning any FY 2023 beet allocations to raw cane sugar imports at this time given the

uncertainty about how much beet sugar will be produced from new crop sugar beets in the final 2 months (August–September) of FY 2023.

TABLE 1—REVISION OF FY 2023 STATE ALLOTMENTS, CANE PROCESSOR ALLOCATIONS AND REASSIGNMENT TO RAW CANE SUGAR IMPORTS ALREADY ANTICIPATED

Distribution	Initial FY23 allotments & allocations	FY23 revisions 4/11/23	Reassignments	Revised allotments & allocations
Beet Sugar	5,786,237	5,570,885	0	5,570,885
Cane Sugar	4,860,013	4,389,115	– 100,000	4,289,115
Beet Reassign to Raw Cane Sugar Imports		250,000	0	250,000
Cane Reassign to Raw Cane Sugar Imports		500,000	100,000	600,000
Total OAQ	10,646,250	10,710,000	0	10,710,00
Amalgamated Sugar	1,238,877	1,193,737	0	1,193,737
American Crystal Sugar	2,128,113	2,039,915	0	2,039,915
Michigan Sugar	597,577	707,281	0	707,281
Minn-Dak Farmers Coop	401,848	419,754	0	419,754
So Minn Beet Sugar	780,958	650,595	0	650,595
Western Sugar	590,415	515,519	0	515,519
Wyoming Sugar	48,449	44,085	0	44,085
Total Beet Sugar	5,786,237	5,570,885	0	5,570,885
Florida	2,612,146	2,152,475	– 104,118	2,048,357
Louisiana	2,020,789	2,134,997	20,528	2,155,525
Texas	227,078	101,643	– 16,410	85,233
Total Cane Sugar	4,860,013	4,389,115	– 100,000	4,289,115
Florida:				
Florida Crystals	1,075,489	772,420	– 62,806	709,614
Growers Cooperative	469,887	406,257	– 6,757	399,501
U.S. Sugar	1,066,770	973,798	– 34,556	939,242
Total Florida	2,612,146	2,152,475	– 104,118	2,048,357
Louisiana:				
Sugar Growers and Refiners	1,402,896	1,463,932	20,528	1,484,460
M.A. Patout	617,893	671,065	0	671,065
Total Louisiana	2,020,789	2,134,997	20,528	2,155,525
Texas:				
Rio Grande Valley	227,078	101,643	– 16,410	85,233

* Values may not sum to row or column totals due to rounding.

FY 2024 Overall Sugar Marketing Allotment, Cane Sugar and Beet Sugar Marketing Allotments, and Company Allocations

USDA is establishing the initial FY 2024 (crop year 2023) OAQ at 10,667,500 STRV, equal to 85 percent of 12,550,000 STRV, the estimated quantity of sugar for domestic human consumption for FY 2024 as forecast in the September 2023 WASDE. As noted above, 54.35 percent of the OAQ is distributed among beet processors and 45.65 percent is distributed among the sugarcane States and cane processors, with the beet and cane sector allotments distributed to individual processors according to formulas set out in the Agricultural Adjustment Act of 1938

and 7 CFR part 1435. Although the Act directs USDA to assign 325,000 STRV of the cane sector allotment to "offshore States," CCC has determined that no offshore States exist. While sugar cane was formerly produced in Puerto Rico and Hawaii, CCC has determined that both States have permanently exited sugarcane production. As a result, CCC has allocated the 325,000 STRV of the cane sector allotment previously reserved for offshore States to the mainland sugarcane producing States. The initial FY 2024 sugar marketing State allotments and processor allocations are listed in Table 2 below.

TABLE 2—INITIAL FY 2024 STATE ALLOTMENTS AND BEET AND CANE PROCESSOR ALLOCATIONS

Distribution	Initial FY 2024 allotments & allocations
Beet Sugar	5,797,786
Cane Sugar	4,869,714
Total OAQ	10,667,500
Amalgamated Sugar	1,241,350
American Crystal Sugar	2,132,371
Michigan Sugar	598,769
Minn-Dak Farmers Coop	402,650
So Minn Beet Sugar	782,517
Western Sugar	591,583

TABLE 2—INITIAL FY 2024 STATE ALLOTMENTS AND BEET AND CANE PROCESSOR ALLOCATIONS—Continued

Distribution	Initial FY 2024 allotments & allocations
Wyoming Sugar	48,546
Total Beet Sugar	5,797,786
Florida	2,617,360
Louisiana	2,024,823
Texas	227,531
Total Cane Sugar	4,869,714
Florida:	
Florida Crystals	1,077,635
Growers Cooperative	470,825
U.S. Sugar	1,068,900
Total Florida	2,617,360
Louisiana:	
Sugar Growers and Refiners	1,405,697
M.A. Patout	619,126
Total Louisiana	2,024,823
Texas:	
Rio Grande Valley	227,531

* Values may not sum to column totals due to rounding.

USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis and may make program adjustments during FY 2024 if needed.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering 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 or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720-2600

(voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2023-22638 Filed 10-12-23; 8:45 am]

BILLING CODE 3411-E2-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss, plan, and vote as needed on matters related to the Committee's inaugural civil rights project.

DATES: Thursday, October 26, 2023, from 11:00 a.m.–12:30 p.m. Atlantic Time.

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or 1-202-656-8937.

SUPPLEMENTARY INFORMATION:

Meeting Link (Audio/Visual): <https://www.zoomgov.com/j/1606760209>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll Free; Meeting ID: 160 676 0209#.

This Committee meeting is available to the public through the meeting link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to 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 is available by selecting "CC" in the meeting platform. To request additional accommodations, please email svillanueva@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 scheduled meeting. Written comments may be emailed to Sarah Villanueva at svillanueva@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-656-8937.

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, U.S. Virgin Islands Advisory Committee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, www.usccr.gov, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Committee Discussion
- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Dated: October 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–22617 Filed 10–12–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Thursday, November 16, 2023, at 3:30 p.m. Atlantic Time and 2:30 p.m. Eastern Time (Daylight Savings Time ends). The purpose is to continue discussion on their project on the civil rights impacts of the Insular Cases in Puerto Rico.

DATES: November 16, 2023, Thursday, at 3:30 p.m. Atlantic Time (2:30 p.m. ET).

ADDRESSES: Meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT:

Email Victoria Moreno, Designated Federal Officer at vmoreno@usccr.gov, or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION:

Registration Link (Audio/Visual): <https://tinyurl.com/mnv2vu37>.

Join by Phone (Audio Only): 1–833 435 1820 USA Toll Free; Meeting ID: 160 742 9502#.

This meeting will take place in Spanish with English interpretation. 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 ebohor@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 Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

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, Puerto Rico 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 ebohor@usccr.gov.

Agenda

1. Welcome & Roll Call
2. Committee Discussion on Project Regarding the Civil Rights Impacts of the Insular Cases in Puerto Rico
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: October 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–22608 Filed 10–12–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. 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 Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 9:30 a.m. ChST on Friday, October 27, 2023 (7:30 p.m. ET on Thursday, October 26, 2023). The

purpose of the meeting is to debrief on the Committee's prior briefing on healthcare in the CNMI judicial system, as well as plan for future briefings.

DATES:

Friday, October 27, 2023, from 9:30 a.m.–11:00 a.m. Chamorro Standard Time.

(Thursday, October 26, 2023, from 7:30 p.m.–9:00 p.m. Eastern Time).

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, Designated Federal Officer, at kfajota@usccr.gov or (434) 515–2395.

SUPPLEMENTARY INFORMATION:

Registration Link (Audio/Visual): <https://www.zoomgov.com/j/1615183627>.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 518 3627.

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 Liliana Schiller, Support Services Specialist, at 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 Kayla Fajota at kfajota@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,

Commonwealth of the Northern Mariana Islands 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. Discussion: September Briefing
- III. Planning: Potential Vote for Briefing #2
- IV. Public Comment
- V. Adjournment

Dated: October 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-22601 Filed 10-12-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meetings.

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 West Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold meetings via Zoom. The purpose of these meetings is to discuss, plan, and vote, as needed, on matters related to the Committee's project on the civil rights impact of WV public school disciplinary policies, practices and procedures on students of color, students with disabilities and LGBTQ+ students.

DATES:

- Thursday, October 12, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time
- Thursday, October 19, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time
- Thursday, October 26, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time
- Thursday, November 2, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time
- Thursday, November 9, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time
- Thursday, November 16, 2023, from 3:00 p.m.–4:00 p.m. Eastern Time

ADDRESSES: These meetings will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at ero@usccr.gov or 1-202-539-8468.

SUPPLEMENTARY INFORMATION:

Meeting Link (Audio/Visual): <https://www.zoomgov.com/j/1603603569>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 160 360 3569#.

These Committee meetings are available to the public through the meeting link above. Any interested member of the public may attend these meetings. Immediately after each meeting concludes the Committee Chair will recognize members of the public to make a brief statement to the Committee on the panel topic—not to exceed five minutes—as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of this meeting will include a list of persons who attended the meeting. If joining via phone, callers can expect to incur regular charges for calls initiated 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 is available by selecting “CC” in the meeting platform. To request additional accommodations, please email svillanueva@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 emailed within 30 days following the scheduled meeting. Written comments may be emailed to Ivy Davis at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-809-9618.

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, West Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, www.usccr.gov, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Meeting Announcement & Roll Call
- II. Welcome
- III. Project Planning
- IV. Other Business
- V. Next Meeting
- VI. Public Comment
- VII. Adjourn

Exceptional Circumstance: Pursuant to to 41 CFR 102-3.150, the notice for this meeting is given less than 15 days

prior to the meeting due to the Committee's report deadline.

Dated: October 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-22616 Filed 10-12-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. 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 Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom at 12:30 p.m. MT on Monday, November 6, 2023. The purpose of this meeting is to hear testimony from various stakeholders regarding housing discrimination in the state.

DATES: Monday, November 6, 2023, from 12:30 p.m.–3:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, Designated Federal Officer, at kfajota@usccr.gov or (434) 515-2395.

SUPPLEMENTARY INFORMATION:

Registration Link (Audio/Visual): <https://www.zoomgov.com/j/1601463652>.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 160 146 3652.

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 Liliana Schiller, Support Services Specialist, at 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 Kayla Fajota at kfajota@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, Wyoming 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. Opening Remarks
- III. Panelist Presentations & Committee Q&A
- IV. Public Comment
- V. Closing Remarks
- VI. Adjournment

Dated: October 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-22600 Filed 10-12-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

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 Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom at 2:00 p.m. CT on Thursday, November 9, 2023. The purpose of this

briefing is to hear testimony on housing affordability in the state.

DATES: Thursday, November 9, 2023, from 2:00 p.m.–4:00 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer, at afortes@usccr.gov or (202) 519-2938.

SUPPLEMENTARY INFORMATION:

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1603587740>.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 160 358 7740.

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 Liliana Schiller, Support Services Specialist, at 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 Ana Victoria Fortes at afortes@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, Minnesota 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. Introductory Remarks
- III. Panelist Presentations & Committee Q&A
- IV. Public Comment
- V. Closing Remarks
- VI. Adjournment

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-22607 Filed 10-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; URAL Airlines JSC, Utrenniy Lane 1-g, Yekaterinburg, Russia 620025

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on April 10, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because URAL Airlines JSC (“URAL”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On October 13, 2022, I signed an order denying URAL's export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations.

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.³ The renewal order issued on April 10, 2023 and was effective upon issuance.⁴

On September 15, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on April 10, 2023. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to serve a copy of the renewal request on URAL in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with

any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any additional or changed circumstances. *Id.* "In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year." ⁵ *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (Section 746.8(a)(1) of the EAR).⁶ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (Section 740.15 of the EAR).⁷ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license

requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the initial TDO, the renewal orders subsequently issued in this matter, and evidence that continues to develop during this investigation. These facts and evidence demonstrate that URAL has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on October 13, 2022, was based on evidence that URAL engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Bishkek, Kyrgyzstan; Dushanbe, Tajikistan; Khudzhand, Tajikistan; and Tamchy, Kyrgyzstan without the required BIS authorization.⁸ Further evidence submitted by BIS indicated that URAL was also continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

As discussed in the April 10, 2023 renewal order, evidence presented by BIS indicated that, after the initial October 13, 2022 TDO issued, URAL continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.⁹ Specifically, the April 10, 2023 renewal order detailed URAL's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Bishkek, Kyrgyzstan, Dushanbe, Tajikistan, and Khujand, Tajikistan, as well as within Russia.¹⁰

Since that time, URAL has continued to engage in conduct prohibited by the

⁸ Publicly available flight tracking information shows multiple flights into Russia, including the following: on September 10, 2022, SN 5055 flew from Dushanbe, Tajikistan to Irkutsk, Russia, and on September 6, 2022, SN 5055 flew from Khudzhand, Tajikistan to Sochi, Russia. In addition, on October 6, 2022, serial number (SN) 5055 flew from Bishkek, Kyrgyzstan to Samara, Russia.

⁹ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹⁰ Publicly available flight tracking information shows that SN 5055 flew from Dushanbe, Tajikistan to Ufa, Russia on March 20, 2023 and from Osh, Kyrgyzstan to Krasnoyarsk, Russia on March 19, 2023. In addition, on March 19, 2023, SN 2376 flew from Bishkek, Kyrgyzstan to Yekaterinburg, Russia. On March 6, 2023, SN 1941 flew from Khujand, Tajikistan to Yekaterinburg, Russia. On March 16, 2023, SN 1941 flew from Sochi, Russia to Moscow, Russia.

² The TDO was published in the **Federal Register** on October 19, 2022 (87 FR 63477).

³ At the time of the renewal, Section 766.24(d) provided that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation.

⁴ The April 10, 2023 renewal order was published in the **Federal Register** on April 13, 2023 (88 FR 22406).

⁵ 88 FR 59791 (Aug. 30, 2023).

⁶ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁷ 87 FR 13048 (Mar. 8, 2022).

TDO and Regulations. In its September 15, 2023, request for renewal of the TDO, BIS submitted evidence that URAL continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and

within Russia, in violation of the April 10, 2023 TDO and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that URAL has continued to operate aircraft subject to the EAR, including, but not limited

to, on flights into and out of Russia from/to Dushanbe, Tajikistan, Tamchy, Kyrgyzstan, and Bishkek, Kyrgyzstan, as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73817	5055	A320-232	Bishkek, KG/Yekaterinburg, RU	August 7, 2023.
RA-73817	5055	A320-232	Kulob, TJ/Moscow, RU	August 15, 2023.
RA-73817	5055	A320-232	Irkutsk, RU/Yekaterinburg, RU	August 17, 2023.
RA-73817	5055	A320-232	Osh, KG/Krasnoyarsk, RU	September 1, 2023.
RA-73817	5055	A320-232	Dushanbe, TJ/Yekaterinburg, RU	September 5, 2023.
RA-73817	5055	A320-232	Yekaterinburg, RU/Sochi, RU	September 8, 2023.
RA-73817	5055	A320-232	Bishkek, KG/Yekaterinburg, RU	September 12, 2023.
RA-73817	5055	A320-232	Bishkek, KG/Yekaterinburg, RU	September 22, 2023.
RA-73817	5055	A320-232	Khujand, TJ/Yekaterinburg, RU	September 30, 2023.
RA-73818	2376	A320-232	Tamchy, KG/Moscow, RU	August 21, 2023.
RA-73818	2376	A320-232	Kulob, TJ/Moscow, RU	August 22, 2023.
RA-73818	2376	A320-232	Khujand, TJ/Yekaterinburg, RU	August 30, 2023.
RA-73818	2376	A320-232	Dushanbe, TJ/Sochi, RU	September 2, 2023.
RA-73818	2376	A320-232	Beslan, RU/Moscow, RU	September 3, 2023.
RA-73818	2376	A320-232	Kulob, TJ/Moscow, RU	September 7, 2023.
RA-73818	2376	A320-232	Sochi, RU/Yekaterinburg, RU	September 14, 2023.
RA-73818	2376	A320-232	Khujand, TJ/Yekaterinburg, RU	September 24, 2023.
RA-73844	1941	A321-231	Dushanbe, TJ/Moscow, RU	August 25, 2023.
RA-73844	1941	A321-231	Dushanbe, TJ/Moscow, RU	August 30, 2023.
RA-73844	1941	A321-231	Osh, KG/Moscow, RU	September 3, 2023.
RA-73844	1941	A321-231	Osh, KG/Moscow, RU	September 6, 2023.
RA-73844	1941	A321-231	Bishkek, KG/Moscow, RU	September 4, 2023.
RA-73844	1941	A321-231	Kaliningrad, RU/Moscow, RU	September 8, 2023.
RA-73844	1941	A321-231	Bishkek, KG/Moscow, RU	September 12, 2023.
RA-73844	1941	A321-231	Kulob, TJ/Moscow, RU	September 29, 2023.
RA-73844	1941	A321-231	Bishkek, KG/Moscow, RU	October 1, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS demonstrates that URAL has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because URAL has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with URAL, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, URAL Airlines JSC, Utrenniy Lane 1-g, Yekaterinburg, Russia 620025,

when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States

that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of URAL any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by URAL of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby URAL acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from URAL of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from URAL in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by URAL, or service any item, of whatever origin, that is owned, possessed or controlled by URAL if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to URAL by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, URAL may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by URAL as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to URAL and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,
Assistant Secretary of Commerce, for Export Enforcement.

[FR Doc. 2023-22604 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Aviastar—TU) 5 b. 7 Leningradsky prospekt g. Moskva, 125040 Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on April 14, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 21, 2022, I signed an order denying Aviastar—TU’s (“Aviastar”) export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² The temporary denial order was subsequently renewed on October 17, 2022³ and again on April 14, 2023,⁴ in accordance with Section 766.24(d) of the Regulations.⁵

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

² The TDO was published in the **Federal Register** on April 26, 2022 (87 FR 24514).

³ The October 17, 2022 renewal order, which was effective upon issuance, was published in the **Federal Register** on October 20, 2022 (87 FR 63760).

⁴ The April 14, 2023 renewal order, which was also effective upon issuance, was published in the **Federal Register** on April 19, 2023 (88 FR 24162).

⁵ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

On September 19, 2023, BIS, through OEE, submitted a written request for a third renewal of the TDO. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Aviastar by alternative means in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia,

including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (Section 746.8(a)(1) of the EAR).⁶ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (Section 740.15 of the EAR).⁷ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

This OEE request for renewal is based upon the facts underlying the issuance

of the TDO and the renewal orders subsequently issued in this matter on October 17, 2022, and April 14, 2023, as well as other evidence developed during this investigation. This evidence demonstrates that Aviastar has acted, and continues to act, in blatant disregard for U.S. export controls and the terms of existing TDOs. The TDO, initially issued on April 21, 2022, was based on evidence that Aviastar violated the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into and out of Russia after March 2, 2022 from destinations including, but not limited to, Hangzhou, China; Shenzhen, China; and Zhengzhou, China from/to Novosibirsk, Russia and Abakan, Russia, without the required BIS authorization.⁸ Further evidence indicated that Aviastar also operated aircraft subject to the EAR on domestic flights within Russia, potentially in violation of Section 736.2(b)(10) of the Regulations.

BIS also presented evidence that, while subject to a TDO, Aviastar

operated aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the terms of the existing TDO.⁹ Specifically, previous renewal orders detailed Aviastar’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Zhengzhou, China and Hangzhou, China, as well as on domestic flights within Russia.¹⁰

In its September 19, 2023 request for TDO renewal, BIS submitted evidence that Aviastar violated the TDO and/or the Regulations by operating aircraft subject to the EAR and flown into Russia on or after March 2, 2022, on flights within Russia, in apparent violation of Section 736.2(b)(10) of the Regulations, as well as the TDO. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73351	25696	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	April 11, 2022.
RA-73351	25696	757–223 (PCF) (B752)	Zhengzhou, CN/Novosibirsk, RU	May 24, 2022.
RA-73351	25696	757–223 (PCF) (B752)	Ulan-Ude, RU/Moscow, RU	April 16, 2023.
RA-73351	25696	757–223 (PCF) (B752)	Moscow, RU/Blagoveshchensk, RU	June 3, 2023.
RA-73351	25696	757–223 (PCF) (B752)	Novosibirsk, RU/Mirny, RU	August 31, 2023.
RA-73351	25696	757–223 (PCF) (B752)	Krasnoyarsk, RU/Magadan, RU	September 8, 2023.
RA-73351	25696	757–223 (PCF) (B752)	Moscow, RU/Mirny, RU	September 10, 2023.
RA-73351	25696	757–223 (PCF) (B752)	Ulan-Ude, RU/Moscow, RU	September 16, 2023.
RA-73352	25731	757–223 (B752)	Hangzhou, CN/Novosibirsk, RU	April 14, 2022.
RA-73352	25731	757–223 (B752)	Hangzhou, CN/Novosibirsk, RU	May 25, 2022.
RA-73352	25731	757–223 (B752)	Anadyr, RU/Ulan-Ude, RU	August 30, 2023.
RA-73352	25731	757–223 (B752)	Norilsk, RU/Moscow, RU	September 22, 2023.
RA-73352	25731	757–223 (B752)	Ulan-Ude, RU/Moscow, RU	September 26, 2023.
RA-73354	27053	757–223 (B752)	Shenzhen, CN/Abakan, RU	April 12, 2022.
RA-73354	27053	757–223 (B752)	Hangzhou, CN/Novosibirsk, RU	May 25, 2022.
RA-73354	27053	757–223 (B752)	Moscow, RU/Novosibirsk, RU	April 18, 2023.
RA-73354	27053	757–223 (B752)	Nizhnevartovsk, RU/Moscow, RU	June 16, 2023.
RA-73354	27053	757–223 (B752)	Mirny, RU/Krasnoyarsk, RU	August 10, 2023.
RA-73354	27053	757–223 (B752)	Norilsk, RU/Moscow, RU	September 8, 2023.
RA-73354	27053	757–223 (B752)	Ulan-Ude, RU/Moscow, RU	September 16, 2023.
RA-73354	27053	757–223 (B752)	Ulan-Ude, RU/Moscow, RU	September 23, 2023.
RA-73355	27054	757–223 (B752)	Hangzhou, CN/Novosibirsk, RU	April 10, 2022.
RA-73355	27054	757–223 (B752)	Zhengzhou, CN/Novosibirsk, RU	May 22, 2022.
RA-73355	27054	757–223 (B752)	Norilsk, RU/Moscow, RU	September 6, 2023.
RA-73355	27054	757–223 (B752)	Moscow, RU/Norilsk, RU	September 15, 2023.
RA-73355	27054	757–223 (B752)	Norilsk, RU/Moscow, RU	September 20, 2023.

III. Findings

Under the applicable standard set forth in Section 766.24 of the

Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly

demonstrates that Aviastar has acted in violation of the Regulations and the TDO; that such violations have been

⁶ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁷ 87 FR 13048 (Mar. 8, 2022).

⁸ Publicly available flight tracking information shows that on April 10, 2022, serial number (SN) 27054 flew from Hangzhou, China to Novosibirsk, Russia, and on April 12, 2022, SN 27054 flew from Zhengzhou, China to Abakan, Russia. In addition, on April 12, 2022, SN 27053 flew from Shenzhen, China to Abakan, Russia.

⁹ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹⁰ Publicly available flight tracking information shows that on May 22, 2022, SN 27054 flew from Zhengzhou, China to Novosibirsk, Russia, and on May 25, 2022, SN 27053 flew from Hangzhou, China to Novosibirsk, Russia. In addition, on September 22, 2022, SN 25731 flew from Irkutsk, Russia to Moscow, Russia. On February 24, 2023, SN 27053 flew from Novosibirsk, Russia to Mirny, Russia. On March 7, 2023, SN 25696 flew from Novosibirsk, Russia to Moscow, Russia.

significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with AviaStar, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, AviaStar—TU, 5 b. 7 Leningradsky prospekt, g. Moskva, 125040, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of AviaStar any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by AviaStar of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby AviaStar acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from AviaStar of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from AviaStar in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by AviaStar, or service any item, of whatever origin, that is owned, possessed or controlled by AviaStar if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to AviaStar by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, AviaStar may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days

before the expiration date. A renewal request may be opposed by AviaStar as provided in Section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to AviaStar, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023-22614 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review in the matter of Certain Fabricated Structural Steel from Canada; Final Negative Injury Determination (Secretariat File Number: USA-CDA-2020-1904-05).

SUMMARY: The USA-CDA-2020-1904-05 Panel has granted a consent motion filed on behalf of the Full Member Subgroup of the American Institute of Steel Construction, LLC, requesting the termination of panel review in the Certain Fabricated Structural Steel from Canada; Final Negative Injury Determination (Fabricated Structural Steel from Canada IN) dispute. Given the Panel's ruling on this consent motion, and pursuant to Rule 71(2) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules)*, the Fabricated Structural Steel from Canada IN dispute has been terminated. As a result, and in accordance with Rule 78(a), notice is hereby given that panel review of the Fabricated Structural Steel from Canada IN dispute has been completed effective September 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of article 1904 of NAFTA provides a

dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules*, which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules*, please see <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904>.

Dated: October 6, 2023.

Vidya Desai,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2023–22543 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–849, A–552–812, C–552–813]

Steel Wire Garment Hangers From Taiwan and the Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders and Countervailing Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on steel wire garment hangers (hangers) from Taiwan and the Socialist Republic of Vietnam (Vietnam), and the countervailing duty (CVD) order on hangers from Vietnam would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders and this CVD order.

DATES: Applicable October 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Kabir Archuleta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2012, and February 5, 2013, Commerce published in the *Federal Register* the AD and CVD orders on hangers from Vietnam and the AD

order on hangers from Taiwan.¹ On April 3, 2023, the ITC instituted,² and Commerce initiated,³ the second sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.⁴

On October 4, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Orders

The merchandise subject to the *Orders* is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the *Orders* are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

¹ See *Steel Wire Garment Hangers from Taiwan: Antidumping Duty Order*, 77 FR 73424 (December 10, 2012); *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Antidumping Duty Order*, 78 FR 8105 (February 5, 2013); and *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Countervailing Duty Order*, 78 FR 8107 (February 5, 2013) (collectively, *Orders*).

² See *Steel Wire Garment Hangers from Taiwan and Vietnam; Institution of Five-Year Reviews*, 88 FR 19669 (April 3, 2023).

³ See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 19616 (April 3, 2023).

⁴ See *Steel Wire Garment Hangers from Taiwan and the Socialist Republic of Vietnam: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Orders*, 88 FR 52123 (August 7, 2023), and accompanying Issues and Decision Memorandum (IDM); and *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 88 FR 43550 (July 10, 2023), and accompanying IDM.

⁵ See *Steel Wire Garment Hangers from Taiwan and Vietnam; Determinations*, 88 FR 68669 (October 4, 2023).

The products subject to the *Orders* are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* is October 4, 2023. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the date of the last determination by the Commission.⁶

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceedings. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: October 5, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–22523 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–DS–P

⁶ *Id.*

DEPARTMENT OF COMMERCE**International Trade Administration****North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review**

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review in the matter of Certain Fabricated Structural Steel from Canada Final Affirmative Antidumping Duty Determination (Secretariat File Number: USA-CDA-2020-1904-02).

SUMMARY: The USA-CDA-2020-1904-02 Panel has granted a consent motion filed on behalf of the Full Member Subgroup of the American Institute of Steel Construction, LLC, requesting the termination of panel review in the Certain Fabricated Structural Steel from Canada Final Affirmative Antidumping Duty Determination (Fabricated Structural Steel from Canada AD) dispute. Given the Panel's ruling on this consent motion, and pursuant to Rule 71(2) of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews (Rules)*, the Fabricated Structural Steel from Canada AD dispute has been terminated. As a result, and in accordance with Rule 78(a), notice is hereby given that panel review of the Fabricated Structural Steel from Canada AD dispute has been completed effective September 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the government of the United States, the government of Canada, and the government of Mexico. There are established *Rules*, which were adopted by the three governments and require Notices of Completion of Panel Review to be published in accordance with Rule 78. For the complete *Rules*, please see <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904>.

Dated: October 6, 2023.

Vidya Desai,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2023-22544 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XD452]

South Atlantic 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 South Atlantic Fishery Management Council (Council) Council will hold a meeting of its Habitat and Ecosystem Advisory Panel (Habitat AP) in Charleston, SC.

DATES: The Habitat AP will meet on Wednesday, November 1, 2023, from 1 p.m. until 4:30 p.m.; Thursday November 2, 2023, from 8:30 a.m. to 4:30 p.m.; and Friday November 3, 2023, from 8:30 a.m. to 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Marriott, 170 Lockwood Blvd., Charleston, SC 29403; phone: (843) 723-3000.

The meeting is open to the public and will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: <https://safmc.net/advisory-panel-meetings/>.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: The Habitat AP will receive updates and discuss the following: NOAA Fisheries Habitat Conservation Division's Essential Fish Habitat (EFH) Consultation Annual Summary and EFH 5-Year Review; Southeast Conservation Adaptability Strategy (SECAS) and the Conservation Blueprint; Offshore Wind Activities in South Atlantic Region; EFH Policy Statement on Energy; U.S. Navy Atlantic Fleet Training and Testing Environmental Impact Statement; SAFMC Habitat Blueprint; South Atlantic Salt Marsh Initiative; and Space Operations off East Florida.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) five (5) days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 6, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-22661 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XD372]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BNSF Railway Bridge Heavy Maintenance Project in King County, Washington

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from BNSF Railway (BNSF) for the reissuance of two consecutive, previously issued incidental harassment authorizations (IHA) with the only change being effective dates. The initial IHAs authorized take of seven species of marine mammals, by Level A and Level B harassment, incidental to construction.

DATES: The authorizations are effective from September 28, 2023 to July 15, 2024 for Year 1 and July 16, 2024 to July 15, 2025 for Year 2.

ADDRESSES: An electronic copy of the final IHAs previously issued to the BNSF, the initial application, and the **Federal Register** notices proposing and issuing the initial IHAs may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-bnsf-railway-railway-bridge-heavy-maintenance-project-king>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On April 15, 2022, NMFS published final notice of our issuance of two consecutive IHAs authorizing take of marine mammals incidental to the Bridge 6.3 Heavy Maintenance Project in King County, Washington (87 FR 22506; April 15, 2022). The effective dates of the IHAs were from July 16, 2022 to July 15, 2023 for Year 1 and from July 16, 2023 to July 15, 2024 for Year 2. On August 3, 2023, BNSF informed NMFS that the project would be delayed by one year and requested a

reissuance of the initial IHAs. None of the work identified in the initial IHAs (e.g., pile driving and removal) has occurred. Therefore, reissuance of the two consecutive IHAs is appropriate. The initial IHAs authorized take of seven species of marine mammals, by Level A and Level B harassment, incidental to construction (87 FR 22506; April 15, 2022). The Year 1 Authorization was effective from July 16, 2022 to July 15, 2023. The Year 2 Authorization was effective from July 16, 2023 to July 15, 2024. BNSF has requested a subsequent reissuance of the IHAs. The reissued Year 1 IHA will be effective from the date September 28, 2023 to July 15, 2024 and the reissued Year 2 IHA will be effective from July 16, 2024 to July 15, 2025. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHAs. NMFS is, therefore, reissuing a two identical IHAs to cover the incidental take analyzed and authorized in the initial IHAs.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued initial IHAs.

The purpose of BNSF’s Railway Bridge 6.3 Heavy Maintenance Project is to extend the service life of the existing structure by replacing several components of the existing movable span. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHAs. The mitigation and monitoring are also as prescribed in the initial IHAs.

Species that are expected to be taken by the planned activity include minke whale (*Balaenoptera acutorostrata*), common bottlenose dolphin (*Tursiops truncatus*), long-beaked common dolphin (*Delphinus capensis*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*) and harbor seal (*Phoca vitulina*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the documents referenced below. The data inputs and methods of estimating take are identical to those used in the initial IHAs. NMFS has reviewed recent Stock Assessment

Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHAs.

We refer to the documents related to the previously issued IHAs, which include the **Federal Register** notice of the issuance of the initial IHAs (87 FR 22506; April 15, 2022) for BNSF’s construction work (87 FR 22506; April 15, 2022), BNSF’s application, the **Federal Register** notice of the proposed IHAs (87 FR 4844; January 31, 2022), and all associated references and documents.

Determinations

BNSF will conduct activities as analyzed in the initial IHAs. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The two consecutive, reissued IHAs include identical required mitigation, monitoring, and reporting measures as the initial IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) BNSF’s activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by 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 review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the reissuance of the IHAs qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities

identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHAs are the effective dates, the CE on record for issuance of the initial IHAs applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species. However, 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.

Authorization

NMFS has issued two consecutive IHAs to BNSF for in-water construction activities associated with the specified activity from the date of issuance to July 15, 2024 for Year 1 and from July 16, 2024 to July 15, 2025 for year 2. All previously described mitigation, monitoring, and reporting requirements from the initial IHAs are incorporated.

Dated: October 2, 2023.
Kimberly Damon-Randall,
Director, Office of Protected Resources,
National Marine Fisheries Service.
[FR Doc. 2023–22633 Filed 10–12–23; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration
[RTID 0648–XD457]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.
ACTION: Notice; issuance of permits, permit amendments, and permit modifications.

SUMMARY: Notice is hereby given that permits, permit amendments, and permit modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to NMFS.Pr1Comments@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Erin Markin, Ph.D. (Permit Nos. 23200–02 and 27109), Carrie Hubbard (Permit No. 21485), Jennifer Skidmore (Permit No. 27489), and Shasta McClenahan, Ph.D. (Permit No. 21425–01); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit, permit amendment, or permit modification had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to <https://www.federalregister.gov> and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RTID	Applicant	Previous Federal Register notice	Issuance date
21425–01	0648–XG297	Point Blue Conservation Science, 3820 Cypress Drive, No. 11, Petaluma, CA 94954 (Responsible Party: Grant Ballard, Ph.D.).	83 FR 64114, December 13, 2018 ...	September 22, 2023.
21485–01	0648–XG288	Jooke Robbins, Ph.D., Center for Coastal Studies, 5 Holway Avenue, Provincetown, MA 02657.	84 FR 4441, February 15, 2019	September 18, 2023.
23200–02	0648–XC219	University of North Carolina, Wilmington, 601 South College Road, Wilmington, NC 28403 (Responsible Party: Frederick Scharf, Ph.D.).	88 FR 52130, August 7, 2023	September 21, 2023.
27109	0648–XD122	Christopher Marshall, Ph.D., Texas A&M University, 200 Seawolf Parkway, Building 3029, Room 253, Galveston, TX 77553.	88 FR 42915, July 5, 2023	September 6, 2023.
27489	0648–XD261	Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007 (Responsible Party: Lori Bettison-Varga, Ph.D.).	84 FR 56606, August 18, 2023	September 21, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were

applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine

mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: October 10, 2023.

Julia M. Harrison,

*Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 2023–22654 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD280]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of modification to expiration date of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico (GOM), notification is hereby given that NMFS has modified the expiration date of a Letter of Authorization (LOA) issued to CGG for the take of marine mammals incidental to geophysical survey activity in the GOM.

DATES: This LOA is effective through April 7, 2024.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: <https://www.fisheries.noaa.gov/marine-mammal-protection/issued-letters-authorization-oil-and-gas-industry-geophysical-survey>. In case of problems accessing these documents, please call the contact listed below (**FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than

commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively “industry operators”), in U.S. Federal waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of affecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as

mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to CGG on March 24, 2023, for the take of marine mammals incidental to a three-dimensional (3D) ocean bottom node (OBN) survey over approximately 200 lease blocks in the Walker Ridge and Green Canyon areas of the central GOM, effective May 1 through December 31, 2023. Please see the **Federal Register** notice of issuance (88 FR 17819, March 24, 2023) for additional detail regarding the LOA and the survey activity.

CGG initially anticipated that the activity would occur at some point between May 1 and December 31, 2023. CGG subsequently conveyed to NMFS that the survey would occur later than previously expected. CGG has requested modification to the expiration date of the LOA (from December 31, 2023 to April 7, 2024) to accommodate the survey delays. There are no other changes to CGG's planned activity. Since issuance of the LOA, no survey work has occurred.

Authorization

NMFS has changed the expiration date of the LOA from December 31, 2023 to April 7, 2024. There are no other changes to the LOA as described in the March 24, 2023, **Federal Register** notice of issuance (88 FR 17819): the specified survey activity; estimated take by incidental harassment; and small numbers analysis and determination remain unchanged and are herein incorporated by reference.

Dated: October 10, 2023.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2023–22670 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD450]

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 will hold a public webinar to collect input on summer flounder commercial mesh regulations and exemptions.

DATES: The meeting will be held on Wednesday, November 1, 2023, from 2 p.m. until 5 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; 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: The Mid-Atlantic Fishery Management Council (Council) will host a webinar to collect public input on multiple summer flounder commercial trawl mesh regulations topics, as described below. The Council is seeking feedback to consider whether modifications to these measures may be needed and will review these topics at the December 2023 Council meeting jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board).

The first issue is the minimum mesh size requirements for the commercial summer flounder trawl fishery. The Fishery Management Plan (FMP) currently allows two options for summer flounder minimum mesh sizes: 5.5-inch diamond or 6.0-inch square. The Council and Board have previously reviewed information suggesting that the selectivity of the 6.0" square mesh is not equivalent to that of the 5.5" diamond mesh, and the 6.0" square mesh may be retaining too many undersized summer flounder. Additional input is being sought from industry on use patterns of these two minimum mesh sizes, factors influencing choice of mesh, cost of modifications to mesh size regulations, and whether modifications to the minimum mesh size may be necessary.

There are two exemptions to the minimum mesh size regulations that are also under review for Council and Board consideration in December 2023: (1) the Small Mesh Exemption Program, and (2)

the flynet exemption. Vessels landing more than 200 lb of summer flounder east of longitude 72° 30.0' W, from November 1 through April 30, and using mesh smaller than 5.5-inch diamond or 6.0-inch square are required to obtain a small mesh exemption program (SMEP) permit from NMFS. The exemption is designed to allow vessels to retain some bycatch of summer flounder while operating in other small-mesh fisheries. This exemption program is being reviewed to determine whether it is still meeting its original intention, and if changes to the SMEP are needed relative to the area, timing, possession limit, or other aspects of the program.

Vessels fishing with a two-seam otter trawl flynet are also exempt from the minimum mesh size requirements. Exempt flynets have large mesh in the wings that measure 8 to 64 inches, the belly of the net has 35 or more meshes that are at least 8 inches, and the mesh decreases in size throughout the body of the net, sometimes to 2 inches or smaller. Previous Council and Board discussions have suggested that the flynet exemption is being used to fish with "high rise" nets that may not meet the regulatory definition of flynets, pointing to a potential enforcement and compliance issues and/or a need to revise the regulatory language. The Council is seeking additional input from industry on how these two exemptions are used and any recommendations for modifications to the program, including consideration of whether they are still needed.

The primary target audience for this webinar includes: (a) any commercial industry participant using trawl gear to fish for summer flounder, (b) commercial fishing industry participants utilizing either of the summer flounder mesh size exemptions while targeting any species, (c) any stakeholder with knowledge of these gear types and their use, and (d) any member of the public who wishes to provide comments or recommendations on these regulations. Additional information, background documents, and instructions for providing written comments will be posted to the Council's website at: <https://www.mafmc.org/>.

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.

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

Dated: October 6, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-22662 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD456]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of scoping meetings via webinar pertaining to Framework Amendment 13 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. The amendment addresses Atlantic migratory group Spanish mackerel catch levels.

DATES: The scoping meetings will be held via webinar on Monday, October 30, 2023, at 6 p.m. and Wednesday, November 1, 2023, at 6 p.m.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Christina Wiegand, Fishery Social Scientist, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: christina.wiegand@safmc.net.

SUPPLEMENTARY INFORMATION: The scoping meetings will be conducted via webinar. Registration is required. The public scoping document, online public comment form, and webinar registration information will be posted on the Council's website at: <https://safmc.net/public-hearings-and-scoping/> as it becomes available. Public comments must be received by 5 p.m. on November 10, 2023.

Framework Amendment 13 to the Coastal Migratory Pelagics FMP

The Council is considering action to address updated scientific information on the Atlantic Spanish mackerel stock provided through the Southeast Data, Assessment, and Review (SEDAR) 78 stock assessment (2022). The assessment, which included revised

recreational landings based on the Marine Recreational Information Program's newer Fishing Effort Survey method, indicated that the Atlantic Spanish mackerel stock was not overfished nor undergoing overfishing. The amendment currently includes actions to update catch levels to be consistent with SEDAR 78 and the Council's Scientific and Statistical Committee recommendations.

During the scoping meetings, Council staff will present an overview of the draft framework amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 6, 2023.

Key Israel Marquez,

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

[FR Doc. 2023–22658 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD453]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 87 Post Data Workshop Webinar for Gulf of Mexico White, Pink, and Brown Shrimp.

SUMMARY: The SEDAR 87 assessment process of Gulf of Mexico white, pink, and brown shrimp will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 87 Post Data Workshop webinar will be held November 6, 2023, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Post Data Workshop webinar are as follows:

Participants will discuss and finalize any outstanding data issues remaining from the Data Workshop.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 6, 2023.

Key Israel Marquez,

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

[FR Doc. 2023–22660 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD455]

New England 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 New England Fishery Management Council's is convening its Scientific and Statistical Committee (SSC) 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 hybrid meeting will be held on Friday, October 27, 2023, beginning at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn, 100 Boardman Street, Boston, MA 02128, (617) 567–6789.

Webinar registration information: <https://attendee.gotowebinar.com/register/114112148113299549>. Call in

information: +1 (631) 992-3221, Access Code: 957-827-573.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scientific and Statistical Committee will meet to: review the information provided by the Council's Plan Development Teams, and stock assessment information where appropriate, and recommend the overfishing limits (OFL) and acceptable biological catches (ABC) for: two stocks of red hake, northern silver hake, and southern whiting (silver and offshore hakes combined) for fishing years (FY) 2024-2026 and Groundfish: Acadian redfish, Northern windowpane and Southern windowpane for FY 2024-2026. They will reconsider SSC recommendations for white hake OFL and ABC for FY 2024-2025 based on corrected catch data and PDT analyses. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council 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. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: October 6, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-22659 Filed 10-12-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD403]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey of Puerto Rico in the Northwest Atlantic Ocean

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 Lamont-Doherty Earth Observatory (L-DEO) to incidentally harass marine mammals during a marine geophysical survey near Puerto Rico in the northwest Atlantic Ocean.

DATES: This authorization is effective from October 6, 2023 through October 5, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, 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 April 27, 2023, NMFS received a request from L-DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Puerto Rico Trench and the southern slope of Puerto Rico in the northwest Atlantic Ocean. L-DEO submitted a revised application on July 27, 2023. The application was deemed adequate and complete on July 27, 2023. L-DEO's request is for take of 27 marine mammal species by Level B harassment, and for a subset of 5 of these species, by Level A harassment. Neither L-DEO 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 IHA to the final IHA.

Description of Activity

Overview

Researchers from the Woods Hole Oceanographic Institution (WHOI), University of Texas Institute of Geophysics (UTIG), and University of Puerto Rico Mayaguez (UPRM), with funding from the U.S. National Science Foundation (NSF) and in collaboration with the United States Geological Survey (USGS) and researchers from the GEOMAR Helmholtz Centre for Ocean Research (GEOMAR), plan to conduct research, including seismic surveys using airguns as the acoustic source, from the research vessel R/V *Marcus G. Langseth* (Langseth). The surveys, including high and low energy surveys, would occur in the Puerto Rico Trench and the southern slope of Puerto Rico in the northwestern Atlantic Ocean during fall 2023. The survey would occur within the U.S. Exclusive Economic Zone (EEZ) around Puerto Rico and the U.S. Virgin Islands and within the

coastal zone of Puerto Rico, and within the EEZs of the Dominican Republic and the British Virgin Islands. The survey would occur in water depths ranging from approximately 1,000 to 8,400 meters (m) for the high energy survey portion and approximately 100 to 3,000 m for the low energy survey portion.

To complete this survey, the R/V Langseth would tow two different airgun configurations: (a) 36-airgun towed array with a total discharge volume of ~6600 cubic inches (in³) at a depth of 12 m for the high-energy surveys, and (b) two 45/105-in³ generator-injector (GI) airguns with a total discharge volume of 90 in³ off southern Puerto Rico at a depth of 3 m for the low-energy surveys. The airgun array receiving systems for the different survey segments would consist of a 15 kilometer (km) long solid-state hydrophone streamer, approximately 31 short-period Ocean Bottom Seismometers (OBS), and 10 ultra-deep-water broadband OBS for the high-energy portion, and 150 m solid-state hydrophone streamer for the low-energy portion. For the high-energy survey, the airguns would fire at a shot interval of 50 m (~24 seconds (s)) during multi-channel seismic (MCS) reflection surveys with the hydrophone streamer and at a 400-m (~155 s) interval during OBS seismic refraction surveys. For the low energy survey, the airgun would fire at a shot interval of 6.25 m (2.7 s).

Approximately 4,630 km of total survey trackline are planned.

The purpose of the high-energy survey is to investigate the Puerto Rico Trench, its outer rise, and across the island of Puerto Rico, and provide data necessary to illuminate the depth, geometry, and physical properties of the seismogenic fault interface between the subducting Atlantic plate and the overlying accretionary wedge/Puerto Rico arc/Caribbean plate, as well as seismogenic structures in the accretionary wedge and submarine slopes of the island of Puerto Rico. The low-energy seismic surveys would be located over a 2019–2020 area of seismic activity in the Caribbean Sea to define the geometry of the faults that ruptured and other potential seismogenic structures. Additional data would be collected using a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP), which would be operated from R/V Langseth continuously during the seismic surveys, including during transit. No take of marine mammals is expected to result from use of this equipment.

Dates and Duration

The high-energy survey is expected to last for approximately 42 days, with 21 days of seismic operations, 20 days for equipment deployment/recovery, and 2 days transit/contingency time. The low-

energy survey would consist of approximately 3 days of seismic operations. R/V Langseth would likely leave from and return to port in San Juan, Puerto Rico during fall 2023.

Specific Geographic Region

The survey would occur within approximately 17–21° N, 63.6–68.2° W, within the EEZs of Puerto Rico, U.S. Virgin Islands, British Virgin Islands, and the Dominican Republic, in water depths ranging from approximately 100–8400 m. The closest approach of the low-energy survey lines to land on the south side of Puerto Rico is ~2.5 km from Isla de Ratones (Isla Piñero), ~3.4 km from Cayo Maria Langa, and ~3 km from Cayo Aurora. The closest approach of the high-energy survey lines to the coast of Puerto Rico is ~22 km, 28 km to the British Virgin Islands, 42 km to Dominican Republic, and 77 km to the U.S. Virgin Islands. The region where the survey is planned to occur is depicted in Figure 1; the tracklines could occur anywhere within the polygon shown in Figure 1. Representative survey tracklines are shown, however, some deviation in actual tracklines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment.

BILLING CODE 3510-22-P

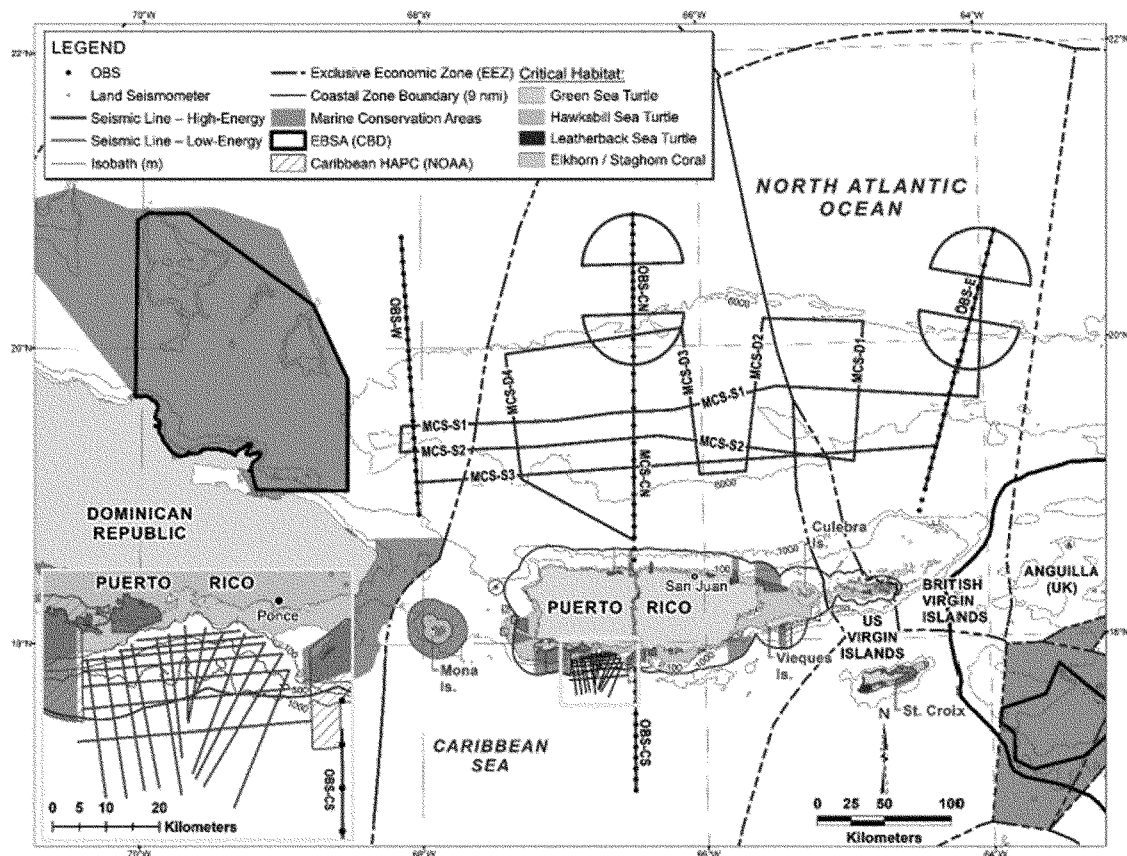


Figure 1 -- Location of the Puerto Rico Seismic Surveys in the Northwest Atlantic Ocean

Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. EBSA = Ecologically or Biologically Significant Marine Areas. CBD = Convention on Biological Diversity. N = North. HAPC = habitat of particular concern.

BILLING CODE 3510-22-C

A detailed description of the planned geophysical survey was provided in the **Federal Register** notice of the proposed IHA (88 FR 56964; August 21, 2023). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to L-DEO was published in the **Federal Register** on August 21, 2023 (88 FR 56964). That notice described, in detail, L-DEO's activities, the marine mammal species that may be affected by the activities, 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. The proposed notice was available for a 30-day public comment period. NMFS received no 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, 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>). NMFS refers the reader to the application and to the aforementioned sources for general information regarding the species listed in table 1.

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. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.

Aside from the few species with stocks assigned for Puerto Rico and the

U.S. Virgin Islands, individuals from the species affected would not be from the stocks described in the SARs. These stocks are not extensively studied but are provisionally being considered separate stocks for management purposes and further work to differentiate them from stocks in the Atlantic and Gulf of Mexico are being conducted. However, these stocks are likely trans-boundary within, at minimum, waters near adjacent Caribbean Islands and are not likely to occur exclusively within the bounds of the U.S. EEZ.

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	Modeled abundance ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family Balaenopteridae (rorquals):					
Humpback whale	<i>Megaptera novaeangliae</i>		-/-; N	1,396 (0; 1,380; 2016)	4,990
Fin whale	<i>Balaenoptera physalus</i>		E/D; Y	6,802 (0.24; 5,573; 2016)	11,672
Sei whale	<i>Balaenoptera borealis</i>		E/D; Y	6,292 (1.02; 3,098; 2016)	19,530
Minke whale	<i>Balaenoptera acutorostrata</i>		-/-; N	21,968 (0.31; 17,002; 2016)	13,784
Blue whale	<i>Balaenoptera musculus</i>		E/D; Y	unk (unk; 402; 1980–2008)	191
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Physeteridae:					
Sperm whale	<i>Physeter macrocephalus</i>	Puerto Rico and U.S. Virgin Islands.	E/D; Y	4,349 (0.28; 3,451; 2016) ⁴	64,015
Family Kogiidae:					
Pygmy sperm whale	<i>Kogia breviceps</i>		-/-; N	7,750 (0.38; 5,689; 2016)	26,043
Dwarf sperm whale	<i>Kogia sima</i>		-/-; N		
Family Ziphiidae (beaked whales):					
Cuvier's beaked Whale	<i>Ziphius cavirostris</i>	Puerto Rico and U.S. Virgin Islands.	-/-; Y	5,744 (0.36; 4,282; 2016) ⁴	65,069
Blainville's beaked Whale ...	<i>Mesoplodon densirostris</i>		-/-; N	10,107 (0.27; 8,085; 2016)	
True's beaked whale	<i>Mesoplodon mirus</i>		-/-; N		
Gervais' beaked whale	<i>Mesoplodon europaeus</i>		-/-; N		
Family Delphinidae:					
Short finned pilot whale	<i>Globicephala macrorhynchus</i> ...	Puerto Rico and U.S. Virgin Islands.	-/-; Y	28,924 (0.24; 23,637; 2016) ⁴ ...	264,907
Rough-toothed dolphin	<i>Steno bredanensis</i>		-/-; N	136 (1.0; 67; 2016)	32,848
Bottlenose dolphin	<i>Tursiops truncatus</i>	Puerto Rico and U.S. Virgin Islands.	-/-; Y	62,851 (0.23; 51,914; 2016) ⁴ ...	418,151
Pantropical spotted dolphin	<i>Stenella attenuata</i>		-/-; N	6,593 (0.52; 4,367; 2016)	321,740
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Puerto Rico and U.S. Virgin Islands.	-/-; Y	39,921 (0.27; 32,032; 2016) ⁴ ...	259,519
Spinner dolphin	<i>Stenella longirostris</i>	Puerto Rico and U.S. Virgin Islands.	-/-; Y	4,102 (0.99; 2,045; 2016) ⁴	152,511
Clymene dolphin	<i>Stenella clymene</i>		-/-; N	4,237 (1.03; 2,071; 2016)	181,209
Striped dolphin	<i>Stenella coeruleoalba</i>		-/-; N	67,036 (0.29; 52,939; 2016)	412,729
Fraser's dolphin	<i>Lagenodelphis hosei</i>		-/-; N	unk	19,585
Risso's dolphin	<i>Grampus griseus</i>		-/-; N	35,215 (0.19; 30,051; 2016)	78,205
Common dolphin	<i>Delphinus delphis</i>		-/-; N	172,947 (0.21; 145,216; 2016)	473,260
Melon-headed whale	<i>Peponocephala electra</i>		-/-; N	unk	64,114
Pygmy killer whale	<i>Feresa attenuate</i>		-/-; N	unk	9,001
False killer whale	<i>Pseudorca crassidens</i>		-/-; N	1,791 (0.56; 1,154; 2016)	12,682
Killer whale	<i>Orcinus orca</i>		-/-; N	unk	972

¹ 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.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance; unknown (unk).

³ Modeled abundance value from U.S. Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (AFTT) (Roberts *et al.*, 2023; Mannocci *et al.*, 2017).

⁴ Puerto Rico and U.S. Virgin Islands stocks have unknown abundance, therefore providing abundance information associated with the Atlantic stocks as point of reference.

As indicated above, all 27 species in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Species that could potentially occur in the research area but are not likely to be harassed due to the rarity of their occurrence (*i.e.* are considered extralimital or rare visitors to the waters of the northwest Atlantic Ocean), or because their known migration through the area does not align with the survey dates, were omitted.

A detailed description of the of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks 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 56964; August 21, 2023). Since that time, we are not aware of any

changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine

mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from L-DEO's survey activities have the potential to result in harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (88 FR 56964; August 21, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from L-DEO on marine mammals and their habitat. That

information and analysis is not repeated here; please refer to the notice of proposed IHA (88 FR 56964; August 21, 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 determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing,

nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be Level B harassment, as use of the airgun arrays have the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for species of certain hearing groups due to the size of the predicted auditory injury zones for those groups. Auditory injury is less likely to occur for mid-frequency species, due to their relative lack of sensitivity to the frequencies at which the primary energy of an airgun signal is found, as well as such species' general lower sensitivity to auditory injury as compared to high-frequency cetaceans. As discussed in further detail below, we do not expect auditory injury for mid-frequency cetaceans. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. No mortality is anticipated as a result of

these activities. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also

informed to varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by Temporary Threshold Shift (TTS) as, in most cases, the

likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

L-DEO's survey includes the use of impulsive seismic sources (i.e., airguns), and therefore the 160 dB re 1 μ Pa is applicable for analysis of Level B harassment.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L-DEO's survey includes the use of impulsive seismic sources (e.g., airguns).

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic

thresholds, including source levels and transmission loss coefficient.

When the Technical Guidance was published (NMFS, 2016), in recognition of the fact that ensonified area/volume could be more technically challenging

to predict because of the duration component in the new thresholds, we developed a user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or

occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate.

The survey would entail the use of a 36-airgun array with a total discharge volume of 6,600 in³ at a tow depth of 12 m and two 45/105 in³ GI airguns at a tow depth of 3 m. L-DEO's model results are used to determine the 160 dB_{rms} radius for both the airgun sources down to a maximum depth of 2,000 m. Received sound levels have been predicted by L-DEO's model (Diebold *et al.* 2010) as a function of distance from the 36-airgun array. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m),

intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the assumed maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L-DEO model results for the same array tow depth are in good alignment (see Figures 12 and 14 in Diebold *et al.* 2010). Consequently, isopleths falling within this domain can be predicted reliably by the L-DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that

seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see Figures 11, 12, and 16 in Diebold *et al.* 2010). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L-DEO model is a robust tool for conservatively estimating isopleths.

The high-energy survey would acquire data with the 36-airgun array at a tow depth of 12 m and the low-energy surveys would use two GI airguns at a 3m tow depth. For deep water (>1,000 m), we use the deep-water radii obtained from L-DEO model results down to a maximum water depth of 2,000 m for the 36-airgun array and the two GI airguns. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Diebold *et al.* 2010).

L-DEO's modeling methodology is described in greater detail in L-DEO's application. The estimated distances to the Level B harassment isopleth for the airgun configuration are shown in table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V LANGSETH SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the Level B harassment threshold
4 strings, 36 airguns, 6,600 in ³	12	>1,000	¹ 6,733
Two 45/105 in GI airguns	3	>1,000	¹ 438
		100–1,000	² 657

¹ Distance is based on L-DEO model results.
² Distance is based on L-DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	Low frequency	Mid frequency	High frequency
MCS Surveys			
PTS SEL _{cum}	320.2	0	1
PTS Peak	38.9	13.6	268.3

The largest distance (in bold) of the dual criteria (SEL_{cum} or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Table 5 presents the modeled PTS isopleths for each cetacean hearing group based on L-DEO modeling incorporated in the companion user spreadsheet, for the high-energy surveys with the shortest shot interval (*i.e.*,

greatest potential to cause PTS based on accumulated sound energy) (NMFS 2018).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L-DEO using the Nucleus software program and the NMFS user spreadsheet, described below. The acoustic thresholds for impulsive sounds (*e.g.*, airguns) contained in the NMFS Technical Guidance were presented as dual metric acoustic thresholds using both cumulative Sound Exposure Level (SEL_{cum}) and peak sound pressure metrics (NMFS 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

The SEL_{cum} for the 36-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.*, 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.*, 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.*, 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the far-field signature. Because the far-field signature does not take into account the large array effect near the source and is calculated as a point source, the far-field signature is not an appropriate measure of the sound source level for large arrays. See L-DEO's application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for mid-frequency cetaceans, given very small modeled zones of injury for those species (all estimated zones less than 15 m for mid-frequency cetaceans), in context of distributed source dynamics.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.*, Nachtigall *et al.*, 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean and do not propose to authorize any take by Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥ 160 dB re 1 μ Pa rms are predicted to occur (see table 1). The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Habitat-based stratified marine mammal densities for the North Atlantic and Puerto Rico are taken from the US Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (Roberts *et al.*, 2023; Mannocci *et al.*, 2017), which represent the best available information regarding marine mammal densities in the survey area. This density information incorporates visual line-transect surveys of marine mammals for over 35 years, resulting in various studies that estimated the abundance, density, and distributions of marine mammal populations. The habitat-based density models consisted of 10 km x 10 km grid cells. Densities in the grid cells for the AFTT Area south of 21° N were averaged per month for each of two water depth categories (intermediate and deep); for most months, the densities for each species were the same. More information is available online at [https://](https://seamap.env.duke.edu/models/Duke/AFTT/)

seamap.env.duke.edu/models/Duke/AFTT/.

For most species, the average monthly densities were the same throughout the year; densities for fin whale, sei whale, humpback whale, and Atlantic white-sided dolphin varied by month, so the highest monthly densities were used.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160-dB Level B harassment threshold and PTS (Level A harassment) thresholds (based on L-DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.*, the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is the equivalent to adding 25 percent to the line km to be surveyed. The density for each species was then multiplied by the daily ensonified areas (increased as described above), and then multiplied by the number of survey days (24) to estimate potential takes (see Appendix B of L-DEO's application for more information).

L-DEO generally assumed that their estimates of marine mammal exposures above harassment thresholds equate to take and requested authorization of those takes. Those estimates in turn form the basis for our take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.*, mid-frequency cetaceans, we have added L-DEO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is authorized. Estimated exposures and take numbers for authorization are shown in table 6. As requested by L-DEO with NMFS concurrence, when zero take was calculated we have authorized one group size of take as a

precaution for species that could potentially occur in the survey area.

TABLE 6—TAKE NUMBERS

Species	Stock	Estimated take		Authorized take		Modeled abundance ²	Percent of stock
		Level B	Level A	Level B	Level A		
Humpback whale	Gulf of Maine	262	12	262	12	4,990	5.5
Fin whale	Western North Atlantic	0.4	0	12	0	11,672	0.2
Sei whale	Nova Scotia	22	1	22	1	19,530	0.1
Minke whale	Canadian East Coast	58	3	58	3	13,784	0.4
Blue whale	Western North Atlantic	1	0	1	0	191	0.5
Sperm whale	North Atlantic	481	1	482	0	64,105	0.8
Kogia spp .....	.....	354	14	354	14	26,043	1.4
Beaked whale .....	.....	539	1	540	0	65,069	0.8
Pilot whales .....	.....	1,830	3	1,833	0	264,907	0.7
Rough-toothed dolphin	Western North Atlantic	476	1	477	0	32,848	1.5
Bottlenose dolphin	Western North Atlantic Offshore	2,128	4	2,132	0	418,151	0.5
Pantropical spotted dolphin	Western North Atlantic	778	1	779	0	321,740	0.2
Atlantic spotted dolphin	Western North Atlantic	1,537	3	1,540	0	259,519	0.6
Spinner dolphin	Western North Atlantic	1,928	4	1,932	0	152,511	1.3
Clymene dolphin	Western North Atlantic	1,586	3	1,589	0	181,209	0.9
Striped dolphin	Western North Atlantic	317	1	318	0	412,729	0.1
Fraser's dolphin	Western North Atlantic	213	0	213	0	19,585	1.1
Risso's dolphin	Western North Atlantic	164	0	164	0	78,205	0.2
Common dolphin	Western North Atlantic	88	0	88	0	473,260	<0.1
Melon-headed whale	Western North Atlantic	985	2	987	0	64,114	1.5
Pygmy killer whale	Western North Atlantic	130	0	130	0	9,001	1.4
False killer whale	Western North Atlantic	218	0	218	0	12,682	1.7
Killer whale	Western North Atlantic	2	0	2	0	972	0.2

¹ Group size from Jefferson *et al.*, 2015.

² Modeled abundance (Roberts *et al.*, 2023).

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.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone and, to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.*, before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.*, ramp-up). The buffer zone encompasses the area at and below

the sea surface from the edge of the 0–500 m SZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000-m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

L-DEO must use dedicated, trained, and NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more

than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.*, any day on which use of the airgun array is planned to occur, and whenever the airgun array is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up, and monitoring must continue until 1 hour after use of the airgun array ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the shutdown and buffer zones. These zones shall be based upon the radial distance from the edges of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the airgun array (*i.e.*, anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the airgun array. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the airgun array is not operating for comparison of sighting rates and behavior with and without use of the airgun array and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

L-DEO must notify the NMFS Southeast Regional Office (SERO), Nicole Angeli (DPNR Virgin Islands), and Grisel Rodriguez Ferrer (DNR Puerto Rico) of the start and end date of airgun operations in the survey area via email (nmfs.ser.research.notification@noaa.gov; nicole.angeli@dpnr.vi.gov; grodriguez@drna.pr.gov).

Passive Acoustic Monitoring

Passive acoustic monitoring (PAM) means the use of trained personnel (sometimes referred to as PAM operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an SZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.*, due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V Langseth will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the airgun array. Acoustic PSOs may be on watch for a maximum of 4

consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 10 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable SZ in the previous 2 hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active airgun array, but without an operating PAM system, do not exceed a cumulative total of 10 hours in any 24-hour period.

Establishment of Shutdown and Pre-Start Clearance Zones

A SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.*, auditory injury, disruption of critical behaviors. The PSOs must establish and monitor shutdown zones and additional buffer zones. During high energy survey effort,¹ the shutdown zone shall be 500 m with an additional 500 m buffer zone (total 1,000 m). During low energy survey effort,² the shutdown zone shall be 100 m with an additional 100 m buffer zone (total 200 m).

The 500 m or 100 m SZ would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the airgun array would be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the airgun array, and includes the SZ plus the buffer zone.

¹ High-energy survey effort refers to use of the 36-airgun, 6,600 in³ array.

² Low-energy survey effort refers to use of the 2 45/105-in³ GI airguns, 90-in³ array.

Detections of marine mammals within the pre-start clearance zone would prevent airgun operations from beginning (*i.e.*, ramp-up).

The 500 m or 100 m SZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak Sound Pressure Level (SPL)), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort.

Additionally, a 500 m or 100 m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m or 100 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 1,500 m or 500 m must be enforced for all beaked whales and *Kogia* species. No buffer of this extended SZ is required, as NMFS concludes that this extended SZ is sufficiently protective to mitigate harassment to beaked whales and *Kogia* species.

Pre-Start Clearance and Ramp-Up

Ramp-up (sometimes referred to as “soft start”) means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array’s airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* spp.) prior to the beginning of ramp-up. During the pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a step-wise

increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the airgun array. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);

- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;

- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales and *Kogia* species) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);

- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;

- PSOs must monitor the pre-start clearance zone (and extended SZ) during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;

- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has

occurred with no detections in the 30 minutes prior to beginning ramp-up. Airgun array activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;

- If the airgun array is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the pre-start clearance zone (or extended SZ, where applicable). For any longer shutdown, pre-start clearance observation and ramp-up are required; and

- Testing of the airgun array involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 minutes.

Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the airgun array if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the airgun array to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable SZ, the airgun array will be shut down. When shutdown is called for by a PSO, the airgun array will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the SZ. If the acoustic PSO cannot confirm presence within the SZ, visual PSOs

will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the SZ. The animal would be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.*, animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes, or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, *Kogia* species, and large delphinids, such as pilot whales.

The shutdown requirement is waived for small dolphins if an individual is detected within the SZ. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.*, bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Delphinus*, *Lagenodelphis*, *Stenella*, *Steno*, and *Tursiops*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.*, delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.*, permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed (*e.g.*, Barkaszi *et al.*, 2012, Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.*, large delphinids) are no more likely to incur auditory injury than are small dolphins,

they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the Langseth.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

L-DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized takes have been met, approaches the Level A or Level B harassment zones. L-DEO must also implement an extended shutdown (1,500 m for the high energy or 500 m for the low energy) if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed at any distance.

Vessel Strike Avoidance

Vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel;

therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

Vessel speeds must be reduced to 10 kn (18.5 kph) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel. All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.*, for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, 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.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs would be based aboard the Langseth. Two visual PSOs would be on duty at all times during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.*, 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that

provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and

- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.*, experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics;
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests

shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information.

Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties;

- For data collection purposes, PSOs shall use standardized electronic data collection forms. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the airgun array and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the airgun array. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:
 - Vessel name, vessel size and type, maximum speed capability of vessel;
 - Dates (MM/DD/YYYY) of departures and returns to port with port name;
 - PSO names and affiliations, PSO ID (initials or other identifier);
 - Date (MM/DD/YYYY) and participants of PSO briefings (as discussed in 3(d));
 - Visual monitoring equipment used (description);
 - PSO location on vessel and height (meters) of observation location above water surface;
 - Watch status (description);
 - Dates (MM/DD/YYYY) and times (Greenwich Mean Time/UTC) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
 - Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
 - Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
 - Vessel heading (compass heading) and speed (knots) at beginning and end of visual PSO duty shifts and upon any change;
 - Water depth (meters) (if obtainable from data collection software);
 - Environmental conditions while on visual survey (at beginning and end of

PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (e.g., vessel traffic, equipment malfunctions); and
- Vessel/Survey activity information (and changes thereof) (description), such as airgun power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (i.e., pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.); and
- Upon visual observation of any marine mammals, the following information must be recorded:
 - Sighting ID (numeric);
 - Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
 - Location of PSO/observer (description);
 - Vessel activity at the time of the sighting (e.g., deploying, recovering, testing, shooting, data acquisition, other);
 - PSO who sighted the animal/ID;
 - Time/date of sighting (GMT/UTC, MM/DD/YYYY);
 - Initial detection method (description);
 - Sighting cue (description);
 - Vessel location at time of sighting (decimal degrees);
 - Water depth (meters);
 - Direction of vessel's travel (compass direction);
 - Speed (knots) of the vessel from which the observation was made;
 - Direction of animal's travel relative to the vessel (description, compass heading);
 - Bearing to sighting (degrees);
 - Identification of the animal (e.g., genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
 - Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
 - Estimated distance to the animal (meters) and method of estimating distance;
 - Estimated number of animals (high/low/best) (numeric);
 - Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
 - Detailed behavior observations (e.g., number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
 - Animal's closest point of approach (meters) and/or closest distance from any element of the airgun array; and
 - Description of any actions implemented in response to the sighting (e.g., delays, shutdown, ramp-up) and time and location of the action.
 - Photos (Yes/No);
 - Photo Frame Numbers (List of numbers);
 - Conditions at time of sighting (Visibility; Beaufort Sea State).
- If a marine mammal is detected while using the PAM system, the following information should be recorded:
- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
 - Date and time when first and last heard;
 - Types and nature of sounds heard (e.g., clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
 - Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

The Holder shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airgun arrays were operating. Tracklines should include points recording any change in airgun array status (e.g., when the sources began operating, when they were turned off, or when they changed

operational status such as from full array to single gun or vice versa). Geographic Information System files shall be provided in Environmental Systems Research Institute shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize data collected as described above in *Data Collection*. A final report must be submitted within 30 days following resolution of any comments on the draft report.

The report must include a validation document concerning the use of PAM, which should include necessary noise validation diagrams and demonstrate whether background noise levels on the PAM deployment limited achievement of the planned detection goals. Copies of any vessel self-noise assessment reports must be included with the report.

Reporting Injured or Dead Marine Mammals

Discovery of injured or dead marine mammals—In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the L-DEO shall report the incident to the Office of Protected Resources (OPR), NMFS, and to the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
 - If available, photographs or video footage of the animal(s); and
 - General circumstances under which the animal was discovered.

Vessel strike—In the event of a strike of a marine mammal by any vessel involved in the activities covered by the authorization, L-DEO shall report the incident to OPR, NMFS, and to the NMFS Southeast Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;

- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.*, wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event in the U.S. Caribbean territories and/or within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee), will advise L-DEO of the need to implement shutdown procedures for all active airgun arrays operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: if at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee), will advise the IHA-holder that the shutdown around the animals' location is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee), determines and advises L-DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.*,

extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Additional Information Requests—if NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L-DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.*, within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

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).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result of L-DEO's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that the majority of potential takes would be in the form of short-term Level B behavioral harassment, resulting from temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.*, Southall *et al.*, 2007).

We authorize a limited number of Level A harassment events of five species in the form of PTS (humpback whale, minke whale, sei whale, and *Kogia* spp), and Level B harassment only of the remaining marine mammal species. If any PTS is incurred in marine mammals as a result of the planned activity, we expect only a small degree of PTS that would not result in severe hearing impairment because of the constant movement of both the Langseth and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Additionally, L-DEO would shut down the airgun array if marine mammals approach within 500 m (with the exception of specific genera of dolphins, see Mitigation), further reducing the expected duration and intensity of sound, and therefore the likelihood of marine mammals incurring PTS. Since the duration of exposure to loud sounds will be relatively short it

would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the Langseth's approach due to the vessel's relatively low speed when conducting seismic surveys.

In addition, the maximum expected Level B harassment zone around the survey vessel is 6,733 m for water depths greater than 1,000 m (and up to 10,100 m in water depths of 100 to 1,000 m). Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (24 days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

Marine Mammal Species With Active Unusual Mortality Events (UMEs)

As discussed above, there are several active UMEs occurring in the vicinity of L-DEO's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales, and the UME is pending closure. Although, the populations experiencing the UME's may not be the same as the populations impacted by the survey.

Additionally, the mitigation measures are expected to reduce the number and/or severity of takes for all species listed in table 1, including those with active UMEs, to the level of least practicable adverse impact. In particular they would provide animals the opportunity to move away from the sound source throughout the survey area before seismic survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment.

In summary and as described above, the following factors primarily 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;
- The activity is temporary and of relatively short duration (40 days);
- The vast majority of anticipated impacts of the activity on marine mammals would be temporary behavioral changes due to avoidance of the area around the vessel;
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey would be temporary and spatially limited, and impacts to marine mammal foraging would be minimal;
- The mitigation measures are expected to reduce the number of takes by Level A harassment (in the form of PTS) by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers; and
- The mitigation measures, including visual and acoustic shutdowns are expected to minimize potential impacts to marine mammals (both amount and severity).

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 all affected marine mammal species or stocks.

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 is below one-third of the estimated modeled abundance for all species (in fact, take of individuals is less than six percent of the abundance of the affected stocks, see table 6). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs would count them as separate individuals if they cannot be identified.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would 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 would 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, in this case with the ESA Interagency Cooperation Division within NMFS' OPR.

The NMFS OPR ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L-DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed blue whales, fin whales, sei whales, and sperm whales.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the NSF prepared an Environmental Analysis (EA) to consider the direct, indirect, and cumulative effects to the human environment from the planned marine geophysical survey off of Puerto Rico. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to L-DEO. In compliance with NEPA and the Council on Environmental Quality regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) available on our website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatorys-marine-geophysical-surveys>. NSF's EA is available at <https://www.nsf.gov/geo/oce/envcomp/>.

Authorization

NMFS has issued an IHA to L-DEO for the incidental harassment of small numbers of 27 marine mammal species

incidental to a marine geophysical survey of Puerto Rico in the Northwest Atlantic Ocean that includes previously explained mitigation, monitoring and reporting requirements.

Dated: October 10, 2023.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2023–22632 Filed 10–12–23; 8:45 am]

BILLING CODE 3510–22–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 delete service(s) that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 12, 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: For further information or to submit comments 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 service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Grounds Maintenance

Mandatory for: NOAA, National Weather Service Forecast Office, Charleston, WV; 400 Parkway Road: Charleston, WV

Mandatory Source of Supply: Goodwill Industries of Kanawha Valley, Charleston, WV

Contracting Activity: NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPT OF COMMERCE NOAA

Service Type: Laundry Service

Mandatory for: US Air Force, Youngstown Municipal Airport, 910th Airlift Wing, Youngstown Air Reserve Station, Vienna, OH, 3976 King Graves Road, Vienna, OH

Mandatory Source of Supply: Hancock County Sheltered Workshop, Inc., Weirton, WV

Contracting Activity: DEPT OF THE AIR FORCE, FA6656 910 AW LGC YNGSTN WRN ARPT

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–22620 Filed 10–12–23; 8:45 am]

BILLING CODE 6353–01–P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Notice.

DATES: Applicable October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspectors General at the telephone numbers listed below.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008 established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. CIGIE is an interagency council whose executive chair is the Deputy Director for Management, Office of Management and Budget, and is comprised principally of the 75 Inspectors General (IGs).

II. CIGIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current

members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2023, are as follows:

Agency for International Development

Phone Number: (202) 712-1150

CIGIE Liaison—Nicole Angarella and Ashley Obando (202) 712-4630

- Nicole Angarella—Acting Deputy Inspector General, Performing the Duties of the Inspector General.
- Marc Meyer—Assistant Inspector General for Investigations.
- Alvin A. Brown—Deputy Assistant Inspector General for Audit.
- Toayoa Aldridge—Deputy Assistant Inspector General for Audit.
- Van Nguyen—Assistant Inspector General for Audit, Inspections and Evaluations.
- Ashley Obando—Acting Chief of Staff.
- Adam Kaplan—Acting General Counsel.

Department of Agriculture

Phone Number: (202) 720-8001

CIGIE Liaison—Angel N. Bethea (202) 720-8001

- Ann M. Coffey—Deputy Inspector General.
- Christy A. Slamowitz—Counsel to the Inspector General.
- Janet Sorensen—Assistant Inspector General for Audit.
- Steven H. Rickrode, Jr.—Deputy Assistant Inspector General for Audit.
- Yaris Rivera Rojas—Deputy Assistant Inspector General for Audit.
- Nicole Gardner—Deputy Assistant Inspector General for Investigations.
- Mily Le—Assistant Inspector General for Management.

Department of Commerce

Phone Number: (202) 578-3324

CIGIE Liaison—Melina Avakian (202) 578-3324

- Roderick M. Anderson—Deputy Inspector General.
- Richard L. Bachman—Assistant Inspector General for Audit and Evaluation.
- E. Wade Green—Counsel to the Inspector General.
- Robert O. Johnston, Jr.—Chief of Staff.
- Scott M. Kieffer—Assistant Inspector General for Investigations.
- Frederick J. Meny—Assistant Inspector General for Audit & Evaluation.
- Arthur L. Scott, Jr.—Assistant Inspector General for Audit and Evaluation.

- Mark H. Zabarsky—Principle Assistant Inspector General for Audit and Evaluation.

Council of the Inspectors General on Integrity and Efficiency

Phone Number: (202) 292-2600

CIGIE Liaison—Denise Mangra (202) 292-2604

- Andrew Cannarsa—Executive Director.
- Douglas Holt—Executive Director CIGIE Training Institute.

Department of Defense

Phone Number: (703) 604-8324

CIGIE Liaison—Steven Driscoll (202) 860-4777

- Juliet Hodgkins—Principal Deputy Inspector General.
- Megan Tinker—Chief of Staff.
- Robert Owens, Jr.—Deputy Inspector for Management and Policy.
- Christian Schrank—Deputy Inspector for Investigations.
- Adam Globerman—Assistant Inspector General for Investigations.
- Ann Maxwell—Deputy Inspector General for Evaluation and Inspections.
- Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
- Robert DeConti—Chief Counsel to the Inspector General.
- Lisa Re—Assistant Inspector General for Legal Affairs.
- Amy Frontz—Deputy Inspector General for Audit Services.
- Tamara Lilly—Assistant Inspector General for Audit Services.
- Carla Lewis—Assistant Inspector General for Audit Services.
- John Hagg—Assistant Inspector General for Audit Services.

Department of Education

Phone Number: (202) 245-6900

CIGIE Liaison—Joy Stith (202) 245-6435

- Vacant—Deputy Inspector General.
- Bryon Gordon—Assistant Inspector General for Audit.
- Sean Dawson—Deputy Assistant Inspector General for Audit.
- Theresa Perolini—Deputy Assistant Inspector General for Audit Services.
- Robert Mancuso—Assistant Inspector General for Investigations.
- Jason Williams—Deputy Assistant Inspector General for Investigations.
- Kevin Young—Assistant Inspector General for Technology Services.
- Antonio Murray—Deputy Assistant Inspector General for Technology Services.
- Antigone Potamianos—Counsel to the Inspector General.

Department of Energy

Phone Number: (202) 586-4393

CIGIE Liaison—Ryan Cocolin (202) 586-8672

- Jennifer Quinones—Deputy Inspector General.
- Travis Farris—Chief Counsel to the Inspector General.
- Charles Sabatos—Assistant Inspector General for Management and Administration.
- Lew Sessions—Assistant Inspector General for Investigations.
- Kenneth Dieffenbach—Deputy Inspector General for Investigations.
- Kshemendra Paul—Assistant Inspector General for Cyber Assessments and Data Analytics.
- Todd Wisniewski—Deputy Assistant Inspector General for Cyber Assessments and Data Analytics.
- Earl Omer—Assistant Inspector General for Audits.
- John McCoy II—Deputy Assistant Inspector General for Audits.
- Anthony Cruz—Assistant Inspector General for Inspections, Intelligence Oversight, and Special Projects.
- Debbie Thomas—Deputy Assistant Inspector General for Inspections, Intelligence Oversight, and Special Projects.
- Jonathan Black—Chief Advisor for Strategic Planning and Program Oversight.

Environmental Protection Agency

CIGIE Liaison—Jee Kim (202) 566-1429

- Kellie J. Walker—Chief of Staff.
- M. Benjamin May—Counsel of the Inspector General.
- Mary Katherine Trimble—Assistant Inspector General for Audit.
- Paul Bergstrand—Assistant Inspector General for Special Review and Evaluation.
- Jason Abend—Assistant Inspector General for Investigations.
- Michael Zola—Assistant Inspector General for Congressional and Public Affairs.
- Stephanie Wright—Chief Technology Officer.

Equal Employment Opportunity Commission

Phone Number: 1-800-849-4230

CIGIE Liaison—Joyce T. Willoughby (202) 921-3138

- Milton A. Mayo, Jr.—Inspector General.

Federal Labor Relations Authority

Phone Number: (202) 218-7744

CIGIE Liaison—Dana Rooney (202) 218-7744

- Dana Rooney—Inspector General.

Federal Maritime Commission

Phone Number: (202) 523-5863

CIGIE Liaison—Jon Hatfield (202) 523-5863

- Jon Hatfield—Inspector General.

Federal Trade Commission

Phone Number: (202) 326-2355

CIGIE Liaison—Andrew Katsaros (202) 326-2355

- Andrew Katsaros—Inspector General.

General Services Administration

Phone Number: (202) 501-0450

CIGIE Liaison—Sarah Breen (202) 273-7284

- Robert C. Erickson—Deputy Inspector General.
- Edward Martin—Counsel to the Inspector General.
- R. Nicholas Goco—Assistant Inspector General for Audits.
- Barbara Bouldin—Deputy Assistant Inspector General for Acquisition Program Audits.
- Brian Gibson—Deputy Assistant Inspector General for Real Property Audits.
- James E. Adams—Assistant Inspector General for Investigations.
- Jason Suffredini—Deputy Assistant Inspector General for Inspections.
- Patricia D. Sheehan—Assistant Inspector General for Inspections.
- Kristine Preece—Assistant Inspector General for Administration.

Department of Health and Human Services

Phone Number: (202) 619-3148

CIGIE Liaison—Steven Driscoll (202) 860-4777

- Juliet Hodgkins—Principal Deputy Inspector General.
- Megan Tinker—Chief of Staff.
- Robert Owens, Jr.—Deputy Inspector General for Management and Policy.
- Christian Schrank—Assistant Inspector General for Investigations.
- Adam Globberman—Assistant Inspector General for Investigations.
- Ann Maxwell—Deputy Inspector General for Evaluation and Inspections.
- Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
- Robert DeConti—Chief Counsel to the Inspector General.

- Lisa Re—Assistant Inspector General for Legal Affairs.
- Amy Frontz—Deputy Inspector General for Audit Services.
- Tamara Lilly—Assistant Inspector General for Audit Services.
- Carla Lewis—Assistant Inspector General for Audit Services.
- John Hagg—Assistant Inspector General for Audit Services.

Department of Homeland Security

Phone Number: (202) 981-6000

CIGIE Liaison—Lyvette Wallace (202) 369-3675

- Maureen Duddy—Assistant Inspector General for Audits, Financial Acquisitions and Emerging Threats.
- Erika Lang—Assistant Inspector General for Inspections and Evaluations.

Department of Housing and Urban Development

Phone Number: (202) 708-0430

CIGIE Liaison—Fara Damelin (2020) 680-2088

- Charles Jones—Senior Advisor for External Affairs.
- Fara Damelin—Chief of Staff.
- Kilah White—Assistant Inspector General for Audit.
- Kimberly Randall—Deputy Assistant Inspector General for Audit.
- Ryan McGonagle—Deputy Assistant Inspector General for Audit.
- Sarah Sequeira—Deputy Assistant Inspector General for Audit.
- Kudawashe Ushe—Chief Information Officer.
- Maura Malone—Counsel to the Inspector General.
- Brian Pattison—Assistant Inspector General for Evaluation.
- Matthew Harris—Assistant Inspector General for Investigation.
- Audra Dortch—Deputy Assistant Inspector General for Investigation.
- Stephen Begg—Deputy Inspector General.

International Development Finance Corporation

Phone Number: (202) 361-8609

CIGIE Liaison—Gladis Griffith (202) 977-5893

- Anthony Zakel—Inspector General (SL).
- Gladis Griffith—Deputy Inspector General & General Counsel (SL).
- Darrell Benjamin—Assistant Inspector General of Audits (SL).
- John Warren—Assistant Inspector General of Investigations (SL).

Department of the Interior

Phone Number: (202) 208-5635

CIGIE Liaison—Karen Edwards (202) 208-5635

- Caryl Brzymialkiewicz—Deputy Inspector General.
- Jill Baisinger—Chief of Staff.
- Matthew Elliott—Assistant Inspector General for Investigations.
- Edward “Ted” Baugh—Deputy Assistant Inspector General for Investigations.
- Justin Martell—General Counsel.
- Kathleen Sedney—Assistant Inspector General for Audit.
- Nicole Miller—Deputy Inspector General for Audit.
- Jorge Christian—Assistant Inspector General for Management.
- Michael O’Rourke—Assistant Inspector General for Strategy, Data, and Innovation.

Department of Justice

Phone Number: (202) 514-3435

CIGIE Liaison—John Lavinsky (202) 514-3435

- William M. Blier—Deputy Inspector General.
- Jonathan M. Malis—General Counsel.
- Michael Sean O’Neill—Assistant Inspector General for Oversight and Review.
- Patricia A. Sumner—Deputy Assistant Inspector General for Oversight and Review.
- Jason R. Malmstrom—Assistant Inspector General for Audit.
- Carol S. Taraszka—Deputy Assistant Inspector General for Audit.
- Kevin M. Strung—Assistant Inspector General for Audit, Office of Data Analytics.
- Sarah E. Lake—Assistant Inspector General for Investigations.
- Sandra D. Barnes—Deputy Assistant Inspector General for Investigations.
- Sanjay Arnold—Assistant Inspector General for Information Technology Division.
- Rene L. Lee—Assistant Inspector General for Evaluation and Inspections.
- Allison E. Russo—Deputy Assistant Inspector General Evaluation and Inspections.
- Mark L. Hayes—Assistant Inspector General for Management and Planning.
- Nancy L. House—Deputy Assistant Inspector General for Management and Planning.

Department of Labor*Phone Number: (202) 693-5100*

CIGIE Liaison—Erin Zickafoose (202) 693-7062

- Luiz A. Santos—Deputy Inspector General.
- Delores “Dee” Thompson—Counsel to the Inspector General.
- Carolyn Ramona Hantz—Assistant Inspector General for Audit.
- Laura Nicolosi—Deputy Assistant Inspector General for Audit.
- Tawanda Holmes—Deputy Assistant Inspector General for Audit.
- Michael C. Mikulka—Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
- Suzann K. Gallagher—Deputy Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
- Christopher T. Cooper—Deputy Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
- Tara A. Porter—Assistant Inspector General for Management and Policy.
- Claudette L. Fogg-Castillo—Deputy Assistant Inspector General for Management and Policy.
- Jessica Southwell—Chief Performance and Risk Management Officer.

National Aeronautics and Space Administration*Phone Number: (202) 358-1220*

CIGIE Liaison—Renee Juhans (202) 358-1712

- George A. Scott—Deputy Inspector General
- Robert H. Steinau—Assistant Inspector General for Investigation.
- Frank LaRocca—Counsel to the Inspector General.
- Kimberly F. Benoit—Assistant Inspector General for Audits.
- Robert H. Steinau—(Acting) Assistant Inspector General for Management Planning.

National Archives and Records Administration*Phone Number: (301) 837-3000*

CIGIE Liaison—John Simms (301) 837-3000

- Brett Baker—Inspector General.

National Labor Relations Board*Phone Number: (202) 273-1960*

CIGIE Liaison—Robert Brennan (202) 273-1960

- David P. Berry—Inspector General.

National Science Foundation*Phone Number: (703) 292-7100*

CIGIE Liaison—Lisa Vonder Haar (703) 292-2989

- Megan Wallace—Assistant Inspector General for Investigations.
- Ken Chason—Counsel to the Inspector General.
- Javier E. Inclán—Assistant Inspector General for Management and CIO.

Nuclear Regulatory Commission*Phone Number: (301) 415-5930*

CIGIE Liaison—Christine Arroyo (301) 415-0526

- Ziad Buhaissi—Deputy Inspector General.
- Malion Bartley—Assistant Inspector General for Investigations.
- Hruta Virkar—Assistant Inspector General for Audits.

Office of Personnel Management*Phone Number: (202) 606-1200*

CIGIE Liaison—Faiza Mathon-Mathieu (202) 606-2236

- Krista A. Boyd—Inspector General.
- Norbert E. Vint—Deputy Inspector General.
- Michael R. Esser—Assistant Inspector General for Audits.
- Melissa D. Brown—Deputy Assistant Inspector General for Audits.
- Lewis F. Parker, Jr.—Deputy Assistant Inspector General for Audits.
- Drew M. Grimm—Assistant Inspector General for Investigations.
- Conrad Quarles—Deputy Assistant Inspector General for Investigations.
- Nicholas E. Hoyle—Assistant Inspector General for Management.
- Robin A. Thottungal—Deputy Assistant Inspector General for Management/Chief Information Technology Officer.
- Monyca W. Peyton—Deputy Assistant Inspector General for Management.
- Paul St. Hillaire—Assistant Inspector General for Legal and Legislative Affairs.
- Faiza Mathon-Mathieu—Deputy Assistant Inspector General for Legal and Legislative Affairs.

Special Inspector General for Pandemic Recovery*Phone Number: (202) 923-7782*

CIGIE Liaison—Geoffrey A. Cherrington (202) 713-8437

- Barbara Bruin—Deputy Special Inspector General.
- Theodore R. Stehney—Assistant Inspector General for Audits.

- Erica M. Kavanagh—Assistant Inspector General for Administration.
- Geoffrey A. Cherrington—Assistant Inspector General for External Affairs.
- Christopher Cherry—Deputy Assistant Inspector General for Investigations.
- Jean Saint Elin—Deputy Assistant Inspector General for Audits.
- James A. Nussbaumer—Deputy Assistant Inspector General for Administration.
- David C. Woll Jr.—Deputy General Counsel.
- Pamela Satterfield—Deputy General Counsel.

United States Postal Service*Phone Number: (703) 248-2100*

CIGIE Liaison—Agapi Doulaveris (703) 248-2286

- Elizabeth Martin—Deputy Inspector General/Chief Diversity Officer.
- Julius Rothstein—Deputy Inspector General/Attorney.
- Robert Kwalwasser—Assistant Inspector General for Investigations.

Railroad Retirement Board*Phone Number: (312) 751-4690*

CIGIE Liaison—Jill Roellig (312) 751-4993

- Patricia A. Marshall—Deputy Inspector General and Counsel to the Inspector General.

Small Business Administration*Phone Number: (202) 401-0753*

CIGIE Liaison—Mary Kazarian (202) 205-6586

- Sheldon Shoemaker—Deputy Inspector General.
- Shafee Carnegie—Assistant Inspector General for Investigations.
- Andrea Deadwyler—Assistant Inspector General for Audits.
- Francine Hines—Assistant Inspector General for Management and Operations.

Social Security Administration*Phone Number: (410) 966-8385*

CIGIE Liaison—Craig Meklir (443) 316-7922

- Michelle L.H. Anderson—Assistant Inspector General for Audit.
- Mike Arbuco—Chief Operating Officer.
- Jeffery Brown—Deputy Assistant Inspector General for Audit.
- B. Chad Bungard—Chief Strategy Officer.
- Mark Franco—Deputy Assistant Inspector General for Investigations.

- Joscelyn Funnié—Assistant Inspector General for Workforce Performance and Development.
- Kevin Huse—Deputy Assistant Inspector General for Investigations.
- Donald Jefferson—Assistant Inspector General for Investigations.
- Adriana Menchaca-Gendron—Assistant Inspector General for Resource Management.
- Michelle M. Murray—Chief Counsel to the Inspector General.
- Ted Planzos—Chief Investigative Counsel.
- Adam Schneider—Deputy Assistant Inspector General for Investigations.
- Mark Searight—Deputy Assistant Inspector General for Audit.

Special Inspector General for the Troubled Asset Relief Program

Phone Number: (202) 622-1419

CIGIE Liaison—Melissa Bruce (202) 617-4238

- Melissa Bruce—Principal Deputy Special Inspector General.
- Thomas Jankowski—Deputy Inspector General for Investigations.
- Sidney Rocke—General Counsel.

Department of State and the U.S. Agency for Global Media

Phone Number: (571) 348-3804

CIGIE Liaison—Mark Huffman (571) 348-4881

- Diana R. Shaw—Deputy Inspector General.
- Nicole Matthis—Acting Chief of Staff and Deputy Assistant Inspector General for Evaluations and Special Projects.
- Norman P. Brown—Assistant Inspector General for Audits.
- Sandra J. Lewis—Acting Deputy Inspector General for Internal Operations and Mission Support.
- Justin Brown (SL)—Senior Advisor to the Inspector General.
- Matthew Tuchow—General Counsel.
- Kevin S. Donohue—Deputy General Counsel.
- Gayle L. Voshell—Deputy Assistant Inspector General for Audits.
- Beverly J.C. O'Neill—Deputy Assistant Inspector General for Audits, Middle East Region Operations.
- Arne Baker—Acting Assistant Inspector General for Inspections.
- Lisa R. Rodely—Deputy Assistant Inspector General for Inspections.
- Robert J. Smolich—Assistant Inspector General for Investigations.
- Jason Loeffler—Deputy Assistant Inspector General for Investigations.
- Andrew Chiu—Assistant Inspector General for Administration/Director of the Office of the Executive Director.

- Jeffrey McDermott—Assistant Inspector General for Evaluations and Special Projects.

- Brian Sano (SL)—Director of Organizational Health.

Department of Transportation

Phone Number: (202) 366-1959

CIGIE Liaison—Nathan P. Richmond: (202) 493-0422

- Mitchell L. Behm—Deputy Inspector General.
- M. Elise Chawaga—Principal Assistant Inspector General for Investigations.
- Susan Ocampo—Deputy Assistant Inspector General for Investigations.
- Charles A. (Chuck) Ward—Principal Assistant Inspector General for Auditing and Evaluation.
- Tiffany Mostert—Assistant Inspector General for Audit Operations and Special Reviews.
- Nelda Z. Smith—Assistant Inspector General for Aviation Audits.
- Dory Dillard-Christian—Assistant Inspector General for Financial Audits.
- David Pouliott—Assistant Inspector General for Surface Transportation Audits.
- Carolyn Hicks—Assistant Inspector General for Acquisition and Procurement Audits.
- Kevin Dorsey—Assistant Inspector General for Information Technology Audits.
- Omer Poirier—Chief Counsel.
- Andrea Nossaman—Assistant Inspector General for Strategic Communications and Programs.

Department of the Treasury

Phone Number: (202) 622-1090

CIGIE Liaison—Rich Delmar (202) 927-3973

- Richard K. Delmar—Deputy Inspector General.
- Jeffrey Lawrence—Assistant Inspector General for Management.
- Sally Luttrell—Assistant Inspector General for Investigations.
- Deborah L. Harker—Assistant Inspector General for Audit.
- Pauletta Battle—Deputy Assistant Inspector General for Financial Management and Transparency Audits.
- Susan L. Barron—Deputy Assistant Inspector General for Financial Sector Audits.
- Donna F. Joseph—Deputy Assistant Inspector General for Cyber and Financial Assistance Audits.

Treasury Inspector General for Tax Administration/Department of the Treasury

Phone Number: (202) 622-6500

CIGIE Liaison—LaToya George (404) 831-8075

- Gladys Hernandez—Chief Counsel.
- Lori Creswell—Deputy Chief Counsel.
- Mervin Hyndman—Deputy Inspector General for Mission Support/Chief Financial Officer.
- Richard Varn II—Chief Information Officer.
- Trevor Nelson—Acting Deputy Inspector General for Investigations.
- Heather Hill—Deputy Inspector General for Inspections and Evaluations.
- Nancy LaManna—Assistant Inspector General for Audit, Management, Planning, and Workforce Development.
- Diana Tengesdal—Assistant Inspector General for Audit, Returns Processing and Account Services.
- Bryce Kisler—Assistant Inspector General for Audit, Management Services and Exempt Organizations.
- Russell Martin—Assistant Inspector General for Audit, Returns Processing, and Accounting Services.
- Danny Verneuille—Assistant Inspector General for Audit, Security, and Information Technology Services.
- Matthew Weir—Assistant Inspector General for Audit, Compliance, and Enforcement Operations.
- Edward Currie—Acting Assistant Inspector General for Investigations—Special Investigations and Support Directorate.
- Dale Forrester—Assistant Inspector General for Investigations—Strategic Enforcement Directorate.
- Derek Anderson—Deputy Assistant Inspector General for Investigations—Field Operations.
- John Kirk—Assistant Inspector General for Investigations—Wester Field Region.

Department of Veterans Affairs

Phone Number: (202) 461-4603

CIGIE Liaison—Brady Beckham (202) 264-9376

- David Case—Deputy Inspector General.
- John D. Daigh—Assistant Inspector General for Healthcare Inspections.
- Michael Goduti—Deputy Assistant Inspector General for Management and Administration.
- David Johnson—Assistant Inspector General for Investigations.
- Julie Kroviak—Principal Deputy Assistant Inspector General for Healthcare Inspections.

- Brent Penny—Assistant Inspector General for Management and Administration.
- Larry Reinkemeyer—Assistant Inspector General for Audits and Evaluations.
- Gopala Seelamneni—Deputy Assistant Inspector General for Management and Administration/Chief Technology.
- Chris Wilber—Counselor to the Inspector General.

Dated: October 1, 2023.

Douglas Holt,

Executive Director, Training Institute.

[FR Doc. 2023–22542 Filed 10–12–23; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting cancellation notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 the Department of Defense announces that the following Federal advisory committee meeting will not take place.

DATES: Monday, October 16, 2023. Time: 9–11:30 a.m.

ADDRESSES:

Location: Haig Room, Jefferson Hall, 758 Cullum Road, West Point, NY.

Reason for Cancellation: Due to the uncertainty of the schedule of the House of Representatives in Washington, DC, the USMA Board of Visitors meeting originally scheduled for Monday, October 16, 2023, is cancelled.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–6534, Deadra.Ghostlaw@westpoint.edu.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the United States Military Academy Board of Visitors is unable to provide public notification required by 41 CFR 102–3.150(a) concerning the cancellation of its October 16, 2023, meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–

3.150(b), waives the 15-calendar day notification requirement.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–22615 Filed 10–12–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Notice of TRICARE Plan Program Changes for Calendar Year (CY) 2024

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice; TRICARE plan program changes for CY 2024.

SUMMARY: This notice provides information regarding TRICARE Plan Program Changes for CY 2024.

DATES: TRICARE health plan information in this notice is valid for services during CY 2024 (January 1, 2024–December 31, 2024).

ADDRESSES: Defense Health Agency, TRICARE Health Plan Division, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Fisher, phone: (703) 275–6224.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** (FR) on February 15, 2019, (84 FR 4326–4333) that established the requirement for the Director, Defense Health Agency (DHA), to provide public notice to Military Health System (MHS) beneficiaries each calendar year in connection with the annual open season enrollment period with a summary of changes to the TRICARE program. The following changes or improvements to the TRICARE program benefits apply for CY 2024.

Announcement of Open Season

Open Season is an annual period when beneficiaries can enroll in or make changes to their healthcare, dental, and vision coverage for the next calendar year.

During the TRICARE Open Season that runs from November 13, 2023, through December 12, 2023, qualified MHS beneficiaries may enroll in or change their TRICARE Prime or TRICARE Select plan.

During the Federal Employee Dental and Vision Insurance Program (FEDVIP) Open Season that runs from November 13, 2023, through December 11, 2023, qualified MHS beneficiaries, including TRICARE for Life beneficiaries, may enroll in or make changes to their dental

and vision plans. FEDVIP is operated by the U.S. Office of Personnel Management.

Any changes MHS beneficiaries make during Open Season will take effect on January 1, 2024. If a beneficiary remains eligible and does not make any changes during Open Season, then their coverage will stay the same for 2024. TRICARE enrollees can ensure they receive important health plan information by promptly listing any change in address and other information in the Defense Enrollment Eligibility Reporting System (DEERS).

Annual Announcements

The following TRICARE program features are subject to a year-to-year determination and are announced each year prior to the annual TRICARE Open Season.

Urgent Care Visits: There continues to be no limit to the number of urgent care visits a covered beneficiary enrolled in TRICARE Prime may receive without a referral for Plan Year 2024. They may receive urgent care from any TRICARE-authorized urgent care center (UCC), either network or non-network, without a referral. They may also receive urgent care from any TRICARE network provider. If the TRICARE Prime enrollee seeks care from a non-network TRICARE authorized provider (outside of a TRICARE-authorized UCC), the usual TRICARE Prime Point of Service (POS) deductible and cost-shares shall apply. Private Sector care for Active Duty Service Members is subject to different rules. Covered beneficiaries who want assistance on decisions to seek urgent care in the United States (U.S.), except those enrolled in the Uniformed Services Family Health Plan (USFHP), may call the MHS Nurse Advice Line (NAL) for health care guidance from a specially trained registered nurse. The NAL is available 24/7 to all non-USFHP TRICARE beneficiaries. Beneficiaries who live overseas can call the NAL for health care advice when traveling in the U.S. but must coordinate care with their Overseas Regional Call Center. For additional information, call the servicing TRICARE contractor or visit <https://www.tricare.mil/ContactUs> and click on “MHS Nurse Advice Line.”

Prime Service Area Changes: Prime Service Areas (PSAs) are geographic areas around military medical treatment facilities and Base Realignment and Closure sites. PSAs support the medical readiness of active duty members of the Uniformed Services by adding to the capability and capacity of military hospitals and clinics. There are no changes to the existing PSAs for CY 2024.

What's New

The following changes or improvements to the TRICARE program benefits apply to CY 2024 (although some changes were implemented in 2023):

Elimination of Cost-Sharing for Female Tubal Sterilization as Preventive Care: Effective January 1, 2023, TRICARE eliminated cost-sharing for female tubal sterilization as a preventive service when it is performed by in-network TRICARE-authorized providers.

Preconception and Prenatal Carrier Screening: TRICARE covers preconception and prenatal carrier screening tests for cystic fibrosis, spinal muscular atrophy, fragile X syndrome, Tay-Sachs Disease, hemoglobinopathies, and conditions linked with Ashkenazi Jewish descent for beneficiaries with a limit of one test per condition per lifetime.

Breastfeeding Supplies: Effective January 25, 2023, in keeping with industry norms of shipping packages of 100 versus the earlier-covered 90 breast milk bags, TRICARE began cost-sharing for 100 breast milk bags every thirty days following the birth event for breastfeeding TRICARE Prime and TRICARE Select enrollees.

USFHP: USFHP is an additional TRICARE Prime option available through networks of community-based, not-for-profit health care systems (designated providers) in six geographic areas of the U.S. Beneficiaries are encouraged to review the information at <https://www.tricare.mil/Plans/Enroll/USFHP> and other available resources to determine whether they are in a USFHP eligible ZIP Code.

TRICARE Prime enrollees who reside in a ZIP Code where a USFHP service area and a PSA served by a TRICARE regional contractor overlap may change between the two at any time. This will be considered a Primary Care Manager (PCM) change and can be changed by phone, online, or by mail. Beneficiaries who are not enrolled in TRICARE Prime but wish to enroll in USFHP can contact the USFHP in their area to make enrollment changes during Open Season or as a result of a Qualifying Life Event (QLE). A QLE is a certain change in the beneficiary's life, such as marriage, birth of a child, or retirement from active duty, which may mean different TRICARE health plan options are available. A QLE opens a 90-day period for beneficiaries to make eligible enrollment changes.

TRICARE Managed Care Support Contracts for East and West Regions Change: A set of new TRICARE Managed Care Support contracts that

facilitate health care in the private sector will serve beneficiaries in the East and West regions. Under the new contracts, beneficiaries residing in Arkansas, Illinois, Louisiana, Oklahoma, Texas, and Wisconsin will shift from the East to the West region. Beneficiaries with questions about this transition can seek more information at <https://newsroom.tricare.mil/News/TRICARE-News/Article/3254092/changes-to-tricare-expected-in-2024>.

Reimbursement and Coverage of Services Provided by Freestanding End-Stage Renal Disease (ESRD) Facilities: Effective January 12, 2023, TRICARE now recognizes freestanding end-stage renal disease facilities as authorized institutional providers, with an accompanying reimbursement methodology.

Planned Changes

Low Back Pain Physical Therapy Demonstration Ends: This three-year demonstration operating in ten states ends on December 31, 2023. The demonstration addresses the ongoing issue of low back pain among TRICARE enrollees and was designed to test the impact of waiving cost-shares associated with the first three physical therapy visits for low back pain. Information can be found at <https://www.tricare.mil/Plans/SpecialPrograms/LowBackPain>.

Laboratory Developed Test Demonstration Extended: The Laboratory Developed Test (LDT) Demonstration to assess whether submitted LDTs without United States Food and Drug Administration approval or clearance otherwise meet TRICARE coverage criteria, *i.e.*, proven safety and effectiveness for its intended use, was slated to terminate on July 18, 2023. However, DHA has opted to extend the LDT Demonstration through July 18, 2028, to allow the Agency additional time to determine how to address LDT coverage long-term and allow continued coverage of these tests for TRICARE beneficiaries in the interim.

Coronavirus Disease (COVID-19) Response Changes: The U.S. National Emergency responding to the COVID-19 pandemic, originally declared in March 2020, ended on April 10, 2023. The Secretary of Health and Human Services (HHS) then ended the corresponding Public Health Emergency (PHE) on May 11, 2023. DoD had implemented certain flexibility for the MHS for the pendency of the National Emergency and HHS PHE that were to sunset with the termination of such emergency statuses.

On termination of the National Emergency, DoD resumed requiring a three-day acute care hospital stay prior to admission to a skilled nursing facility

and requiring TRICARE Prime enrollees seek referrals to acquire COVID-19 vaccines from non-network, authorized providers without incurring point-of-services charges; and discontinued coverage of National Institute of Allergy and Infectious Disease (NIAID)-sponsored clinical trials (note: eligible beneficiaries who enrolled in a covered trial on or before April 10, 2023 will continue to have their care covered through the end of the trial). DoD also discontinued coverage of the treatment use of investigational drugs under expanded access for all new episodes of treatment and eliminated the temporary waiver of certain interstate and international licensing requirements for providers practicing both in person and via telehealth.

On termination of the HHS PHE, DoD discontinued its temporary coverage of facilities registered with Medicare Hospitals Without Walls initiative. DoD also discontinued its waiver of cost-sharing for COVID-19 testing. Normal TRICARE copayments and cost-sharing apply to testing and related services after May 11, 2023.

Additionally, for DoD beneficiaries receiving telehealth from the Direct Care component via Facetime, Google Duo/Meet, Microsoft Skype or other similar platforms, their telehealth services have moved to an approved DHA Platform. For DoD beneficiaries receiving Private Sector telehealth, any platform used by their provider must be HIPAA-compliant.

Appendix A

Certain TRICARE enrollee out-of-pocket costs (enrollment fees, premiums, catastrophic caps, deductibles, and copayments) are adjusted annually by Federal law and regulations based on the annual Cost of Living Adjustment (COLA) applied to Uniformed Service member retired pay. A difference in copayments remains between those who joined a Uniformed Service before January 1, 2018, (Group A), and those who joined on or after that date (Group B).

The retiree COLA is typically announced after the Federal fiscal year begins in October. Beneficiary out-of-pocket expenses impacted by the 2024 COLA will be posted to the [tricare.mil/changes](https://www.tricare.mil/changes) web page before the start of TRICARE Open Season, November 13, 2023.

Pharmacy Out-of-Pocket Expenses for CY 2024

TRICARE Pharmacy copayments will increase on January 1, 2024:

PHARMACY COPAYMENTS FOR CALENDAR YEAR 2024 *

Year	Retail network generic formulary 30-day supply	Retail network brand-name formulary 30-day supply	Retail network non-formulary 30-day supply	Mail order generic formulary 90-day supply	Mail order brand-name formulary 90-day supply	Mail order non-formulary 90-day supply
2024	\$16	\$43	**\$76	\$13	\$38	\$76

* Active Duty Service Members enjoy a \$0 copay for covered drugs at any pharmacy.

** For all beneficiaries except Active Duty Service Members, select brand-name maintenance medications (taken for long-term conditions) may only be filled twice at retail and then must be filled through home delivery or military pharmacy.

Premium Based Plans

The CY 2024 monthly premiums for TRICARE Reserve Select, TRICARE Retired Reserve, and TRICARE Young Adult and the quarterly premiums for Continued Health Care Benefit Program will be posted to the tricare.mil/changes web page once announced.

Dated: October 11, 2023.

Natalie M. Ragland,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–22790 Filed 10–11–23; 4:15 pm]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Savannah River Site**

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, November 6, 2023; 1:00 p.m.–4:15 p.m. ET.

Tuesday, November 7, 2023; 9:00 a.m.–4:45 p.m. ET.

ADDRESSES: Sonesta Hilton Head, 130 Shipyard Drive, Hilton Head Island, SC 29928. The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: <https://cab.srs.gov/srs-cab.html>.

FOR FURTHER INFORMATION CONTACT:

Amy Boyette, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120; or Email: amy.boyette@srs.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

Monday, November 6, 2023:

Chair Update
Agency Updates
Subcommittee Updates
Program Presentations
Board Business
Public Comments
Tuesday, November 7, 2023:
Program Presentations
Public Comments
Board Business, Voting

Public Participation: The meeting is open to the public. To register for in-person attendance, please send an email to srscitizensadvisoryboard@srs.gov no later than 4:00 p.m. ET on Friday, November 3, 2023. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to srscitizensadvisoryboard@srs.gov. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4:00 p.m. ET on Tuesday, November 14, 2023. Please submit comments to srscitizensadvisoryboard@srs.gov. The Deputy Designated Federal Officer is empowered to conduct the

meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling Amy Boyette at the email address or telephone number listed above. Minutes will also be available at the following website: <https://cab.srs.gov/srs-cab.html>.

Signed in Washington, DC, on October 6, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–22550 Filed 10–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Portsmouth**

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 2, 2023; 6:00 p.m.–8:00 p.m. EDT.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, by Phone: (740) 897–3737 or Email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess

facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Review of Agenda
- Presentation
- Administrative Issues
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5:00 p.m. EDT on Friday, October 27, 2023, will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. EDT on Friday, November 9, 2023. Please submit comments to Greg Simonton at the aforementioned email address. Please put "Public Comment" in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Greg Simonton, Federal Coordinator, U.S. Department of Energy, Portsmouth/Paducah Project Office, P.O. Box 700, Piketon, OH 45661, Email: greg.simonton@pppo.gov or by Phone: (740) 897-3737, Minutes

will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signed in Washington, DC, on October 6, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-22549 Filed 10-12-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 16, 2023; 5:30 p.m.–7:00 p.m. CST.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, Room 215, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Robert "Buz" Smith, Federal Coordinator, by Phone: (270) 441-6821 or Email: Robert.Smith@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Review of Agenda
- Administrative Activities
- Public Comment Period

Public Participation: The meeting is open to the public. The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert "Buz" Smith as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be

filed with the Board either before or after the meeting. Comments received by no later than 5:00 p.m. CST on Monday, November 13, 2023 will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. CST on Friday, November 24, 2023. Please submit comments to Robert "Buz" Smith at the aforementioned email address. Please put "Public Comment" in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Robert "Buz" Smith at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554-3004. Minutes will also be available at the following website: <https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials>.

Signed in Washington, DC, on October 6, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-22548 Filed 10-12-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP23–549–000]

Carolina Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 28, 2023, Carolina Gas Transmission, LLC (Carolina Gas), 121 Moore Hopkins Lane, Columbia, SC 29210, filed in the above referenced docket, a prior notice requests pursuant to sections 157.205(b) and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and Carolina Gas' blanket certificate issued in Docket No. CP06–72–000, for authorization to construct and operate its Aiken Compressor Expansion Project (ACE Project) located in Aiken County, South Carolina. The proposed project will allow Carolina Gas to provide 73,000 dekatherms per day (Dth/d) of firm transportation service to three project customers. Specifically, the Project consists of a new compressor unit at the Southern Compressor Station of 6,248 nominal horsepower and ancillary equipment, and the replacement of approximately 0.33 miles of existing 16-inch-diameter natural gas pipeline. The estimated, cost for the project is \$35,254,000, all as more fully set forth in the request which is on file with the Commission and open to 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 concerning this request should be directed to James Scribner, Regulatory Analyst, BHE GT&S, LLC, 10700 Energy Way, Glen Allen, VA 23060, or by phone at (804) 397–5113 or via email at James.scribner@bhegts.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the

project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on December 5, 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.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is December 5, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person 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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is December 5, 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>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). 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. 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.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before December 5, 2023. *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.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–549–000 in your submission.

(1) You may file your protest, motion to intervene, and comments 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

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

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 “Protest”, “Intervention”, or “Comment on a Filing”; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–549–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (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 or email (with a link to the document) at: James Scribner, Regulatory Analyst, BHE GT&S, LLC, 10700 Energy Way, Glen Allen, VA 23060 or via email at James.scribner@bhegts.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.

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.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–22698 Filed 10–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI22–5–000]

Antelope Valley Water Storage LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Declaration of Intention.
- b. *Docket No:* DI22–5–000.
- c. *Date Filed:* February 16, 2022.
- d. *Applicant:* Antelope Valley Water Storage LLC.
- e. *Name of Project:* Antelope Valley Water Storage Aquifer Pumped Hydroelectric Project.
- f. *Location:* The proposed project would be located at the Antelope Valley Groundwater Basin in Rosamond, Kern County, California.
- g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
- h. *Applicant Contact:* Lon House; 10645 N Oracle, Ste. 121–216, Oro Valley, AZ 85704; telephone: (530) 409–9702; email: lonwhouse@gmail.com.
- i. *FERC Contact:* Ashish Desai, (202) 502–8370, or Ashish.Desai@ferc.gov.
- j. *Deadline for filing comments, protests, and motions to intervene is* November 6, 2023.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission’s eFiling 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 docket number DI22–5–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed Antelope Valley Water Storage Aquifer Pumped Hydroelectric Project would consist of: (1) a 600-foot-deep groundwater well; (2) a reversible pump/turbine rated at 150kW; (3) three flexible storage tanks connected by 12-inch pipe; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce.

l. *Locations of the Application:* This filing may be viewed on the Commission’s website at <http://www.ferc.gov/docs-filing/elibrary.asp>. 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.

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, and .214. 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:* All filings must bear in all capital letters the title “COMMENTS”, “PROTESTS”, and “MOTIONS TO

⁶ Additionally, 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.

INTERVENE”, as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Dated: October 5, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–22553 Filed 10–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–111; Project No. 82–000; Project No. 618–000]

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Alabama Power Company Coosa River Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission’s (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a single new license to continue to operate and maintain three separately licensed projects and has prepared a final supplemental environmental impact statement (SEIS).¹ The single new license would combine the Coosa Hydroelectric Project (FERC No. 2146), which consists of the Weiss, H. Neely Henry, Logan Martin, Lay, and Bouldin developments, the Mitchell Dam Hydroelectric Project (FERC No. 82), and the Jordan Dam Hydroelectric Project (FERC No. 618) into one 969.9-megawatt project, the Coosa River Hydroelectric Project (Coosa River Project) No. 2146. The

projects are located on the Coosa River, in the states of Alabama and Georgia, and occupy about 508.31 acres of federal land administered by the U.S. Bureau of Land Management and 5.75 acres of federal land administered by the U.S. Army Corps of Engineers. The U.S. Environmental Protection Agency participated as a cooperating agency to prepare the final SEIS.

The final SEIS has been prepared to address the July 6, 2018 opinion issued by the United States Court of Appeals for the District of Columbia (court) regarding the Commission’s environmental review of the Coosa River Hydroelectric Project and supplements the final environmental assessment (FEA), issued December 31, 2009, for the project. The final SEIS focuses on the following issues identified by the court as needing further analysis and expands upon the analysis contained within the FEA for these issues: (1) dissolved oxygen; (2) fish entrainment and turbine mortality; (3) federally listed threatened and endangered species; and (4) cumulative effects. The final SEIS describes staff’s analysis of the applicant’s proposal and the alternatives for relicensing the project. The final SEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

The Commission provides all interested persons an opportunity to view and/or print the final SEIS via the internet through the Commission’s Home Page (<http://www.ferc.gov/>), using the “eLibrary” link. Enter the docket number (P–2146), excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at <https://ferconline.ferc.gov/FERConline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

Any question regarding this notice may be directed to Aaron Liberty at (202) 502–6862 or at aaron.liberty@ferc.gov.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–22692 Filed 10–12–23; 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 Schedule for the Preparation of an Environmental Assessment for the Louisiana Connector Pipeline Amendment

On July 14, 2023, Port Arthur Pipeline, LLC (Port Arthur) filed an application in Docket No. CP23–513–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Louisiana Connector Pipeline Amendment (Amendment), and would involve 38 modifications to the pipeline alignment, construction footprint, and installation methods for the Louisiana Connector Project, which was approved by the Commission on April 18, 2019, in Docket No. CP18–7–000.

On July 28, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Amendment. 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 Amendment.

This notice identifies Commission staff’s intention to prepare an environmental assessment (EA) for the Amendment and the planned schedule for the completion of the environmental review.¹

Schedule for Environmental Review

Issuance of EA—February 2, 2024

¹ 40 CFR 1501.10 (2020).

¹ The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising its regulations for implementing NEPA (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23,453–70). The rule became effective on May 20, 2022. However, because the NEPA review of this project was in process at that time, the final SEIS was prepared pursuant to CEQ’s 1978 regulations.

90-day Federal Authorization Decision Deadline²—May 2, 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

The proposed amended facilities are specific to 38 locations in Jefferson County, Texas and Cameron, Calcasieu, Beauregard, and Allen Parishes, Louisiana (between milepost 0 in Jefferson County, Texas and milepost 82.5 south of Reeves in Allen Parish, Louisiana), as detailed below:

- Modifications to pipeline routes, construction methods, horizontal directional drill (HDD) entry points, and additional temporary workspaces to accommodate landowner requests, to reduce environmental impacts, to avoid newly identified non-Port Arthur pipelines, to avoid new structures, or to allow for safer construction access;
- Shifting of pipeline easements to allow the permanent easements to abut other existing permanent easements;
- Addition and modification of access roads for geotechnical boring access and/or to allow better and safer access to the HDD drill pad for construction and HDD inspection;
- Modification of equipment and material storage areas and staging areas to utilize areas that were recently and permanently impacted by other parties;
- Modification to water approaches to use existing boat ramp/dock improvements;
- Relocation of mainline valves to reduce the amount of permanent right-of-way needed, to facilitate operations and maintenance, to provide for safer access via road, and to allow access to power and communications to comply with new and anticipated U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration requirements;
- Modification of three waterbody crossings methodologies from open cut to an HDD as requested by the U.S. Army Corps of Engineers;
- Combine, in two locations, multiple HDDs into a single HDD which would result in avoiding an open-cut crossing and eliminating an HDD; and

- Modification of HDD alignments to avoid conflicts with potential future deeper canal depths.

Background

On August 9, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Louisiana Connector Pipeline Amendment* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the U.S. Environmental Protection Agency (EPA). The primary issues raised by the EPA are air quality, environmental justice, and National Pollutant Discharge Elimination System permits. All substantive comments will be addressed in the EA. The U.S. Army Corps of Engineers is a cooperating agency in the preparation of 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 Amendment 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" excluding the last three digits (i.e., CP23-513), 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 website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22693 Filed 10-12-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-1816-002.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: Tariff Amendment: New York State Electric & Gas Corporation submits tariff filing per 35.17(b): NYSEG Second Deficiency Response re: Rate Schedule 19 Formula Rate Filing to be effective 7/3/2023.

Filed Date: 10/5/23.

Accession Number: 20231005-5061.

Comment Date: 5 p.m. ET 10/26/23.

Docket Numbers: ER23-1817-002.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: Tariff Amendment: Rochester Gas and Electric Corporation submits tariff filing per 35.17(b): RG&E Second Deficiency Response re: Rate Schedule 19 Formula Rate Filing to be effective 7/3/2023.

Filed Date: 10/5/23.

Accession Number: 20231005-5094.

Comment Date: 5 p.m. ET 10/26/23.

Docket Numbers: ER23-2651-001.

Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023-10-05_SA 4154 UEC-MEC-AECI Substitute Original TIA to be effective 10/18/2023.

Filed Date: 10/5/23.

Accession Number: 20231005-5118.

Comment Date: 5 p.m. ET 10/26/23.

Docket Numbers: ER24-27-000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 318, Certificate of Concurrence to be effective 11/15/2023.

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.

Filed Date: 10/4/23.
Accession Number: 20231004–5135.
Comment Date: 5 p.m. ET 10/25/23.
Docket Numbers: ER24–28–000.
Applicants: Interstate Power and Light Company.
Description: § 205(d) Rate Filing: IPL-Louise Solar LBA Agreement to be effective 12/3/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5053.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–29–000.
Applicants: PacifiCorp.
Description: Tariff Amendment: Termination of UAMPS Const Agmt Lehi Carter BTM Resource Modeling to be effective 12/5/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5059.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–30–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–10–05_SA 3765 Termination of NIPSCO-Dunns Bridge E&P (J1333 J1334 J1335) to be effective 10/6/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5073.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–31–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–10–05_SA 3324 Termination of Chandler Solar Project-ATC GIA (J849) to be effective 7/18/2022.
Filed Date: 10/5/23.
Accession Number: 20231005–5074.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–32–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 2 to be effective 12/4/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5077.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–33–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 67 to be effective 12/4/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5085.
Comment Date: 5 p.m. ET 10/26/23.
Docket Numbers: ER24–34–000.
Applicants: Proxima Solar, LLC.
Description: Baseline eTariff Filing: Proxima Solar, LLC Application for Market-Based Rate Authorization to be effective 12/5/2023.
Filed Date: 10/5/23.
Accession Number: 20231005–5108.

Comment Date: 5 p.m. ET 10/26/23.
 Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES24–4–000.
Applicants: Commonwealth Edison Company.
Description: Application Under Section 204 of The Federal Power Act for Authorization of The Issuance of Securities of Commonwealth Edison Company.
Filed Date: 10/2/23.
Accession Number: 20231002–5385.
Comment Date: 5 p.m. ET 10/23/23.
Docket Numbers: ES24–5–000.
Applicants: PECO Energy Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of PECO Energy Company.
Filed Date: 10/2/23.
Accession Number: 20231002–5386.
Comment Date: 5 p.m. ET 10/23/23.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: October 5, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–22555 Filed 10–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–14–000]

Commission Information Collection Activity (FERC–717); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the revision of the currently approved information collection, FERC–717 (Standards for Business Practices and Communication Protocols for Public Utilities).

DATES: Comments on the collections of information are due December 12, 2023.

ADDRESSES: You may submit your comments (identified by Docket No. IC23–14–000) on FERC–717 by one of the following methods:

Electronic filing through <https://www.ferc.gov> is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- **Mail via U.S. Postal Service Only:** Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **Hand (Including Courier) Delivery:** Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at DataClearance@FERC.gov, or by telephone at (202) 502–8663.

Title: FERC–717, Standards for Business Practices and Communication Protocols for Public Utilities.

OMB Control No.: 1902–0173.

Type of Request: Three-year approval of the FERC–717 information collection requirements with deletion of one-time burdens previously approved by the Office of Management and Budget.

Abstract: Section 205 of the Federal Power Act (FPA) (16 U.S.C. 824d) requires that all rates and charges for the transmission or sale of electric energy and all rules and regulations affecting or pertaining to such rates and charges be just and reasonable. Section 206 of the FPA (16 U.S.C. 824e) authorizes FERC to initiate a proceeding to address any “rate, charge or classification” related to the transmission or sale of electricity that the agency determines is “unjust, unreasonable, unduly discriminatory or preferential.”

Commission regulations at 18 CFR 35.28 and 18 CFR part 37 are in accordance with FPA Sections 205 and 206. The regulation at 18 CFR 35.28 applies to any public utility that owns, operates, or controls interstate transmission facilities and any non-public utility seeking voluntary compliance with jurisdictional transmission tariff reciprocity conditions. These entities must offer transmission service on an open and non-discriminatory basis pursuant to a *pro forma* Open Access Transmission Tariff (OATT). Part 37 applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to transactions performed under the *pro forma* OATT established under 18 CFR 35.28. As stated at 18 CFR 37.2, the purpose of 18 CFR part 37 is to ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis from any Transmission Provider.¹ The regulations in 18 CFR part 37 provide standards of conduct and require the Transmission Provider (or its agent) to create and operate an Open Access Same-Time Information System (OASIS) that gives all users of the open access transmission system access to the same information.

The collection of information in accordance with FERC–717 is necessary for the implementation of OASIS. The regulation at 18 CFR 37.6 lists the information that Transportation Providers or Responsible Parties² must

¹ As defined at 18 CFR 37.3(a), a “Transmission Provider” is any public utility that owns, operates, or controls facilities used for the transmission of electricity in interstate commerce.

² As defined at 18 CFR 37.3(c), a “Responsible Party” is the Transmission Provider or an agent to whom the Transmission Provider has delegated the

calculate and post on OASIS. Paragraph (a) of section 37.6 provides that the information posted on OASIS must be in such detail and the OASIS must have such capabilities as to allow Transmission Customers³ to:

(1) Make requests for transmission services offered by Transmission Providers, Resellers⁴ and other providers of ancillary services, request the designation of a network resource, and request the termination of the designation of a network resource;

(2) View and download in standard formats, using standard protocols,⁵ information regarding the transmission system necessary to enable prudent business decision making;

(3) Post, view, upload and download information regarding available products and desired services;

(4) Clearly identify the degree to which transmission service requests or schedules were denied or interrupted;

(5) Obtain access, in electronic format, to information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes; and

(6) Make file transfers and automated computer-to-computer file transfers and queries as defined by the Standards and Communications Protocols Document.

Calculation Methods, Availability of Information, and Requests

The regulation at 18 CFR 37.6(b)(2) provides that information used to calculate any posting of ATC and TTC⁶ must be dated and time-stamped and all calculations shall be performed

responsibility of meeting any of the requirements of 18 CFR part 37.

³ As defined at 18 CFR 37.3(b), a “Transmission Customer” is any eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service.

⁴ As defined at 18 CFR 37.3(d), a “Reseller” is any Transmission Customer who offers to sell transmission capacity it has purchased.

⁵ The standard protocols are included in the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). The Commission adopted the protocols by reference in 18 CFR 38.1(b)(2)(iv) in a final rule at 86 FR 29491 (June 2, 2021). The protocols remain effective at present.

⁶ As defined at 18 CFR 37.6(b)(1): (1) ATC is the transfer capability remaining in the physical transmission network for further commercial activity over and above already committed uses, or such definition as contained in Commission-approved Reliability Standards. (2) TTC is the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected transmission systems by way of all transmission lines (or paths) between those areas under specified system conditions, or such definition as contained in Commission-approved Reliability Standards.

according to consistently applied methodologies referenced in the Transmission Provider’s transmission tariff and shall be based on Commission-approved Reliability Standards, business practice and electronic communication standards, and related implementation documents, as well as current industry practices, standards and criteria. Such calculations shall be conducted in a manner that is transparent, consistent with anticipated system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential.

On request, the Responsible Party must make all data used to calculate ATC, TTC, Capacity Benefit Margin,⁷ and Transmission Reliability Margin⁸ for any constrained posted paths publicly available in electronic form within one week of the posting. The information is required to be provided only in the electronic format in which it was created, along with any necessary decoding instructions, at a cost limited to the cost of reproducing the material. This information is to be retained for six months after the applicable posting period.

System planning studies, facilities studies, and specific network impact studies performed for customers or the Transmission Provider’s own network resources are to be made publicly available in electronic form on request and a list of such studies must be posted on the OASIS. A study is required to be provided only in the electronic format in which it was created, along with any necessary decoding instructions, at a cost limited to the cost of reproducing the material. These studies are to be retained for five years.

Posting Requirements

Paragraph (b)(3) of 18 CFR 37.6 requires Transmission Providers to calculate and post the ATC, TTC, CBM, and TRM in megawatts for each Posted Path.⁹ Paragraph (c) of 18 CFR 37.6

⁷ As defined at 18 CFR 37.6(b)(1)(vii), “Capacity Benefit Margin” means the amount of TTC preserved by the Transmission Provider for load-serving entities, whose loads are located on that Transmission Provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved Reliability Standards.

⁸ As defined at 18 CFR 37.6(b)(1)(viii), “Transmission Reliability Margin” is the amount of TTC necessary to provide reasonable assurance that the interconnected transmission network will be secure, or such definition as contained in Commission-approved Reliability Standards.

⁹ As defined at 18 CFR 37.6(b)(1)(i), “Posted Path” means any control area to control area interconnection; any path for which service is

requires Transmission Providers to post prices and a summary of the terms and conditions associated with all transmission products offered to Transmission Customers. Paragraph (d) of 18 CFR 37.6 requires Transmission Providers to post any ancillary service required to be provided or offered under the *pro forma* OATT.

Standards of Conduct

The Commission established Standards of Conduct at 18 CFR 37.4 requiring that personnel engaged in transmission system operations function independently from personnel engaged in marketing functions. The Standards of Conduct were designed to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from preferential access to

OASIS-related information or from engaging in unduly discriminatory business practices. Companies were required to separate their transmission operations/reliability functions from their marketing/merchant functions and prevent system operators from providing merchant employees and employees of affiliates with transmission-related information not available to all customers at the same time through public posting on the OASIS.

Type of Respondents: Transmission Providers.

*Estimate of Annual Burden:*¹⁰ The previous information collection request (ICR Reference No. 202002–1902–006) in the year 2020 was approved by OMB with a one-time burden that was expected to be completed in Year One.

As averaged over a three-year period, the annual responses were estimated as 165 annually, 10 hours per response, and total hours of 1,650 hours. These burdens are not included in this information collection request because all respondents have complied with that one-time burden. The removal of those burdens constitutes a program change.

The estimated annual number of responses for the ongoing information collection activity are adjusted in this information collection request from 162 to 216, an increase of 54 responses. Based on a review of the information collection since our last submission, we have determined this change in number of responses is due to changes in the regulated industry.

The current burden estimates are shown in the following table.

BURDEN ESTIMATES FOR FERC–717, STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

Information collection requirement	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response ¹¹	Total annual burden hours & total annual cost
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Open Access Same-Time Information (OASIS).	216	1	216	30 hrs.; \$2,880	6,480 hrs.; \$622,080.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 5, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–22551 Filed 10–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–547–000]

Honeoye Storage Corporation; Notice of Application and Establishing Intervention Deadline

Take notice that on September 22, 2023, Honeoye Storage Corporation (Honeoye), 4511 Egypt Road, Canandaigua, NY, 14424, filed an application under section 7(b) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to abandon certain certificated natural gas storage capacity at Honeoye's natural gas storage facility in Canandaigua, New York. Specifically, Honeoye seeks authority to abandon 974,400 Dth of previously certificated storage capacity which would reduce its total capacity of the Honeoye storage facility from 11,701,900 Dth to 10,727,500 Dth; and to reduce its

Maximum Daily Withdrawal Quantity by 3,880 Dth from 55,880 Dth to 52,000 Dth. Honeoye states that the reduced Maximum Allowable Operating Pressure of its gathering system requires it to reduce the firm storage capacity and maximum daily deliverability of the Honeoye storage field and to reset the relationship between working gas capacity and base/cushion gas capacity in the Honeoye storage field, 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

denied, curtailed, or interrupted for more than 24 hours in the past 12 months; and any path for which a customer requests to have ATC or TTC posted. For this last category, the posting must continue for 180 days and thereafter until 180 days have elapsed from the most recent request for service over the requested path. For purposes of this definition, an hour includes any part of an hour

during which service was denied, curtailed, or interrupted.

¹⁰ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

¹¹ The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's FY 2022 annual average of \$199,867 (for salary plus benefits), and the average hourly cost is \$96/hour.

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 Andrew Hall, Honeoye Storage Corporation, 4511 Egypt Road, Canandaigua, NY, 14424, by phone (585) 229-5161 or by email to andy.hall@honeoyestorage.com.

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.

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 p.m. Eastern Time on October 27, 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 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ 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 October 27, 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 CP23-547-000 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 (CP23-547-000).

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

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.

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 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 Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is October 27, 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 CP23-547-000 in your submission.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

¹ 18 CFR (Code of Federal Regulations) 157.9.

(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 CP23-547-000.

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 or email at: Andrew Hall, Honeoye Storage Corporation, 4511 Egypt Road, Canandaigua, NY 14424 or by email to andy.hall@honeoyestorage.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, unopposed⁹ 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 p.m. Eastern Time on October 27, 2023.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22694 Filed 10-12-23; 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: PR24-1-000.

Applicants: The East Ohio Gas Company.

Description: § 284.123(g) Rate Filing: Operating Statement of The East Ohio Gas Company 10/1/2023 to be effective 10/1/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5088.

Comment Date: 5 p.m. ET 10/25/23.

Protest Date: 5 p.m. ET 12/4/23.

Docket Numbers: RP24-20-000.

Applicants: ANR Pipeline Company.

Description: § 4(d) Rate Filing: OFO Penalty to be effective 11/3/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5173.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP24-21-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.4.23 Negotiated Rates—Citadel Energy Marketing LLC R-7705-20 to be effective 11/1/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5008.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP24-22-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.4.23 Negotiated Rates—Citadel Energy Marketing LLC R-7705-21 to be effective 11/1/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5009.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP24-23-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.4.23 Negotiated Rates—Emera Energy Services, Inc. R-2715-57 to be effective 11/1/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5015.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP24-24-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 10.4.23 Negotiated Rates—Emera Energy Services, Inc. R-2715-58 to be effective 11/1/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5018.

Comment Date: 5 p.m. ET 10/16/23.

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: RP23-863-002.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Compliance filing: Revised TGP Powerserve Compliance to be effective 10/1/2023.

Filed Date: 10/3/23.

Accession Number: 20231003-5155.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP23-1143-000.

Applicants: Cimarron River Pipeline, LLC.

Description: Report Filing: Cimarron River Pipeline—Amendment to Fuel Rate filing (Winter 2023) to be effective N/A.

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).

Filed Date: 10/3/23.

Accession Number: 20231003–5160.

Comment Date: 5 p.m. ET 10/16/23.

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.

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: October 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–22512 Filed 10–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF23–2–000]

Sabine Pass Liquefaction, LLC; Sabine Pass Liquefaction Stage V, LLC; Sabine Crossing, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Sabine Pass Liquefaction Stage 5 Expansion Project, and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Sabine Pass Liquefaction Stage 5 Expansion Project involving construction and operation of facilities by Sabine Pass Liquefaction, LLC and

Sabine Pass Liquefaction Stage V, LLC (collectively, Sabine Pass) and Sabine Crossing, LLC (Sabine Crossing) in Cameron Parish, Louisiana and Jefferson County, Texas. The Commission will use this environmental document in its decision-making process to determine whether the planned pipeline project is in the public convenience and necessity and if the planned facility expansion is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity and authorization. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on November 6, 2023. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on February 22, 2023, you will need to file those comments in Docket No. PF23–2–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should

notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. 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; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF23–2–000) on

your letter. 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.

(4) In lieu of sending written comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Tuesday, October 24, 2023, 4–7 p.m	Johnson Bayou Recreation Center, 135 Berwick Rd., Cameron, LA 70631, (337) 569–2288.
Wednesday, October 25, 2023, 4–7 p.m	West Side Development Center, 625 W Rev Dr Ransom Howard St., Port Arthur, TX 77640, (409) 984–9096.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 4 p.m. to 7 p.m. Central Standard Time. You may arrive at any time after 4 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 7 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 6:30 p.m. Please see appendix 1 for additional information on the session format and conduct.¹

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 3 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from Sabine Pass and Sabine Crossing will also be present to answer project-specific questions.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. 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.

Summary of the Planned Project

To support customer's requirements for natural gas, Sabine Pass and Sabine Crossing plan to expand existing liquefied natural gas (LNG) facilities and construct a new natural gas pipeline to provide a feed supply. The Sabine Pass Liquefaction Stage 5 Expansion Project (Project) would be located in Cameron Parish, Louisiana and Jefferson County,

Texas and would consist of constructing the following facilities:

- Three natural gas liquefaction trains;
- Two aboveground LNG storage tanks;
- Flares;
- Boil off gas re-liquefaction unit;
- Operations and maintenance building;
- A new 5.3-mile, 48-inch diameter natural gas pipeline; and
- Other associated utility and support facilities.

Sabine Pass also proposes modifications to existing ship-loading facilities.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the planned facilities would disturb about 1,013.4 acres of land for the LNG facilities and the pipeline. Following construction, Sabine Pass and Sabine Crossing would maintain about 884.1 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and could revert to former uses. About 60 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- Geology and soils;
- Water resources and wetlands;
- Vegetation and wildlife;
- Threatened and endangered species;
- Cultural resources;
- Land use;
- Socioeconomics;
- Environmental justice;
- Air quality and noise; and

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208–3676 or TTY (202) 502–8659.

- Reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Sabine Pass and Sabine Crossing. This preliminary list of issues may change based on your comments and our analysis:

- Permanent wetland impacts;
- Shipping channel traffic;
- Flooding and storm surge;
- Cumulative impacts; and
- Alternative facility designs.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary,

before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice. Currently, the U.S. Army Corps of Engineers Galveston District and the National Marine Fisheries Service have expressed their intention to participate as a cooperating agency in the preparation of the environmental document.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest

groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number PF23–2–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 3).

Becoming an Intervenor

Once Sabine Pass and Sabine Crossing file their application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, 1501.8.

⁴ The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

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. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. 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. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22697 Filed 10-12-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. DI22-6-000]

Bionics Avionics Energy Design Analysis Lab Inc.; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Declaration of Intention.
- b. *Docket No.:* DI22-6-000.
- c. *Date Filed:* March 22, 2022.
- d. *Applicant:* Bionics Avionics Energy Design Analysis Lab Inc.
- e. *Name of Project:* BAEDAL Hydroelectric Project.
- f. *Location:* The proposed project would be located on Bartley Creek in Bartley, McDowell County, West Virginia.
- g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
- h. *Applicant Contact:* Gyoung Hyun Bae; 7607 Karver Ln., Annandale, VA 22003; telephone: (703) 489-4616; email: gbae@cox.net.
- i. *FERC Contact:* Ashish Desai, (202) 502-8370, or Ashish.Desai@ferc.gov.

j. Deadline for filing comments, protests, and motions to intervene is November 6, 2023.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling 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 docket number DI22-6-000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed BAEDAL Hydroelectric Project would consist of: (1) a 5-foot-high outflow levy; (2) a series of up to 40 water wheels each mounted on a 7-foot radial arm and connected to a 20-kilowatt generator; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. 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.

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, and .214. 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:* All filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 5, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-22552 Filed 10-12-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP22-491-001]

Natural Gas Pipeline Company of America LLC; Notice of Request for Extension of Time

Take notice that on September 29, 2023, Natural Gas Pipeline Company of America LLC (Natural) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 31, 2023, to complete construction of the Crawford Line #3 Make Piggable Project (Project) and place the Project facilities into service.

On July 19, 2022, Natural filed a prior notice application, pursuant to 18 CFR

157.205, 157.206, 157.208(b) and 157.216(b) of the Commission's regulations and its blanket certificate authority granted in Docket No. CP82-402-000 for Commission authorization of the Project.¹ On September 27, 2022, BNSF Railway Company (BNSF) filed a protest seeking additional information on the Project. Natural resolved the protest with BNSF on October 17, 2022, and the Project was deemed approved as of such date. Based on the Project approval date of October 17, 2022, Natural is required to complete Project-related construction by October 17, 2023. Natural states that its request for an extension of time is due to construction delays, and adverse weather conditions the Project has experienced, all as more fully discussed in its request for extension of time letter.

As of September 29, 2023, Natural's Project construction is approximately 65 percent complete. However, given the remaining amount of work and potential for weather or other unforeseen delays, Natural does not believe it will be able to complete Project construction activities by October 17, 2023. As such, Natural is respectfully seeking a limited extension of time in which to complete Project construction activities. While Natural anticipates achieving mechanical completion of the Project by November 1, 2023, Natural is requesting an extension until December 31, 2023, to complete Project construction, accounting for potential delays.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Natural's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,² the Commission will aim to issue an order acting on the request

within 45 days.³ The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.⁴ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.⁵ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁶ The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

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. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. 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 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.

Comment Date: 5 p.m. Eastern Time on October 23, 2023.

Dated: October 6, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-22696 Filed 10-12-23; 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: PR24-2-000.

Applicants: Columbia Gas of Ohio, Inc.

Description: § 284.123 Rate Filing: COH Rates effective Sept 28 2023 to be effective 9/28/2023.

Filed Date: 10/5/23.

Accession Number: 20231005-5045.

Comment Date: 5 p.m. ET 10/26/23.

Docket Numbers: RP24-25-000.

Applicants: White River Hub, LLC.

Description: § 4(d) Rate Filing: 2023 Housekeeping to be effective 11/4/2023.

Filed Date: 10/4/23.

Accession Number: 20231004-5147.

Comment Date: 5 p.m. ET 10/16/23.

Docket Numbers: RP24-26-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree Oct 6 2023) to be effective 10/6/2023.

Filed Date: 10/5/23.

Accession Number: 20231005-5075.

Comment Date: 5 p.m. ET 10/17/23.

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.

¹ *Natural Gas Pipeline Company of America*, 20 FERC ¶ 62,415 (1982).

² Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

³ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

⁴ *Id.* at P 40.

⁵ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁶ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

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.

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: October 5, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-22554 Filed 10-12-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-090]

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 October 2, 2023 10 a.m. EST

Through October 6, 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. 20230134, Final, NRCS, CA, ADOPTION—Upper Llagas Creek Flood Protection Project, Review Period Ends: 11/13/2023, Contact: Ernesto De La Riva 530-792-5680. The Natural Resource Conservation Service (NRCS) has adopted the U.S. Army Corps of Engineers' Final EIS No. 20180300 filed 11/28/2018 with the Environmental Protection Agency.

The NRCS was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(b)(1) of the CEQ regulations.

EIS No. 20230135, Final, TxDOT, TX, US 380 McKinney, Contact: Doug Booher 512-416-2663. Under 23 U.S.C. 139(n)(2), TxDOT has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20230136, Final, TxDOT, TX, Loop 9 Segment A, Contact: Doug Booher 512-416-2663. Under 23 U.S.C. 139(n)(2), TxDOT has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20230137, Final Supplement, FERC, AL, Coosa River Hydroelectric Project, Review Period Ends: 11/13/2023, Contact: Office of External Affairs 866-208-3372.

Dated: October 10, 2023.

Cindy S. Barger,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023-22639 Filed 10-12-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0068; FRL-11445-01-OCSPP]

CGI Federal, Inc. and Zachary Piper, LLC; Transfer of Data September 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, in accordance with the CBI regulations. CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, have been awarded a contract to perform work for OPP, and access to this information will enable CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC to fulfill the obligations of the contract.

DATES: CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC will be given access to this information on or before October 18, 2023.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1493 email address: northern.william@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0068, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (202) 566-0294. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. Contractor Requirements

Under Contract No. 47QFCA23R0032, CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, will support the application development and operations of EPA's enterprise. The initial focus of this TO is the development, support, and operations of EPA's Central Data Exchange (CDX) followed by development and governance across the agency within the context and goals of EPA's digital strategy.

OPP has determined that access by CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with CGI Federal Inc. and its subcontractor, Zachary Piper, LLC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, until the requirements in this document have been fully satisfied. Records of information provided to CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, will be maintained by EPA Project Officers for this contract. All information supplied to CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, by EPA for use in connection with this contract will be returned to EPA when CGI Federal, Inc. and its subcontractor, Zachary Piper, LLC, have completed their work.

Authority: 7 U.S.C. 136 *et seq.*; 21 U.S.C. 301 *et seq.*

Dated: October 4, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–22557 Filed 10–12–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2023–0014]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP089498XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (“EXIM”) has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million. Comments received within the comment period specified below will be presented to the

EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before November 7, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2023–0014 under the heading “Enter Keyword or ID” and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2023–0014 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089498XX.

Purpose and Use: Brief description of the purpose of the transaction: to finance a manufacturing facility under the Make More in America initiative.

To the extent that EXIM is reasonably aware, the item(s) being financed are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Brief non-proprietary description of the anticipated use of the items being exported: The financing will be used for domestic purposes, but will result in the export of electric-powered air transportation equipment.

Parties:

Principal Supplier: Various U.S. companies.

Obligor: BETA Technologies, Inc.

Guarantor(s): N/A.

Description of Items Being Exported:

The financing will enable the production of electric-powered aircraft, a portion of which is expected to be exported.

Information on Decision: Information on the final decision for this transaction will be available in the “Summary Minutes of Meetings of Board of Directors” on <https://www.exim.gov/news/meeting-minutes>.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–22641 Filed 10–12–23; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Appointments Panel Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Appointments Panel, a subcommittee of the Federal Accounting Standards Advisory Board (FASAB), will hold a meeting on October 25, 2023. The Appointments Panel makes recommendations regarding appointments for non-federal member positions.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: The meeting is closed to the public. The reason for the closure is that matters covered by 5 U.S.C. 552b(c)(2) and (6) will be discussed. Any such discussions will involve matters that relate solely to internal personnel rules and practices of the sponsor agencies and the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(d), portions of advisory committee meetings may be closed to the public where the head of the agency to which the advisory committee reports determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. The determination shall be in writing and shall contain the reasons for the determination. A determination has been made in writing by the U.S. Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget, as required by section 10(d) of FACA, that such portions of the meetings may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014).

Dated: October 5, 2023.

Monica R. Valentine,
Executive Director.

[FR Doc. 2023–22511 Filed 10–12–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD**Notice of Renewal of Federal Accounting Standards Advisory Board Charter and Establishment of Appointments Panel Charter**

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Comptroller General of the United States (the Sponsors) have agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government. The advisory committee is called the Federal Accounting Standards Advisory Board (FASAB). Copies of the charter can be obtained by contacting FASAB at (202) 512-7350.

Notice is also hereby given that the Sponsors intend to charter FASAB's subcommittee, called the Appointments Panel. The Appointments Panel's mission is to assist in the selection, appointment, and monitoring of special government employee members of FASAB. The Panel assists the Sponsors by recruiting and recommending individuals for appointment or reappointment of special government employee members. The panel also assists the Sponsors and FASAB in evaluating and monitoring adherence to the American Institute of Certified Public Accountants (AICPA) criteria for an entity designated as a source for generally accepted accounting principles (GAAP). The Sponsors affirm that the Appointments Panel is essential to the conduct of the agencies' business, is in the public interest, and the functions cannot be performed by other means.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512-7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001-1014).

Dated: October 5, 2023.

Monica R. Valentine,
Executive Director.

[FR Doc. 2023-22515 Filed 10-12-23; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0991 and OMB 3060-1171; FR ID 177915]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. **DATES:** Written PRA comments should be submitted on or before December 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060-0991.
Title: AM Measurement Data.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,800 respondents; 3,135 responses.

Estimated Hours per Response: 0.50-25 hours.

Frequency of Response: Recordkeeping requirement, Third party disclosure requirement, On occasion reporting requirement.

Total Annual Burden: 20,200 hours.

Total Annual Cost: \$1,131,500.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 151, 152, 154(i), 303, and 307 of the Communications Act of 1934, as amended.

Needs and Uses: In order to control interference between stations and assure adequate community coverage, AM stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The data is used by station engineers to correct the operating parameters of the antenna. The data is also used by FCC staff in field investigations to ensure that stations are in compliance with the technical requirements of the Commission's various rules.

OMB Control Number: 3060-1171.

Title: Commercial Advertisement Loudness Mitigation ("CALM") Act; 73.682(e) and 76.607(a).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,937 respondents and 4,868 responses.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement; On occasion reporting requirement.

Estimated Time per Response: 0.25-80 hours.

Total Annual Burden: 6,036 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i) and (j), 303(r) and 621.

Needs and Uses: The Commission will use this information to determine compliance with the CALM Act. The CALM Act mandates that the Commission make the Advanced Television Systems Committee ("ATSC") A/85 Recommended Practice

mandatory for all commercial TV stations and cable/multichannel video programming distributors (MVPDs).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22534 Filed 10–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0716; FR ID 177916]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection

of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318 and 73.685, Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 400 hours.

Total Annual Cost: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in section 154(i) of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements approved under this collection are contained under the following rule sections:

47 CFR 73.88 states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1V/m contour.

47 CFR 73.318(b) states that after January 1, 1985, permittees or licensees who either (1) commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one-year period.

47 CFR 73.318(c) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88, and 73.685(d), the license is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a license is only required to provide technical assistance to determine the cause of interference.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22535 Filed 10–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–xxxx, OMB 3060–xxxx, OMB 3060–1121, OMB 3060–0386, OMB 3060–0320, OMB 3060–0190, OMB 3060–0182, OMB 3060–0178, OMB 3060–0175, OMB 3060–0113, and 3060–0009; FR ID 177760]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before December 12, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection

of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–xxxx.

Title: Section 73.1750,

Discontinuance of operation; § 73.3549, Request for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders; § 73.3550, Requests for new or modified call sign assignments.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and

Responses: 300 respondents and 300 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response:

Recordkeeping requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television.

47 CFR 73.1750 requires that the licensee of each station provide a notification to the FCC in a Cancellation Application via the Commission's Licensing and Management System (LMS) of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee must forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation.

47 CFR 73.3549 requires that requests for extension of authority to operate without required monitors, transmission system indicating instruments, or

encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC by electronically filing via LMS. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

47 CFR 73.3550(a) requires that all requests for new or modified call sign assignments for radio and television broadcast stations be made via LMS with the FCC. Paragraph (j) provides that a change in call sign assignment will be made effective on the date specified in the Call Sign Request Authorization generated by LMS acknowledging the assignment of the requested new call sign and authorizing the change.

OMB Control Number: 3060–xxxx.

Title: Section 73.619, Contours and service areas; § 73.625, TV antenna system; § 73.5006, Filing of petitions to deny against long-form applications; § 73.6024, Transmission standards and system requirements; § 73.6025, Antenna system and station location.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and Responses: 100 respondents and 100 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response:

Recordkeeping requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television.

47 CFR 73.619(b)(5) requires that in determining coverage, the elevation or contour intervals must be taken from a high quality bald earth map or dataset such as the United States Geological

Survey Topographic Quadrangle Maps or the National Elevation Dataset. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

47 CFR 73.625(c)(3)(v) requires that all azimuth plane patterns be plotted in a PDF attachment to an application in a size sufficient to be easily viewed; paragraph (vii) requires that if an elevation pattern is submitted in the application form, similar tabulations and PDF attachments must be provided for the elevation pattern; and paragraph (viii) requires that if a matrix pattern is submitted in the application form, similar tabulations must be provided as necessary in the form of a spreadsheet to accurately represent the pattern.

Similarly, 47 CFR 73.6025 requires that applications for modified Class A TV facilities proposing the use of directional antennas include the documentation in § 73.625(c)(3).

47 CFR 73.5006 requires that within ten days following the issuance of a public notice announcing that a long-form application for an AM, FM, or television construction permit has been accepted for filing, petitions to deny that application may be filed in the Commission's Licensing and Management (LMS) database. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

47 CFR 73.6024 requires that a Class A station within 275 kilometers of the U.S.-Mexico border must specify the full service emission mask in an application on FCC Form 2100. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

OMB Control Number: 3060–1121.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not for-profit institutions.

Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in section 154(i) of the

Communications Act of 1934, as amended.

Total Annual Burden: 1,960 hours.
Total Annual Cost: \$1,078,200.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including revisions to 47 CFR 73.1675 and 73.1690. The revisions to this information collection are only with respect to 47 CFR 73.1675 and 47 CFR 73.1690, and are made for informational purposes only, and do not create new or modify existing burdens.

47 CFR 73.1675(c)(1) continues to state that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application. The *R&O* revises paragraph (b) to note that the application for a construction permit is now made electronically via the Commission's Licensing and Management System using Form 2100, but this change does not modify any existing paperwork burdens or establish any new ones.

47 CFR 73.1690(c) continues to require FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002. The *R&O* revises paragraph (b) to indicate that certain changes can be made on FCC Form 2100, but this change does not modify any existing paperwork burdens or establish new ones, and similarly, paragraph (c)(3) is revised to note that the modification of license application is now made on Form 2100, but this change does not modify any existing paperwork burdens or establish any new ones.

Other information collection requirements that are covered under this collection that have not changed since last approved by the Office of Management and Budget (OMB) are as follows:

On August 14, 2013, the Commission adopted the *Third Report and Order*

and *Second Order on Reconsideration* in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115. In the *Third Report and Order* in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations. In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, §§ 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as part 90 and part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the *Third Report and Order* the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The *Third Report and Order* also designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the

proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002(c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on

the effective date of the rules adopted in this part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof

(see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002 and 1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as “expedited,” and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable,

with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

OMB Control Number: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; §§ 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; § 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; § 73.3700(b)(5), Post Auction Licensing; § 73.3700(f).

Form Number: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 5,537 respondents and 5,537 responses.

Estimated Time per Response: 0.50–4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,353 hours.

Total Annual Cost: \$1,834,210.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television. The Commission revised 47 CFR 73.1635 such that Broadcast stations (AM, FM, TV, Class A TV or LPTV licensees or permittees) may file a request for STA electronically in the Commission's Licensing and Management System (LMS) for approval to permit a station to operate a broadcast

facility for a limited period at a specified variance from the terms of the station's authorization or requirements of the FCC rules. Stations may file a request for STA approval for a variety of reasons. The request must describe the operating modes and facilities to be used. Types of STA requests include Engineering and Legal STAs.

The Commission also revised 47 CFR 73.1740 such that Broadcast stations (AM, FM, TV or Class A TV licensees) may file this form in the Commission's LMS to notify the Commission of the station's suspension of broadcast operations. Broadcast stations may also use this form to request a silent STA or extension thereof. Types of Silent Notifications include Notification of Suspension and Resumption of Operations. Pursuant to § 73.1740, broadcast station licensees must notify the Commission when events beyond their control make it impossible to continue operation or to adhere to the required operating schedules set forth in this rule. In addition, they must notify the Commission when they resume normal operations. (No further authority is needed for limited operation or discontinued operation for a period not exceeding 30 days.) Should events beyond the licensees control make it impossible for compliance within the required 30-day time period, broadcast station licensees must file an informal letter request for silent operations ("Silent STA," discussed below in informal filings section).

The Commission also revised 47 CFR 73.1615 such that broadcast stations (AM, FM, TV or Class A TV licensees) must file a notification under 47 CFR 73.1615(c) when such a station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service for a period not more than 30 days (in which case it must file a Silent STA application or an Engineering STA application via LMS). Licensees or permittees of directional or nondirectional FM, TV or Class A TV or nondirectional AM must file a notification and comply with 47 CFR 73.1615(a). Licensees or permittees of a directional AM station whose modification does not involve a change in operating frequency must file a notification and comply with 47 CFR 73.1615(b). Licensees or permittees of a directional AM station whose modification does involve a change in frequency and determines it is necessary to discontinue operation for a period not more than 30 days must file a notification and comply with 47 CFR

73.1615(d)(2). The Commission does not have any program changes or adjustments to this collection as a result of the information collection requirements adopted in FCC 23–72 and there are no other adjustments to the other information collection requirements covered by this collection since last approved by OMB.

OMB Control Number: 3060–0320.

Title: Section 73.1350, Transmission System Operation.

Form Number: N/A.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit entities; not-for-profit institutions. Currently approved collection.

Number of Respondents and Responses: 505 respondents and 505 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 253 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1350(h).

47 CFR 73.1350(h) requires licensees to submit a "letter of notification" to the FCC via a Change of Control Point Notice in the Commission's Licensing and Management System (LMS) database, whenever a transmission system control point is established at a location other than at the main studio or transmitter within three days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

OMB Control Number: 3060–0190.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 325 respondents and 325 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 306 hours.

Total Annual Cost: \$75,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.3544(b) and (c).

47 CFR 73.3544(b) permits that an informal electronic filing of an Administrative Update via the Commission's Licensing and Management System (LMS) may be filed to cover the following changes: (1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed; (2) A change in the type of AM station directional antenna monitor. See § 73.69; (3) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

47 CFR 73.3544(c) requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by electronically filing an Administrative Update via LMS by the licensee to the Commission.

OMB Control Number: 3060–0182.

Title: Section 73.1620, Program Tests.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions.

Number of Respondents and Responses: 1,469 respondents and 1,469 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,517 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1620(a)(1) through (3) and deletion of 47 CFR 73.1620(f) and (g). No other changes to the existing collection, restated below, are proposed.

47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests via a Program Test Authority filing in the Commission's Licensing and Management System (LMS) database. An application for license must be filed with the FCC within 10 days of this notification.

47 CFR 73.1620(a)(2) requires a permittee of an FM station with a directional antenna to file a request with the FCC for program test authority 10 days prior to date on which it desires to begin program tests on FCC Form 2100 Schedule 302–FM in LMS. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(3) requires a licensee of an FM station replacing a directional antenna without changes that would not require the submission of a construction permit application to file with the FCC a modification of license application on FCC Form 2100 Schedule 302–FM within 10 days after commencing operations with the replacement antenna. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(4) requires a permittee of an AM station with a directional antenna to file a request with the FCC for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(5) except for permits subject to successive license terms, the permittee of an Low Power TV (LPFM) station may begin program tests upon notification to the FCC in Washington, DC, provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.

47 CFR 73.1620(b) the Commission reserves the right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provisions of § 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The Commission may, at its discretion, also require the filing of a construction permit application to bring the station into compliance the Commission's rules and policies.

OMB Control Number: 3060–0178.

Title: Section 73.1560, Operating Power and Mode Tolerances.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities or Not-for-profit institutions.

Number of Respondents and Responses: 80 respondents and 80 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 80 hours.

Total Annual Cost: \$20,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1560(d).

47 CFR 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC via the Commission's Licensing and Management System (LMS) when

operation at reduced power will exceed ten consecutive days in a Reduced Power Notification and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal request for Special Temporary Authority must be made via LMS for any additional time as may be necessary to restore normal operations.

OMB Control Number: 3060–0175.

Title: Section 73.1250, Broadcasting Emergency Information.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities or Not-for-profit institutions.

Number of Respondents and Responses: 50 respondents and 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1250(e) to update the address in which a report in letter form shall be forwarded to.

Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings.

47 CFR 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC's main office in Washington, DC, as indicated in 47 CFR 0.401(a), setting forth the nature of the emergency, the dates and hours of the

broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the non-commercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station.

OMB Control Number: 3060–0113.

Title: Form 2100, Schedule 396—Broadcast Equal Employment Opportunity Program Report.

Form Number: FCC 2100, Schedule 396.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents and Responses: 2,960 respondents and 2,960 responses.

Estimated Time per Response: 0.5–2 hours.

Frequency of Response: On renewal reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in section 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,436 hours.

Total Annual Cost: \$666,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.2080. No other changes to OMB Control Number 3060–0113, approved August 2021, been made, with the exception of an added description regarding the revision to § 73.2080. That description is for illustrative purposes only, and also does not create any new or modified paperwork obligations.

OMB Control Number: 3060–0009.

Title: FCC Form 2100, Schedule 316—Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer Control of Entity Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 2100, Schedule 316.

Type of Review: Revision a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit

institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents and 750 responses.

Estimated Time per Response: 1.5–4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,231 hours.

Total Annual Cost: \$711,150.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order (R&O)*, Amendment of part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including revisions to 47 CFR 73.3540 to update the reference to FCC Form 2100, Schedule 316. For informational purposes, the Commission also will update reference in 47 CFR 73.3540 to FCC Form 2100, Schedules 314 and 315 covered under OMB 3060–0031 and FCC Form 2100, Schedule 345 covered under 3060–0075. The Commission will not revise these collections because only the reference to the forms will be updated. We are noting this in this collection. The revision to this information collection is made for informational purposes only, and does not create new or modify existing burdens. Other information collection requirements that are covered under this collection have not changed since last approved by the Office of Management and Budget (OMB).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22646 Filed 10–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0110, OMB 3060–0214, OMB 3060–0386, OMB 3060–1089; FR ID 177893]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 13, 2023.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information

unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents: 23,819 respondents; 66,392 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in sections 151, 152, 154(i), 303, 307, 308, and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,065,841 hours.

Total Annual Cost: No cost.

Needs and Uses: On July 20, 2023, the Commission adopted Amendment of

Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (FM6 Report and Order). The Commission adopted a new requirement that FM6 LPTV stations maintain a public inspection file similar to the requirement in the rule for FM radio stations. This submission is being made to the Office of Management and Budget (OMB) for approval of the local public inspection file requirement for FM6 LPTV stations as adopted in the FM6 Report and Order. This requirement is contained in 47 CFR 73.3526.

OMB Control Number: 3060–0110.

Title: FCC Form 2100, Application for Renewal of Broadcast Station License, LMS Schedule 303–S.

Form Number: FCC 2100, LMS Schedule 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 5,140 respondents, 5,140 responses.

Estimated Time per Response: 0.5 hours–12 hours.

Frequency of Response: On occasion reporting requirement; Every eight-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 14,868 hours.

Total Annual Costs: \$3,994,164.

Obligation of Response: Required to obtain or retain benefits. The statutory authority for the collection is contained sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and section 204 of the Telecommunications Act of 1996.

Needs and Uses: On July 20, 2023, the Commission adopted Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (FM6 Report and Order). The Commission adopted a new requirement that FM6 LPTV stations certify in their license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. The Commission delegated authority to the Media Bureau to determine the most appropriate means for these stations to make such certification, be it by an attachment to the renewal application or some other reasonable means. This requirement is contained in 47 CFR 74.790(o)(10).

This submission is being made to the Office of Management and Budget (OMB) for approval of the renewal certification requirement for FM6 LPTV stations as adopted in the FM6 Report and Order. Since the certification will be included as an additional exhibit to the existing form, it did not necessitate changes to LMS Form 2100 Schedule 303–S.

OMB Control No.: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5), Post Auction Licensing; Section 73.3700(f).

Form No.: None.

Type of Review: Revision of a currently information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 5,537 respondents and 5,537 responses.

Estimated Time per Response: 0.50–4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,353 hours.

Annual Cost Burden: \$1,834,210.

Needs and Uses: On July 20, 2023, the Commission adopted Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (FM6 Report and Order). The Commission adopted a one-time requirement that FM6 LPTV stations notify the Media Bureau via letter filing as to whether they will continue FM6 operations and confirm their precise FM6 operational parameters. In addition, in the FM6 Report and Order, the Commission adopted a rule, 47 CFR 74.790(o)(9) that requires FM6 LPTV stations that are permanently

discontinuing their FM6 operations to notify the Commission pursuant to section 73.1750 of the rules. This submission is being made to the Office of Management and Budget (OMB) for approval of the one-time letter notification and discontinuation of operations notification requirements for FM6 LPTV stations as adopted in the FM6 Report and Order.

OMB Control No.: 3060–1089.

Title: Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10–51 & 03–123.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 187,019 respondents;

1,836,456 responses.

Estimated Time per Response: 0.05 hours (3 minutes) to 300 hours.

Frequency of Response: Annual, monthly, on occasion, on-going, one-time, and quarterly reporting requirements; Recordkeeping requirement; and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, and amended by the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 103(a), 124 Stat. 2751, 2755 (2010) (CVAA); Public Law 111–265 (technical amendments to CVAA).

Total Annual Burden: 320,484 hours.

Annual Cost Burden: \$280,200.

Needs and Uses: The telecommunications relay service (TRS) program enables access to the nation's telephone network by persons with hearing and speech disabilities. In 1991, as required by the Americans with Disabilities Act and codified at 47 U.S.C. 225, the Commission adopted rules governing the telecommunications relay services (TRS) program and procedures for each state TRS program to apply for initial Commission certification and renewal of Commission certification of each state program. Telecommunications Services for Individuals with Hearing and Speech

Disabilities, and the Americans with Disabilities Act of 1990, Report and Order and Request for Comments, document FCC 91–213, published at 56 FR 36729, August 1, 1991 (1991 TRS Implementation Order).

Between 2008 and 2011, to integrate internet-based TRS into the North American Numbering plan and facilitate interoperability, universal calling, and 911 emergency services, the Commission adopted rules in three separate orders related to the telephone numbering system and enhanced 911 (E911) services for users of two forms of internet-based TRS: Video Relay Service (VRS) and internet Protocol Relay service (IP Relay). See document FCC 08–151, Report and Order and Further Notice of Proposed Rulemaking, published at 73 FR 41286, July 18, 2008 (First Numbering Order); document FCC 08–275, Second Report and Order and Order on Reconsideration, published at 73 FR 79683, December 30, 2008 (Second Numbering Order); and document FCC 11–123, Report and Order, published at 76 FR 59551, September 27, 2011 (internet-based TRS Toll Free Order).

The rules adopted in these three orders have information collection requirements that include requiring VRS and IP Relay providers to: register each user who selects the provider as his or her default provider, including obtaining a self-certification from each user; verify the accuracy of each user's registration information; provision and maintain their registered users' routing information to the TRS Numbering Directory; place their users' Registered Location and certain callback information in Automatic Location Information (ALI) databases across the country and provide a means for their users to update their Registered Locations; include advisories on their websites and in any promotional materials addressing numbering and E911 services for VRS or IP Relay; verify in the TRS Numbering Directory whether each dial-around user is registered with another provider; and if they provide equipment to a consumer, make available to other VRS providers enough information about that equipment to enable another VRS provider selected as the consumer's default provider to perform all of the functions of a default provider.

On July 28, 2011, the Commission released Structure and Practices of the Video Relay Service Program, document FCC 11–118, published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011 (VRS Certification Order), adopting final and interim rules—designed to help prevent waste,

fraud, and abuse, and ensure quality service, in the provision of internet-based forms of TRS. On October 17, 2011, the Commission released Structure and Practices of the Video Relay Service Program, Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, document FCC 11–155, published at 76 FR 67070, October 31, 2011 (VRS Certification Reconsideration Order), modifying two aspects of information collection requirements contained in the VRS Certification Order.

On June 10, 2013, the Commission made permanent the interim rules adopted in the VRS Certification Order. Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, document FCC 13–82, published at 78 FR 40582, July 5, 2013 (2013 VRS Reform Order). The VRS Certification Order as modified by the VRS Certification Reconsideration Order and, as applicable, made permanent by the 2013 VRS Reform Order, amended the Commission's process for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS to ensure that internet-based TRS providers receiving certification are qualified to provide internet-based TRS in compliance with the Commission's rules and to eliminate waste, fraud and abuse through improved oversight of such providers. They contain information collection requirements including: submission of detailed information in an application for certification that shows the applicant's ability to comply with the Commission's rules; submission of annual reports that include updates to the provider's information on file with the Commission or a certification that there are no changes to the information; requirements for a senior executive of an applicant for internet-based TRS certification or an internet-based TRS provider, when submitting an annual compliance report, to certify under penalty of perjury to its accuracy and completeness; requirements for VRS providers to obtain prior authorization from the Commission for planned interruptions of service, to report to the Commission unforeseen interruptions of service, and to provide notification of temporary service outages, including updates, to consumers on their websites; and requirements for internet-based TRS providers that will no longer be

providing service to give their customers at least 30-days notice.

In the 2013 VRS Reform Order, the Commission adopted further measures to improve the structure, efficiency, and quality of the VRS program, reducing the noted inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. The Commission required reporting of unauthorized and unnecessary use of VRS; established a central TRS user registration database (TRS-URD) for VRS, which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, as well as per-call validation, to achieve more effective prevention of waste, fraud, and abuse; established procedures to prevent unauthorized changes of a user's default TRS provider; and established procedures to protect TRS users' customer proprietary network information (CPNI) from disclosure.

On March 23, 2017, the Commission released Structure and Practices of the Video Relay Services Program et al., FCC 17–26, published at 82 FR 17754, April 13, 2017, (2017 VRS Improvements Order), which among other things, allows VRS providers to assign TRS Numbering Directory 10-digit telephone numbers to hearing individuals for the limited purpose of making point-to-point video calls, and gives VRS providers the option to participate in an at-home call handling pilot program, subject to certain limitations, as well as recordkeeping and reporting requirements.

On May 15, 2019, the Commission released Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 19–39, published at 84 FR 26364, June 6, 2019 (2019 VRS Program Management Order). The Commission further improved the structure, efficiency, and quality of the VRS program, reduced the risk of waste, fraud, and abuse, and ensured that the program makes full use of advances in commercially-available technology. These improvements include information collection requirements, including: the establishment of procedures to register enterprise and public videophones to the TRS-URD; and permitting Qualified Direct Video Calling (DVC) Entities to access the TRS Numbering Directory and establishing an application procedure to authorize such access, including rules governing DVC entities and entry of information in

the TRS Numbering Directory and the TRS-URD.

On August 2, 2019, the Commission released Implementing Kari's Law and Section 506 of RAY BAUM's Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules, FCC 19–76, published at 84 FR 66716, December 5, 2019 (MLTS 911 and Dispatchable Location Order). The Commission amended its rules to ensure that the dispatchable location is conveyed to a Public Safety Answering Point (PSAP) with a 911 call, regardless of the technological platform used. Based on the directive in section 506 of RAY BAUM'S Act, the Commission adopted dispatchable location requirements that in effect modified the existing information collection requirements applicable to VRS, IP Relay and covered internet Protocol captioned telephone service (IP CTS) by improving the options for providing accurate location information to PSAPs as part of 911 calls.

Fixed internet-based TRS devices must provide automated dispatchable location. For non-fixed devices, when dispatchable location is not technically feasible, internet-based TRS providers may fall back to Registered Location or provide alternative location information. As a last resort, internet-based providers may route calls to Emergency Relay Calling Centers after making a good faith effort to obtain location data from all available alternative location sources. Dispatchable location means a location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. Automated dispatchable location means automatic generation of dispatchable location. Alternative location information is location information (which may be coordinate-based) sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.

On January 31, 2020, the Commission released Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, FCC 20–7, 85 FR 27309, May 8, 2020 (VRS At-Home Call Handling Order). The Commission amended its rules to convert the VRS at-

home call handling pilot program into a permanent one, thereby allowing CAs to work from home. To ensure user privacy and call confidentiality and to help prevent waste, fraud, and abuse, the modified information collections include requirements for VRS providers to apply for certification to allow their communications assistants to handle calls while working at home; monitoring and oversight requirements; and reporting requirements.

On June 30, 2022, the Commission released Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of Internet Protocol Captioned Telephone Service, FCC 22–51, published at 87 FR 57645, September 21, 2022 (Registration Grace Period Order). To offer more efficient service to VRS and IP CTS users without risk of waste, fraud, and abuse to the TRS Fund, the Commission amended its rules to allow VRS and IP CTS providers to provide compensable service to a new user for up to two weeks after submitting the user's information to the TRS URD if the user's identity is verified within that period.

On September 30, 2022, the Commission released Rates for Interstate Inmate Calling Services, FCC 22–76, published at 87 FR 75496, December 9, 2022 (Accessible Carceral Communications Order). To improve access to communications services for incarcerated people with communications disabilities, the Commission adopted modifications to the user registration and verification requirements for use of internet-based TRS in correctional facilities.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–22533 Filed 10–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2023–15]

Filing Dates for the California Senate Special Election

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled special elections on March 5, 2024, and November 5, 2024, to fill the remainder of the late Senator Dianne Feinstein's unexpired U.S. Senate term, which ends on January 3, 2025. Committees

required to file reports in connection with the Special Primary Election on March 5, 2024, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on November 5, 2024, shall file a 12-day Pre-Primary, a 12-day Pre-General, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the California Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on February 22, 2024; a 12-day Pre-General Report on October 24, 2024; and a 30-day Post-General Report on December 5, 2024. (See charts

below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the California Special Primary or Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the California Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information for the California special elections may be found on the FEC website at [https://www.fec.gov/help-candidates-and-](https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/)

www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registant PACs that aggregate in excess of the lobbyist bundling threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2023 is \$21,800. This threshold amount may change in 2024 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 104.22(g) and 110.17(e)(2).

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

Report	Close of books ¹	Reg./cert. & overnight mailing deadline	Filing deadline
Political Committees Involved in <i>Only</i> the Special Primary (03/05/2024) Must File:			
Pre-Primary	02/14/2024	² 02/19/2024	02/22/2024
April Quarterly	03/31/2024	04/15/2024	04/15/2024
Political Committees Involved in Both the Special Primary (03/05/2024) and the Special General (11/05/2024) Must File:			
Pre-Primary	02/14/2024	² 02/19/2024	02/22/2024
April Quarterly	03/31/2024	04/15/2024	04/15/2024
July Quarterly	06/30/2024	07/15/2024	07/15/2024
October Quarterly	09/30/2024	10/15/2024	10/15/2024
Pre-General	10/16/2024	10/21/2024	10/24/2024
Post-General	11/25/2024	12/05/2024	12/05/2024
Year-End	12/31/2024	01/31/2025	01/31/2025
Political Committees Involved in <i>Only</i> the Special General (11/05/2024) Must File:			
Pre-General	10/16/2024	10/21/2024	10/24/2024
Post-General	11/25/2024	12/05/2024	12/05/2024
Year-End	12/31/2024	01/31/2025	01/31/2025

¹ The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

² Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

Dated: October 10, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023-22669 Filed 10-12-23; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–15]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

SUMMARY: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Webex.

Date: October 4, 2023.

Time: 11:15 a.m. ET.

Action and Discussion Item

Personnel Matter.

The ASC convened a Special Closed Meeting to discuss a personnel matter. No action was taken by the ASC.

James R. Park,

Executive Director.

[FR Doc. 2023–22528 Filed 10–12–23; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION**Release of the Federal Maritime Commission's FY 2020 Service Contract Inventory Analysis**

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2020 Service Contract Inventory Analysis. The FY 2021 Service Contract Inventory Analysis includes Scope, Methodology, Findings, Actions Taken or Planned, and Accountable Officials.

DATES: The inventory is available on the Commission's website as of October 10, 2023.

FOR FURTHER INFORMATION CONTACT:

Katona Bryan-Wade, Director, Office of Management Services, 202–523–5900, omsmaritime@fmc.gov.

SUPPLEMENTARY INFORMATION: Acting in compliance with Sec. 743 of Division C of the Consolidated Appropriations Act 2010, the Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2020 Service Contract Inventory Analysis. The FY 2020

Service Contract Inventory Analysis includes Scope, Methodology, Findings, Actions Taken or Planned, Accountable Officials.

Objectives, and Agency Findings

This analysis was developed in accordance with guidance issued by the Office of Management and Budget (OMB), Office of Procurement Policy (OFPP), and in accordance with FAR subpart 4.17—Service Contracts Inventory. The Federal Maritime Commission has posted its FY 2021 Service Contract Inventory Analysis at the following link: <https://www.fmc.gov/about-the-fmc/governmentwide-laws-regulations/service-contract-analysis/>.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2023–22680 Filed 10–12–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION**Notice of Agreements Filed**

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of Agreements at (202) 523–5793 or tradeanalysis@fmc.gov.

Agreement No.: 201409.

Agreement Name: Seven Seals Co., Ltd. and Kawasaki Kisen Kaisha, Ltd. Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd.; Seven Seals Co., Ltd.

Filing Party: Neal Mayer; Hoppel, Mayer & Coleman.

Synopsis: The Agreement authorizes Seven Seals to charter space for the carriage of cars to K-Line on an "as needed/as available basis" in the Trade between ports in Japan and the U.S. West Coast.

Proposed Effective Date: 10/3/2023.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/84522>.

Dated: October 6, 2023.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2023–22562 Filed 10–12–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 13, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org:

1. *RiverWind Bancshares, Inc.*; to become a bank holding company by acquiring RiverWind Bank, both of Augusta, Arkansas.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *TEB Trust and TEB Middle Holdings, LLC*, both of Fort Worth,

Texas; to become bank holding companies by acquiring up to 55.15 percent of Texas Exchange Bank, Crowley, Texas. TEB Middle Holdings, LLC would be a wholly-owned subsidiary of TEB Trust.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–22682 Filed 10–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Evaluation of Resources To Support the Identification and Care of Children With Prenatal Substance or Alcohol Exposure in the Child Welfare System (Office of Management and Budget #0970–0608)

AGENCY: Children's Bureau, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is proposing to collect data for an evaluation of a set of resources that are being developed to support the identification and care of children with prenatal substance or alcohol exposure in the child welfare system.

DATES: Comments due within 30 days of publication. Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after

publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <http://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. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Materials to begin this proposed information collection effort were initially approved in April 2023. The study is gathering data from end users of a toolkit of resources sponsored by CB in collaboration with the Centers for Disease Control and Prevention under an interagency agreement. The toolkit is intended to support child welfare agency staff in the identification and support of children living with prenatal exposure to alcohol and other substances. The data collected will be used in a formative evaluation of the toolkit, which will be guided by 3 research questions: (1) To what degree do agency staff find toolkit resource to be relevant and applicable to their work?; (2) To what degree do toolkit resources change agency staff attitudes and increase staff knowledge?; (3) What implementation approaches and organizational supports facilitate toolkit use by child welfare agencies? Data sources for this effort include 5 surveys that have been approved for use: (1) a survey to measure users' reactions to the toolkit; (2) a survey of users' attitudes

toward prenatal alcohol exposure (PAE)-related issues; (3) a survey of users' knowledge about PAE-related issues; and (4 and 5) two versions of a survey of transfer potential and perceived competence, which measures users' sense of competence in PAE-related knowledge and skills and the extent to which users believe they will transfer knowledge/skills to their work. One version of this instrument contains the full survey and will be administered after users have been exposed to the full toolkit and its resources. The second version contains a smaller selection of key items from the survey, tailored to collect information from users after their exposure to each of 5 key modules of the toolkit. Newly proposed data collection will include (6) one focus group to assess user perspectives on changes to practice as a result of implementation and fit of the toolkit with the agency's diversity, equity, and inclusion efforts. All data will be collected in 2024 over the course of 6–9 months.

Respondents: Child welfare professionals, including state and/or county-level directors of child welfare agencies; supervisors; program staff (e.g., investigation/intake, case management, foster care/adoption/permanency, etc.); staff working in specialist roles that align with toolkit resources (e.g., data/quality improvement specialists); local or state agency managers involved in determining agency strategic plans and practice guidance (e.g., substance-exposed newborn program manager); training system lead staff.

Annual Burden Estimates

There are no updates to the burden estimates for previously approved instruments. This request adds the burden for the one new focus group protocol on implementation.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of reactions to the toolkit	32	1	.05	2
Survey of attitudes	32	2	.17	11
Survey of PAE-related knowledge	32	3	.27	26
Survey of transfer potential and perceived competency	32	1	.09	3
Module-specific transfer potential and perceived competency items	32	5	.03	5
Focus group protocol on implementation	28	1	1.5	42

Estimated Total Annual Burden Hours: 89.

Authority: This information collection is related to and funded by CB, is authorized by the Child Abuse

Prevention and Treatment Act Reauthorization Act, 42 U.S.C. 5105, (2010), and is being conducted by CB. This information collection complies with the statutory requirement to carry

out research designed to provide information needed to improve the well-being of victims of child abuse or neglect. Specifically, this information collection complies with the

requirement for evaluation of practices and programs to improve activities such as identification, screening, medical diagnosis, forensic diagnosis, health evaluations, and services, including activities that promote collaboration between (1) the child protective service system; and (2) (i) the medical community, including providers of mental health and developmental disability services; and (ii) providers of early childhood intervention services and special education for children who have been victims of child abuse or neglect.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–22676 Filed 10–12–23; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Child Support Enforcement Direct Funding Request: (Office of Management and Budget #0970–0218)

AGENCY: Office of Child Support Services, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Services (OCSS), Administration for Children and Families (ACF) is requesting proposed revisions to an approved information collection the

Tribal Child Support Enforcement Direct Funding Requests—(Office of Management and Budget (OMB) #0970–0218, expiration March 31, 2026). We are proposing a new requirement for tribes or tribal organizations to provide that charging fees and recovering costs will not be permitted.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that, in order to receive funding for a tribal IV–D program, a tribe or tribal organization must submit a plan describing how the tribe or tribal organization meets or plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity; establishing, modifying, and enforcing support orders; and locating noncustodial parents. The plan is required for all tribes requesting funding; however, once a tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a tribe makes changes to its title IV–D program. If a tribe or tribal organization intends

to make any substantial or material changes, a tribal IV–D plan amendment must be submitted for approval. Tribes and tribal organizations must have an approved plan and submit any required plan amendments to receive funding to operate a tribal IV–D program.

With this request to revise an approved information collection, OCSS proposes a new requirement for tribes and tribal organizations to provide that charging fees and recovering costs will not be permitted. This is due to the Elimination of the Non-Federal Share notice of proposed rulemaking published on April 21, 2023 (see 88 FR 24526). Tribes and tribal organizations that charge fees and recover costs must submit a plan amendment demonstrating compliance with the proposed new requirement, in accordance with 45 CFR 309.35(d). This notice invites comments on this proposed change and the related burden implications. This would be a onetime submission that would be implemented in conjunction with the issuing of a Final Rule. Only three tribal child support programs report data on the collection of fees and recovered costs.

Respondents: Tribes and tribal Organizations.

Burden Estimates

The following burden estimates are specific to burden associated with the proposed change in requirement. For information about currently approved burden under OMB #: 0970–0218, which is not expected to change, see information here: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-0970-012.

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR part 309—Plan Amendment—Charging fees and recovering costs ..	3	1	3	9

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: Title IV–D of the Social Security Act; 45 CFR part 309.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–22630 Filed 10–12–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1189]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importation of Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 13, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted 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 OMB control number for this information collection is 0910–0888. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Importation of Prescription Drugs

OMB Control Number 0910–0888—Extension

This information collection supports implementation of section 804 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 384), and applicable regulations in part 251 (21 CFR part 251), which provide for the importation of certain prescription drugs shipped from Canada. The purpose of section 804 of the FD&C Act is to reduce the cost of covered products to American consumers without imposing additional risk to public health and safety. The regulations in part 251 set forth procedures Section 804 Importation Program sponsors (SIP Sponsors) must follow when submitting plans to implement time-limited programs to begin importation of drugs from Canada. The regulations also establish criteria for FDA review and authorization of a SIP proposal or supplemental proposal. Additionally, the regulations set forth requirements for eligible prescription drugs and requirements for entities that engage in importation of eligible prescription drugs. Finally, the regulations provide that eligible prescription drugs that meet certain requirements are exempt from section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)).

Description of Respondents: Respondents to the collection of information are SIP Sponsors (States or

Indian Tribes, or in certain future circumstances, pharmacists or wholesale distributors, and any cosponsor(s)), importers (pharmacists or wholesaler distributors), and manufacturers of eligible prescription drugs.

In the **Federal Register** of June 8, 2023 (88 FR 37549), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment communicating that we had revised our burden estimates from those found in the final rule that issued October 1, 2020 (85 FR 62094). The comment also suggested that our figures underestimated burden associated with individual provisions established by part 251 although no alternative figures were proffered. We note also, that both FDA and respondents continue to carry out certain provisions in part 251, including activities related to the information collection elements. The comment also appeared to question how FDA derived its count of respondents included in the information collection. In this regard, we note that the scope of the information collection is set forth in § 251.1. We appreciate all comments but refrain from making further modifications to our estimate until we have more experience with the implementation of the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

21 CFR section 251; information collection activity	Number of respondents	Number of records per recordkeeper	Total annual records	Average burden per record (hours)	Total hours
Subpart B; SIP proposals and pre-import requests	40	1.5	60	72	4,320
Subpart C; Certain requirements for importation programs	40	1	40	43	1,720
Total .....	.....	.....	100	.....	6,040

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We assume burden attributable to the information collection tasks will be averaged and distributed among respondents. As noted in the previous submission, FDA estimates that there will be 10 SIP Sponsors requiring 360 hours each to research, prepare, and administer requirements annually; 10 Pre-Import Requests requiring 24 hours each annually; and 20 manufacturers also requiring 24 hours each annually to participate in the program. In addition, FDA estimates that a recordkeeping burden of 52 hours will be imposed annually on the 10 SIP Sponsors, and a recordkeeping burden of 24 hours will

be imposed annually on each of the 10 Importers and the 20 manufacturers. The 20 manufacturers anticipated to participate in the program will also incur an estimated burden of 24 hours each for copying and providing records to SIP Sponsors and Importers of foreign transactions.

We have established a web page at <https://www.fda.gov/about-fda/reports/importation-program-under-section-804-fdc-act> to communicate news and information about FDA efforts to implement the Section 804 Importation Program. To date, no SIP proposals have been authorized since publication of the

final rule on October 1, 2020. We have therefore retained figures from the previous information collection approval. We assume burden attributable to the required retention, reporting and disclosure of records pertaining to these information collection activities will be distributed among respondents for an average of 100 responses and 6,040 hours annually.

Dated: October 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22653 Filed 10–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA Recall Regulations.

DATES: Either electronic or written comments on the collection of information must be submitted by December 12, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 12, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–N–4066 for “Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Recall Regulations.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Recall Regulations—21 CFR Part 7

OMB Control Number 0910-0249—Extension

This information collection helps support implementation of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) pertaining to product recalls, and regulations in 21 CFR part 7, subpart C (21 CFR 7.40 through 7.59) promulgated to clarify and explain associated practices and procedures by FDA. Sections 7.49, 7.50, and 7.59 (21 CFR 7.49, 7.50, and 7.59) of the regulations apply specifically to product recalls, which may be undertaken voluntarily and at any time

by manufacturers and distributors, or at the request of the Agency.

Recalls are terminated when all reasonable efforts have been made to remove or correct the product in accordance with the recall strategy. The regulations also provide for corrective actions to be taken regarding violative products and establish specific guidelines that enable us to monitor and assess the effectiveness of a firm's efforts in this regard. The provisions include reporting to FDA on the initiation and termination of a recall, as well as submitting recall status reports and making required communication disclosures. The regulations also permit FDA to evaluate whether a recall has been completed in a manner which assures that unreasonable risk of substantial harm to the public health has been eliminated and that violative products have been corrected or removed from the market. Specific guidance regarding recalls is set forth in § 7.59, although product-specific guidance documents may also be

developed to assist respondents to the information collection. Agency guidance documents are issued in accordance with our good guidance regulations in 21 CFR 10.115, which provide for public comment at any time.

Consistent with § 7.50, all recalls monitored by FDA are included in an "Enforcement Report" once they are classified and may be listed prior to classification when FDA determines the firm's removal or correction of a marketed product(s) meets the definition of a recall. Recall data in the Enforcement Report can be accessed through the weekly report publication, the quick and advanced search functionalities, and an Application Programming Interface (API). Instructions for navigating the report, accessing and using the API, and definitions of the report contents are found at <https://www.fda.gov/safety/enforcement-reports/enforcement-report-information-and-definitions>.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Firm initiated recall; § 7.46	2,309	1	2,309	25	57,725
Termination of recall; § 7.55	2,128	1	2,128	10	21,280
Recall status reports; § 7.53	2,309	13	30,017	10	300,170
Total .....	.....	.....	34,454	.....	379,175

¹ There are no capital or operating and maintenance costs associated with this collection.

A review of Agency data shows that 6,928 recall events were conducted during fiscal years 2020 through 2022, for an average of 2,309 recalls annually. We assume an average of 25 hours is needed to submit the requisite notification to FDA, for a total annual burden of 57,725 hours. Similarly,

during the same period, 6,385 recalls were terminated, for an average of 2,128 recall terminations annually, and we assume an average of 10 hours is needed for the corresponding information collection activity. To determine burden associated with recall status reports, we multiplied the average number of

annual respondents (2,309) by the average number of status reports per recall (13), producing the number annual submissions (30,017), which, assuming 10 hours per response, results in a burden of 300,170 hours annually.

TABLE 2—ESTIMATED THIRD-PARTY DISCLOSURE BURDEN ¹

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Recall communications; § 7.49	2,309	1,108	2,559,200	0.05 (3 minutes)	127,960

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

To determine burden associated with recall communication disclosures described in § 7.49, we calculated an average of 1,108 disclosures per recall and attribute 3 minutes for each disclosure, resulting in 127,960 burden hours annually. We provide no estimate for recordkeeping in § 7.59 as these activities are provided as guidance only,

and we regard them to be usual and customary to these respondents.

Cumulatively, these adjustments reflect an overall decrease in our estimate, which we attribute to a corresponding decrease in FDA-regulated product recalls since our last evaluation of the information collection.

Dated: October 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-22652 Filed 10-12-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-D-4177]

Quality Considerations for Topical Ophthalmic Drug Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Quality Considerations for Topical Ophthalmic Drug Products.” This draft guidance discusses certain quality considerations for ophthalmic drug products (*i.e.*, solutions, suspensions, emulsions, gels, ointments, and creams) intended for topical delivery in and around the eye. Specifically, this draft guidance discusses approaches to evaluating visible particulate matter, extractables and leachables, and impurities and degradation products; use of in vitro drug release/dissolution testing as an optional quality control strategy for certain ophthalmic dosage forms; recommendations for design and delivery and dispensing features of container closure systems; and recommendations for stability studies. The draft guidance applies to ophthalmic drug products approved under new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license applications (BLAs), as well as to over-the-counter (OTC) monograph drugs.

DATES: Submit either electronic or written comments on the draft guidance by December 12, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance 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-2023-D-4177 for “Quality Considerations for Topical Ophthalmic Drug Products.” 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 the draft 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ranjani Prabhakara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6648, Silver Spring, MD 20993-0002, 240-402-4652.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Quality Considerations for Topical Ophthalmic Drug Products.” This draft guidance provides information regarding quality considerations for ophthalmic drug products consistent with the requirements outlined in section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)) and 21 CFR parts 210 and 211 for all drug products, 21 CFR part 601 for biological products, 21 CFR part 4 for combination products, and, for ophthalmic drug products with a United States Pharmacopeia (USP) monograph, the applicable criteria from the USP. The draft guidance also provides recommendations to industry on the documentation that should be submitted in the chemistry, manufacturing, and controls (CMC) section of NDAs,

ANDAs, and BLAs for certain CMC attributes for ophthalmic drug products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Quality Considerations for Topical Ophthalmic Drug Products." 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. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 314 and 601 have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively. The collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: October 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–22650 Filed 10–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Screening Framework Guidance for Providers and Users of Synthetic Nucleic Acids

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration for Strategic Preparedness and Response is issuing this screening framework guidance, which sets forth baseline standards for the gene and genome synthesis industry, as well as best practices for all entities involved in the

provision, use, and transfer of synthetic nucleic acids, regarding screening orders and recipients and maintaining records. In addition, this guidance seeks to encourage best practices to address biosecurity concerns associated with the potential misuse of synthetic nucleic acids in order to bypass existing regulatory controls and commit unlawful acts.

FOR FURTHER INFORMATION CONTACT: C. Matthew Sharkey, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 400 7th St. SW, Washington, DC 20024; 202–868–9224, syndnaguidance@hhs.gov.

SUPPLEMENTARY INFORMATION: A request for public comments on the issues covered in this Notice was published in the **Federal Register** (85 FR 52611 [Aug. 26, 2020]; 85 FR 69630 [Nov. 3, 2020], *Review and Revision of the Screening Framework Guidance for Providers of Synthetic Double-Stranded DNA*) with a comment period of more than 120 days. Following consideration of the comments received in response to this Notice, HHS issued proposed draft revised guidance as a **Federal Register** Notice (87 FR 25495 [Apr. 29, 2022], *Screening Framework Guidance for Providers and Users of Synthetic Oligonucleotides*) and solicited additional comments for a period of 60 days. This *Guidance* was drafted through a deliberative interagency process to address the topics raised in public comments received in response to these prior Notices as well as other considerations. Responses received from these prior Notices and summaries of updates contained in this *Guidance* are available for public review at the following website <https://aspr.hhs.gov/legal/synna>.

Screening Framework Guidance for Providers and Users of Synthetic Nucleic Acids

I. Introduction

Synthetic biology is an interdisciplinary field that focuses on the design and fabrication of novel biological components and systems as well as the redesign and fabrication of existing biological systems. Modern biotechnologies have made the conversion of different types of nucleic acids possible (e.g., RNA to DNA), and longer genomic sequences can now be constructed from very short nucleic acids with higher fidelity. Additionally, synthetic biology is not limited to naturally derived genetic material. Thus, this scientific field has the potential to generate existing or novel components, systems, or organisms

directly, using only genetic sequence data.

Advances in nucleic acid synthesis technology and the open-source availability of genetic sequence data have significantly contributed to discovery and innovation in areas such as health and agriculture research and development. However, there are concerns among the scientific community, the nucleic acid synthesis industry, the U.S. government, and the public that individuals with ill intent could exploit biotechnology for harmful purposes. The U.S. government has acted to minimize risks to public health, agriculture, plants, animals, animal or plant products, and the environment due to biological pathogens and toxins. For instance, it has issued the Federal Select Agent Regulations, which regulate a subset of microbial organisms and toxins determined to have the potential to pose a severe threat to public health and safety, animal health, plant health, animal or plant products, or the environment. These regulations are administered jointly by the CDC, Division of Select Agents and Toxins and the Animal and Plant Health Inspection Service, Division of Agricultural Select Agents and Toxins, through the Federal Select Agent Program (FSAP),¹ which sets forth requirements for the possession, use, and transfer of biological select agents and toxins. A second layer of regulation is provided by the Bureau of Industry and Security (BIS) Export Administration Regulations' Commerce Control List (CCL),² which identifies agents and genetic sequences that require licenses before export from the United States. However, these regulated pathogens and toxins do not represent the entirety of the potential risks to public health, agriculture, plants, animals, animal or plant products, or the environment that could arise from the misuse of synthetic nucleic acids. Non-regulated pathogens and toxins, as well as other novel types of nucleic acid sequences, may also pose significant risks if they are misused. To minimize these risks, a shift is needed from relying solely on lists of regulated pathogens and toxins to also assessing the risks associated with other nucleic acid sequences that may contribute to pathogenicity or harm if introduced into new genetic frameworks (i.e., Sequences of Concern [SOCs]). Also, modern molecular biological techniques allow the conversion between different types of nucleic acids (e.g., RNA to DNA, and

¹ <https://www.selectagents.gov/sat/list.htm>.

² <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>.

vice versa), so it has become necessary to treat all types of synthetic genetic materials with equal care. Additionally, benchtop nucleic acid synthesis equipment is increasingly common in modern laboratories, which changes the commercial landscape for synthetic nucleic acids. These advances and others motivated the U.S. government to review and revise the 2010 *Screening Framework Guidance for Providers of Synthetic Double-Stranded DNA*.³

Individuals with no legitimate, *bona fide*, and peaceful purpose should be prevented from accessing genetic materials that could contribute to pathogenicity or toxicity, even when those materials do not contain sequences from FSAP- or CCL-listed pathogens or toxins, and nucleic acid synthesis equipment. Purchasing or synthesizing nucleic acids could enable individuals without a legitimate and peaceful purpose to possess genetic material that would pose risks if misused. Synthetic nucleic acids ordered from Providers can be used to synthesize pathogens *de novo* or may be used to modify non-pathogenic strains or create higher risk pathogens or toxins. Nucleic acid synthesis has removed the need to directly access the naturally occurring agents or naturally occurring genetic material from these agents for those who may wish to do harm with them. The potential availability of high-risk agents has thereby been greatly expanded due to this changing commercial landscape. The *Screening Framework Guidance for Providers and Users of Synthetic Nucleic Acids (Guidance)* reaffirms the recommendation to screen for genetic sequences from regulated organisms and toxins but also recognizes that screening should evolve to encompass all sequences that are recognized to contribute to pathogenicity or toxicity as information regarding these sequences and their verified functions and improved screening methods become available (or as feasible).

This *Guidance* is intended to assist all entities involved in the provision and use of synthetic nucleic acids in establishing and operating a screening framework for synthetic nucleic acid orders, including mechanisms to identify sequences designed to circumvent lists of regulated organisms or toxins or sequences that are not Best Matches to any sequences in GenBank.⁴ This *Guidance* sets forth recommended baseline standards for the nucleic acid synthesis industry (Providers) and for Manufacturers of benchtop nucleic acid

synthesis devices, as well as best practices for Customers of synthetic nucleic acids (*i.e.*, institutions, Principal Users, End Users, and Third-Party Vendors) regarding screening orders for SOC. In addition, this *Guidance* seeks to encourage best practices to address biosecurity concerns associated with the potential misuse of synthetic nucleic acids to bypass existing regulatory controls.

This *Guidance* recommends that (1) upon receiving an order for synthetic nucleic acids, Providers and Third-Party Vendors perform sequence screening, verify the identity of their Customers, and follow up to verify the legitimacy of the order when SOC. are identified; (2) institutions, Third-Party Vendors, Principal Users, and End Users keep records of synthetic nucleic acid orders containing SOC. s; (3) institutions and/or Principal Users record any transfers involving synthetic nucleic acids containing SOC. s beyond the Principal User and manage those transfers responsibly to limit the possibility of misuse; and (4) Manufacturers only distribute equipment capable of synthesizing nucleic acids containing SOC. s to Customers whose legitimacy has been verified and implement mechanisms to track legitimate use of their equipment.

If sequence screening identifies SOC. s, Providers should perform further validation steps and follow-up screening of the Customer to verify the legitimacy of the order. Open communication between Customers and Providers will facilitate the screening and validation of orders that contain SOC. s. Institutions, Principal Users, or End Users are best positioned to know if they are ordering SOC. s and are encouraged to provide information with their order to preemptively demonstrate legitimacy of the order when they are aware that it contains SOC. s. Providers can facilitate this information-sharing by including a mechanism for self-reporting and verification of legitimacy in their ordering process. If follow-up screening does not resolve concerns about the order, or if there is reason to believe a customer may intentionally or inadvertently violate U.S. laws or regulations, Providers should not fulfill the order and should contact designated entities within the U.S. government (*i.e.*, U.S. Department of Commerce, Federal Bureau of Investigation [FBI]) for further information and assistance.

This *Guidance* also provides recommendations regarding proper records retention protocols and sequence screening methodologies. Additionally, this *Guidance* recommends that institutions, Principal

Users, and End Users develop and follow best practices in biosafety, biosecurity, and responsible conduct regarding the possession, use, and transfer of SOC. s. Institutional policies and procedures already in place for safe possession, use, and transfer of these materials, as well as federal and international guidance, such as HHS's Centers for Disease Control and Prevention (CDC) and National Institutes of Health's *Biosafety in Microbiological & Biomedical Laboratories* (BMBL),⁵ the World Health Organization's *Laboratory Biosafety Manual*,⁶ and *Global Guidance Framework for the Responsible Use of the Life Sciences: Mitigating Biorisks and Governing Dual-Use Research*⁷ should be used wherever possible to complement the measures suggested in this *Guidance* to maximize safe and secure practices while seeking to minimize the burden on legitimate life science research.

II. Definitions

The following definitions are applicable for the purpose of this *Guidance*:

Customer: The individual or entity (such as an institution) that orders or requests synthetic nucleic acids from a Provider, or that purchases synthesis equipment from a Manufacturer.

Principal User: The individual who originates an order or request for synthetic nucleic acids or synthesizes nucleic acids and oversees the use of ordered or synthesized nucleic acids in the laboratory. The Principal User may also be the End User.

End User: The individual who possesses and uses synthetic nucleic acids that they have received from a Customer, Principal User, or another End User.

Provider: The entity that synthesizes and distributes synthetic nucleic acids to a customer. A Provider is understood to be synthesizing nucleic acids as a transactional service, rather than a research scientist collaborating with a colleague (for such transfers between collaborators, see End User in this section of the *Guidance*).

Third-Party Vendor: An entity that orders synthetic nucleic acids from Providers and sells them or their constructs, with or without reformulation, or resells benchtop equipment for synthesizing nucleic acids.

⁵ <https://www.cdc.gov/labs/BMBL.html>.

⁶ <https://www.who.int/publications/i/item/9789240011311>.

⁷ <https://www.who.int/publications/i/item/9789240056107>.

³ 75 FR 62820 (Oct. 13, 2010).

⁴ <https://www.ncbi.nlm.nih.gov/genbank/>.

Manufacturer: An entity that produces and sells benchtop equipment for synthesizing nucleic acids. Manufacturers may provide equipment to individuals, entities, Principal Users, or Third-Party Vendors.

Sequence of Concern (SOC): A nucleotide sequence that is a Best Match (see the SEQUENCE SCREENING METHODOLOGY section of this *Guidance*) to a sequence of federally regulated agents (*i.e.*, the Biological Select Agents and Toxins List, or the CCL), except when the sequence is also found in an unregulated organism or toxin. As soon as it is practical to do so, it is also recommended that sequences known to contribute to pathogenicity or toxicity, even when not derived from or encoding regulated biological agents, be treated as SOC⁸. Follow-up customer screening to verify legitimacy should take place when a SOC is identified (see Verifying Legitimacy in this section of the *Guidance*).⁹

Synthetic Nucleic Acids Subject to Screening: At a minimum, DNA or RNA, single- or double-stranded, 200 nucleotides (nt) or longer should be screened for SOC⁸. This *Guidance* recommends that this length for screening be decreased to 50 nt within three years of the issuance of the *Guidance*, and that all entities consider the potential for shorter nucleotides to be assembled into SOC⁸ when multiple synthetic nucleic acids are ordered by the same Customer in a bulk order or for multiple orders over time (see the SEQUENCE SCREENING METHODOLOGY section of this *Guidance*).

Benchtop Nucleic Acid Synthesis Equipment: Benchtop nucleic acid synthesis equipment sold by Manufacturers that is intended to be used to synthesize nucleic acids for use within a research laboratory or within an institution. While this nucleic acid synthesis equipment may not be small enough to be placed on a benchtop (*e.g.*, it sits on the laboratory floor), it is still considered benchtop equipment if it is sold with the intent that it will be used by researchers individually or in a core facility in an institution.

Verifying Legitimacy: Review of information that would allow Providers, Manufacturers, Principal Users, or End Users to authenticate the recipient of synthetic nucleic acids containing SOC⁸ or benchtop nucleic acid synthesis equipment as a legitimate member of the scientific community. Information such as proposed end-use of the order, institutional or corporate affiliation (if applicable), the name of a biosafety officer (if available), documentation of internal review and approval of the research, evidence provided by the recipient's Responsible Official that the recipient is registered with FSAP¹ or Statement by Ultimate Consignee and Purchaser (*i.e.*, a completed BIS-711 form¹⁰) (if applicable), or other evidence of a legitimate research or training program (*e.g.*, publication history, researcher persistent identifiers such as Open Researcher and Contributor Identifier [ORCID]),¹¹ business licenses, grant numbers, research plan) or other legitimate use (*e.g.*, diagnostic test development or manufacture) may be helpful for such verification. In Verifying Legitimacy, providers should avoid the violation of personal privacy. Providers should focus on professional not personal information, except for personal information that is necessary to establish a unique individual user identity to authenticate each recipient.

III. Goals and Scope of the Guidance

Goals: This *Guidance* has three parallel goals. A primary goal is to minimize the risk that individuals without a legitimate need or individuals with malicious intent will use nucleic acid synthesis technologies to obtain organisms for which possession, use, and transfer is regulated by FSAP and CCL.^{1,2} Another goal is to limit the potential for individuals with malicious intent to use synthetic nucleic acids to create high-risk pathogens or toxins using nucleic acid sequences from unregulated organisms. A third goal is to minimize disruption of legitimate research, commerce, and educational activities.

Scope: The *Guidance* pertains to the sale or transfer of all types of synthetic nucleic acids, *i.e.*, DNA and RNA, whether single- or double-stranded. The *Guidance* recommends that Providers develop and/or consult a database of known SOC⁸ to determine if the purchase or transfer includes SOC⁸. It

also recommends methods that aim to ensure the legitimacy of Customers, Principal Users, and End Users of synthetic nucleic acids. The *Guidance* also aims to ensure that entities maintain records of transfers for synthetic nucleic acids containing SOC⁸.

The *Guidance* was developed to align with Providers' and Customers' existing protocols and business practices, to be implemented without unnecessary cost, and to minimize any negative impacts on the conduct of research and business operations. Where practical to do so, entities can use existing business practices to verify the legitimacy of Principal Users and End Users and to track the transfer of materials containing SOC⁸. Many Providers have already instituted measures to address these concerns. The ongoing development of best practices in this area is commendable and encouraged, particularly considering the continued advances in nucleic acid sequencing and synthesis technologies.

IV. Recommendations for Providers, Users, Institutions, and Manufacturers

This *Guidance* encourages the establishment of mechanisms that aim to ensure that Customers, Principal Users, and End Users ordering SOC⁸ are legitimate. It also recommends that Manufacturers install safeguards in nucleic acid synthesis equipment that aim to ensure only legitimate Customers can synthesize SOC⁸. This *Guidance* encourages entities transferring synthetic nucleic acids containing SOC⁸ (*i.e.*, the Third-Party Vendor, Principal User, End User, or institution) to know to whom they are transferring and to conduct screening to verify that the recipients have a legitimate, *bona fide*, and peaceful purpose to use the synthetic nucleic acids. This *Guidance* recommends that the Customers who place these orders use responsible business practices to maintain records of transfers.

Principal Users and End Users are best positioned to understand the nature of their synthetic nucleic acids and oversee and shepherd their responsible use. Principal Users and End Users may also transfer these synthetic nucleic acids to other End Users, such as colleagues, and certain recommendations are made for this case in this *Guidance*. Principal Users and End Users are encouraged to streamline the screening of their synthetic nucleic acid orders by providing verification of their legitimacy to Providers and Third-Party Vendors, if they know that their order contains SOC⁸.

⁸ Pathogenicity or toxicity that threatens public health, agriculture, plants, animals, animal or plant products, or the environment. SOC⁸ include sequences for which a direct and harmful impact on a host has been verified based on published experimental data; and, where experimental data do not exist, based on homology to a sequence encoding a verified function.

⁹ Organizations should define and document their criteria for determining whether a sequence is of concern. In order to ensure compliance with the FSAP and CCL regulations, sequences of concern should include sequences derived from their listed agents—except when they are also found in unregulated agents.

¹⁰ <https://www.bis.doc.gov/index.php/documents/just-licensing-forms/803-bis-711-statement-by-ultimate-consignee-and-purchaser-1/file>.

¹¹ Open Researcher and Contributor Identifier (<https://orcid.org/>).

Information described in the Verifying Legitimacy definition will be helpful to the Provider or Third-Party Vendor of the synthetic nucleic acids in Verifying Legitimacy. Preemptively providing this information is likely to limit the time and expense for Providers in fulfilling these orders in a manner that ensures safety and security.

Providers and Third-Party Vendors of synthetic nucleic acids are encouraged to do the following in this context:

- Know and document to whom they are distributing a product.
- Know if the product that they are synthesizing and/or distributing contains identified SOC.
- Notify Customers and Principal Users when their order contains SOC.
- Implement adequate security and cybersecurity measures to protect the intellectual property and identity of Customers.¹²

- Do not fulfill the order and report an order to the FBI when follow-up screening does not resolve concerns.

- Archive the following information for orders containing SOC for at least three years: Customer information (point-of-contact name, organization, address, email, and phone number), order sequence information (nucleotide sequences ordered, vector used), and order information (date placed and shipped, shipping address, receiver name). Archive this information for longer (e.g., eight years) if it does not pose an undue burden on business operations.

Customers, Principal Users, and End Users of synthetic nucleic acids are encouraged to develop best practices in five main areas in this context:

- Customers, Principal Users, and End Users who know that their synthetic nucleic acid order contains SOC are encouraged to preemptively provide information that will assist the Provider or Third-Party Vendor in verifying their legitimacy.
- Customers, Principal Users, and End Users are encouraged to only transfer synthetic nucleic acids containing SOC to verified individuals with a legitimate use for these synthetic nucleic acids.
- Customers, Principal Users, and End Users are also encouraged to maintain records of these transfers and to communicate them to their biosafety officer, or equivalent, using the responsible business practices in place in their organizations.
- Principal Users and End Users are encouraged to record transfers of

synthetic nucleic acids containing SOC to any other individuals not listed in the original order through a Material Transfer Agreement (MTA), a contract that governs the transfer of materials between entities for use in research, or another sample tracking process.

Principal Users, End Users, and institutions are encouraged to retain records of SOC transfers for at least three years, or longer (e.g., eight years) if it does not pose an undue burden on their operations. Business practices already in place at institutions may be used to fulfill this recommendation.

- Institutions with in-house nucleic acid synthesis capabilities, including synthesis equipment, are also encouraged to apply these recommendations for use or transfers of synthetic nucleic acids containing SOC.

Manufacturers of benchtop nucleic acid synthesis equipment, Customers using the equipment, and institutions where the equipment is used are encouraged to consider these areas for developing best practices:

- Manufacturers should screen all Customers purchasing benchtop nucleic acid synthesizers to validate customer legitimacy and that the equipment is appropriate for their needs. Manufacturers should only provide nucleic acid synthesizers to Customers that have mechanisms in place that aim to ensure that the devices are only operated by legitimate users.

- Institutions should aim to ensure, as soon as it is possible to do so, that benchtop nucleic acid synthesizers—including those that were acquired prior to this *Guidance*—are only accessed by users with a legitimate need, such as through validated user accounts. If this equipment is housed in a core facility for an institution, or in other cases when the equipment is being operated by an authorized user on the behalf of another individual, then the institution should aim to ensure that the legitimacy of the individual receiving any synthetic nucleic acids containing SOC from the authorized user or core facility is also verified. If misuse or unauthorized access to benchtop nucleic acid synthesizers with the intent of obtaining SOC is suspected, institutions should notify their FBI Field Office Weapons of Mass Destruction (WMD) Coordinator.

- Manufacturers whose benchtop nucleic acid synthesizers require the use of proprietary and sole-use reagents (i.e., reagents that can only be obtained from the manufacturer of their devices and do not have common applications other than the operation of their devices) should screen Customers purchasing those reagents to verify their legitimacy,

even when they were not screened when obtaining their nucleic acid synthesizer (i.e., when they acquired their device prior to the issuance of this *Guidance*).

- Manufacturers and their Customers should implement mechanisms to track legitimate use of their equipment, including when it is potentially transferred to a new Principal User or End User during the lifecycle of these equipment (see the definition of Verifying Legitimacy for criteria to verify the legitimacy of a User). Manufacturers may use methods not prescribed within this *Guidance* to achieve this recommendation, such as by having a closed loop system in which operation of their devices relies upon obtaining reagents only available from the Manufacturers (who establish the legitimacy of Customers whenever they obtain these reagents), asking Customers to report the transfer of their benchtop synthesizers to new users, or requiring new user accounts to be verified by the Manufacturer as legitimate.

- Manufacturers should integrate into benchtop nucleic acid synthesizers the capability to screen sequences for SOC and to authenticate legitimate users. This level of screening should be on par with the SOC screening best practices recommended for Providers in this *Guidance*, including screening against SOC databases, when available, that are updated regularly as new SOC are identified as a required step before synthesizing the sequence, in a verifiable manner.¹³ Manufacturers should implement this recommendation using measures that ensure cybersecurity considerations are addressed to guard against malign use and to protect both the intellectual property and identity of users.¹⁴

- Manufacturers should not store databases of SOC that include sequences from unregulated pathogens or toxins on the device itself in an unencrypted manner or a manner that could allow users to extract the database. The aggregation of all sequences that contribute to pathogenicity or toxicity poses a biosecurity risk that may endanger public health, agriculture, plants, animals, animal or plant products, or

¹³ Here, verifiability means the ability to confirm that: every prospective sequence has been screened for SOC against an up-to-date database, and screening is up to date and performant; when users input sequences of concern, this is flagged and reported in real time; and attempts to tamper with the device to avoid screening are flagged and reported in real time.

¹⁴ Manufacturers are encouraged to follow the ISO/IEC 27032:2012 & ISO/IEC 62443 standards for cybersecurity and information security.

¹² Providers and Third-Party Vendors are encouraged to follow the ISA/IEC 27032:2012 & ISO/IEC 62443 standards for cybersecurity and information security.

the environment if disclosed to entities or individuals with malintent.

- Manufacturers should consider using cryptographic methods of screening that protect the contents of the order from disclosure.
- Manufacturers are encouraged to include mechanisms to ensure the integrity of the synthesis process to prevent circumvention of the SOC screening methodology through physical or logical manipulation of the devices or reagents.
- Manufacturers are also encouraged to include a data logging function to maintain a record of the nucleic acids synthesized on their equipment.
- Manufacturers are encouraged to formulate a reference architecture prescribing guidance for the secure implementation, configuration, and operation of devices.

V. Sequence Screening Methodology

Providers should screen orders to determine whether they contain SOC. Appropriate sequence screening software should be selected by Providers of synthetic nucleic acids. This *Guidance* recommends that Providers use either Best Match with a local sequence alignment technique (such as the Basic Local Alignment Search Tool [BLAST] family of tools¹⁵) or another screening approach that they assess to be equivalent or superior to the Best Match approach. Providers are encouraged to determine whether synthetic nucleic acid orders contain sequences that are Best Matches over the appropriate windows to any SOC. By using the Best Match approach, the sequence with the greatest percent identity over each 66 amino acid or 200 nt window (or within three years of the publication of this *Guidance*, over each 16 amino acid or 50 nt window), in all six reading frames, should be considered the Best Match, regardless of the statistical significance or percent identity. The Best Match approach is intended to minimize the number of sequence hits due to sequences that are shared among both SOC and non-SOC.

Some synthetic nucleic acid orders may be appropriate for screening even if all components of the order are nucleic acids shorter than the screening window length. In some cases, orders of short nucleic acids may be intended to construct longer nucleic acids that themselves may constitute SOC. To minimize the risk of this scenario, this *Guidance* encourages screening all sequences ordered by an individual customer, using a short sequence alignment software package. If the

resulting ungapped alignment of any constituents of a customer's order is a Best Match to any SOC, and if these sequences are constructed to allow their ligation to form these SOC (i.e., overlaps are present to support the construction of a larger nucleic acid, which itself is a SOC), Providers should consider those orders as containing SOC and perform standard follow-up Customer screening to establish legitimacy (see Verifying Legitimacy in the DEFINITIONS section of the *Guidance*).

These sequence screening recommendations do not preclude the use by Providers of a curated database of sequences that may directly contribute to pathogenicity or toxicity to identify SOC. This *Guidance* recognizes that a database of known sequences that contribute to pathogenicity and toxicity in humans, animals, and plants, and that have a direct and harmful impact on a host, may not yet exist or may not yet be fully developed and encourages industry consortia and/or any other interested parties in the continued development of such a database for screening SOC—provided that measures are taken to prevent such a database from being misused. These measures should include establishing a security office, security protocols, and a personnel reliability program—based on a risk assessment—to guide selection, implementation, and monitoring of cybersecurity and information security capabilities and protection. These measures should aim to ensure database confidentiality and integrity (including user access controls and sequence encryption, both in transit and at rest) and compliance with applicable laws such that data on SOC are protected against unauthorized access, exfiltration, or other use. Providers may also choose to use other screening approaches that they assess to be equivalent or superior to the Best Match approach or supplement it, including a customized database or approaches that evaluate the biological risk associated with sequences from unregulated agents (i.e., not FSAP- or CCL-listed pathogens or toxins). This *Guidance* encourages the continued development of best practices to address risks associated with nucleic acid synthesis technologies.

Providers, Third-Party Vendors, and professional consortia are encouraged to develop secure mechanisms—designed to respect privacy, security, commercial, intellectual property, and other concerns—to detect SOC that may be broken up among multiple Providers or Vendors, or among multiple orders at a

single Provider or Vendor over a period of time, to evade screening.

In addition, Providers may wish to consider developing solutions for determining which sequences from pathogens should not cause concern (i.e., pass list of genes that pose no pathogenic or toxicity risk).

VI. Customer Screening

In addition to verifying the Customer identity for all orders, Verifying Legitimacy of Customers and Users is recommended when orders contain SOC, and for orders of nucleic acid synthesis equipment. Customers and Users are encouraged to streamline the Customer screening process by providing verification of their legitimacy when submitting an order containing SOC. Information described in the definition of Verifying Legitimacy may be helpful for such verification (See also Red Flags for Verifying Legitimacy in the *Companion Guide to Assist in Implementing the Recommendations of the Screening Framework Guidance for Providers and Users of Synthetic Nucleic Acids*).

This *Guidance* encourages Customers and Principal Users to also Verify Legitimacy of End Users receiving SOC. Records of such verification and transfer can be created and maintained by using business practices that document such transfers (e.g., MTAs). The Principal User is best positioned to determine the legitimacy of any End User to whom SOC are transferred. Keeping a record of such transfers should not cause undue burden on the essential research carried out across the biotechnology enterprise and may therefore entail only a minor adaptation of responsible business practices already in place. This *Guidance* does not include recommendations for reporting transfers to new End Users back to the original Provider. It would be sufficient for each Principal User or End User transferring the materials to verify the legitimacy of the recipient during each transfer and for all parties to retain a record of it for at least three years, and longer (e.g., eight years) if this does not pose an undue burden on their operations.

Providers should be aware of regulatory and statutory prohibitions related to U.S. persons dealing with certain foreign persons, entities, and companies. Providers are encouraged to check the Customer against the International Trade Administration consolidated list of individuals and entities for which the U.S. government maintains restrictions on certain exports, re-exports, or transfers of

¹⁵ <https://blast.ncbi.nlm.nih.gov/Blast.cgi>.

items.¹⁶ In the event that a company, entity, or person on the list appears to match that of a customer or other recipient, additional due diligence should be conducted before proceeding. There may be a strict export prohibition, a requirement for seeking a license application, or other evaluation of the Customer or other recipient necessary to ensure it does not result in an activity prohibited by any U.S. export regulations, or other restrictions. Before fulfilling the order, to ensure full compliance with all the terms and conditions of the restrictions placed on the parties on this list, the Provider must check the official publication of restricted parties in the **Federal Register**.

VII. Following Up With the U.S. Government in Cases Where Malintent is Suspected by Providers, Third-Party Vendors, or Manufacturers

If sequence or Customer screening raises concerns that are not alleviated through follow-up screening, Providers, Third-Party Vendors, and Manufacturers should not fulfill the order and are strongly encouraged to contact their nearest FBI Field Office's WMD Coordinator. Institutions are encouraged to work with their Principal Users and End Users to help them understand that only individuals with legitimate, *bona fide*, and peaceful purpose should obtain synthetic nucleic acids containing SOC's.

VIII. Records Retention

The *Guidance* recommends that Providers, Third-Party Vendors, and Manufacturers retain the following types of records for at least three years, and longer (e.g., eight years) if this does not pose an undue burden on their operations:

- Records of Customer orders including the following information: Customer information (point-of contact name, organization, address, email, and phone number), order sequence information (nucleotide sequences ordered, vector used), and order information (date placed and shipped, shipping address, receiver name);
- Records of protocols for sequence screening and for determining whether a sequence hit qualifies as a SOC;
- Records of screening documentation of all hits, even if the order was deemed acceptable;
- Records of any follow-up screening, even if the order was ultimately filled; and

- The ultimate disposition of any SOC orders, with documentation of reasoning for final decision (fulfill versus deny).

IX. Periodic Review, Evaluation, and Improvement of This Guidance

This *Guidance* addresses biosecurity risks that have emerged in a dynamic and rapidly developing technological landscape. It is likely that new risks will emerge and that new technological approaches will also appear to address them. As such, this *Guidance* encourages the further development of mechanisms to detect SOC's and screening strategies for sequences that contribute directly to pathogenicity and toxicity. For instance, strategies may be used by malicious Customers to obfuscate SOC's, including engineering pathogenic or toxic proteins with completely novel sequences. In such cases, synthetic nucleic acid orders may contain 50 nt windows that are not a match to any known sequence. Although there are likely legitimate explanations for orders of sequences with no matches in existing databases (e.g., nucleic acids ordered to populate microarrays or to store digital information), in such cases, it may be possible to use predictive bioinformatic algorithms to screen sequences that are not a match to any known sequences to determine if they could produce proteins that are structurally and functionally identical to SOC's. This *Guidance* encourages Providers to continue to develop these methods to best ensure the safety and security of the synthetic nucleic acid research enterprise.

This *Guidance* will be periodically revisited, including by soliciting stakeholder input, and feedback is encouraged from the nucleic acid synthesis industry as well as from their customers as they implement the *Guidance*. Furthermore, implementation of this *Guidance* will be supported through the publication of a Companion Guide.

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–22540 Filed 10–12–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Biomedical Advanced Research and Development Authority Industry Day 2023

AGENCY: Administration for Strategic Preparedness and Response (ASPR),

Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Biomedical Advanced Research and Development Authority (BARDA) annually hosts BARDA Industry Day (BID), a two-day conference with industry and our government partners to share BARDA's goals and objectives, increase awareness of U.S. government medical countermeasure (MCM) priorities, and facilitate collaboration between public and private sectors within the health security space. This year, BARDA plans to discuss implementation efforts for our *2022–2026 Strategic Plan*, which focuses on strengthening the health security of the nation, embracing lessons learned from the COVID–19 pandemic, incorporating new avenues of promising research and development, and addressing the imperative for MCMs that are safe, effective, and widely accessible.

DATES: BID 2023 will be a hybrid event, held from Monday, November 13–Tuesday, November 14, 2023. The meeting will begin each day at 9 a.m. Eastern Standard Time.

ADDRESSES: This meeting is open to the public. Register here: <https://medicalcountermeasures.gov/barda/barda-industry-day-2023/>.

FOR FURTHER INFORMATION CONTACT: Ezinne N. Ebi, Biomedical Advanced Research & Development Authority (BARDA), ezinne.ebi@hhs.gov, (202) 989–5539.

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–22539 Filed 10–12–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

¹⁶ <https://www.trade.gov/consolidated-screening-list>.

notify the contact person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://videocast.nih.gov/>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, January 2024.

Date: January 23, 2024.

Open: 12:00 p.m. to 2:50 p.m.

Agenda: Report from the Institute Director, Council Members and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Kathy Salaita, Sc.D., Acting Associate Director for Research Administration, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Bethesda, MD 20892, kathy.salaita@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nibib.nih.gov/about-nibib/advisory-council> where an agenda and any additional information for the meeting will be posted when available.

Dated: October 10, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-22672 Filed 10-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; RM1 HEAL Interdisciplinary Team Science to Uncover the Mechanisms of Pain Relief by Medical Devices.

Date: November 6, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301-496-9223, Ana.Olariu@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: October 6, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-22618 Filed 10-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Office of Research Infrastructure Programs Special Emphasis Panel Office of Research Infrastructure Programs (ORIP) Special Emphasis Panel: Applications for Scientific Conferences.

Date: November 13, 2023.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301-455-2364, tatiana.cohen@nih.gov.

(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: September 29, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-22516 Filed 10-12-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Roybal Centers.

Date: November 14–15, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue RM: 2C212, Bethesda, MD 20892, 301–402–7702, firthkm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22520 Filed 10–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Training and Workforce Development Study Section–D, October 12, 2023, 09:30 a.m.–05:00 p.m., National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892, which was published in the **Federal Register** on September 19, 2023, FR Doc. 2023–20244, 88 FR 64447.

This notice is being amended to change the name of the committee from Training and Workforce Development Study Section–D to Review of U–RISE and MARC Applications. Meeting date, time, and location will stay the same. The meeting is closed to the public.

Dated: October 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22514 Filed 10–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; Clinical Applications.

Date: November 16, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Eye Institute, Bethesda, MD 20817, 240–276–5864, jennifer.schiltz@nih.gov.

Name of Committee: National Eye Institute Special Emphasis Panel; Translational Research Program for Therapeutics (R61/R33).

Date: December 12, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Designated Federal Official, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Bethesda, MD 20817, (301) 451–2020, ashley.fortress@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 10, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–22671 Filed 10–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2363]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before January 11, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2363, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are

used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information

regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Brookings County, South Dakota and Incorporated Areas Project: 20-08-0008S Preliminary Date: April 28, 2023	
City of Arlington	City Hall, 202 West Elm Street, Arlington, SD 57212.
City of Aurora	City Office, 102 West Front Street, Aurora, SD 57002.
City of Brookings	City and County Government Center, 520 3rd Street, Suite 140, Brookings, SD 57006.
City of Bruce	Finance Office, 507 Jay Street, Bruce, SD 57220.
City of Elkton	Community Center, 109 Elk Street, Elkton, SD 57026.
City of Volga	City Hall, 226 Kasan Avenue, Volga, SD 57071.
Town of Bushnell	Map Repository, 47816 Main Street, Bushnell, SD 57276.
Town of Sinai	Fire Hall, 307 Main Street, Sinai, SD 57061.
Town of White	City Finance Office, 300 West Main Street, White, SD 57276.
Unincorporated Areas of Brookings County	City and County Government Center, 520 3rd Street, Suite 200, Brookings, SD 57006.
Pierce County, Washington and Incorporated Areas Project: 21-10-0021S Preliminary Date: December 07, 2022	
City of Roy	City Hall, 216 McNaught Street S, Roy, WA 98580.
Unincorporated Areas of Pierce County	Pierce County Tacoma Mall Plaza, 2702 South 42nd Street, Suite 201, Tacoma, WA 98409.

[FR Doc. 2023-22689 Filed 10-12-23; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to

adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of January 25, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services

Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the

Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Washington County, Arkansas and Incorporated Areas Docket No.: B-2131	
City of Elkins	City Hall, 1874 Stokenbury Road, Elkins, AR 72727.
City of Elm Springs	City Hall, 289 Jayroe Avenue, Elm Springs, AR 72728.
City of Farmington	City Hall, 354 West Main Street, Farmington, AR 72730.
City of Fayetteville	Development Services Building, 125 West Mountain Street, Fayetteville, AR 72701.
City of Goshen	City Hall, 124 Church Street, Goshen, AR 72735.
City of Greenland	City Hall, 8 East Ross Street, Greenland, AR 72701.
City of Johnson	City Hall, 2904 Main Drive, Johnson, AR 72704.
City of Lincoln	City Hall, 101 East Bean Street, Lincoln, AR 72744.
City of Prairie Grove	City Hall, 975 East Douglas Street, Prairie Grove, AR 72753.
City of Springdale	City Hall, 201 Spring Street, Springdale, AR 72764.
City of Tontitown	City Hall, 235 East Henri De Tonti Boulevard, Tontitown, AR 72762.
City of West Fork	City Hall, 164 North Centennial Avenue, West Fork, AR 72774.
City of Winslow	City Hall, 108 North Winslow Boulevard, Winslow, AR 72959.
Unincorporated Areas of Washington County	Washington County Planning Department, 2615 South Brink Drive, Fayetteville, AR 72701.

[FR Doc. 2023-22691 Filed 10-12-23; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone

designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of February 8, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at <https://msc.fema.gov> by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the

FEMA Map Service Center at <https://msc.fema.gov>.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Maricopa County, Arizona and Incorporated Areas Docket No.: FEMA-B-1864 and FEMA-B-2296	
City of Avondale	City Hall, 11465 West Civic Center Drive, Development and Engineering Services Department, Suite 120, Avondale, AZ 85323.
City of Buckeye	City Hall, 530 East Monroe Avenue, Buckeye, AZ 85326.
City of Goodyear	Development Center, 1900 North Civic Square, Goodyear, AZ 85395.
City of Phoenix	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.
Town of Gila Bend	Town Hall, 644 West Pima Street, Gila Bend, AZ 85337.
Unincorporated Areas of Maricopa County	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.
Yavapai County, Arizona and Incorporated Areas Docket No.: FEMA-B-2156 and B-2260	
City of Cottonwood	Public Works, 1490 West Mingus Avenue, Cottonwood, AZ 86326.
City of Sedona	Community Development Department, 102 Roadrunner Drive, Sedona, AZ 86336.
Town of Camp Verde	Town Hall, 473 South Main Street, Room 108, Camp Verde, AZ 86322.
Unincorporated Areas of Yavapai County	Yavapai County Flood Control District, 1120 Commerce Drive, Prescott, AZ 86305.
Collier County, Florida and Incorporated Areas Docket No.: FEMA-B-2074	
City of Everglades City	City Hall, 102 Copeland Avenue North, Everglades City, FL 34139.
City of Marco Island	Growth Management Department, 50 Bald Eagle Drive, Marco Island, FL 34145.
City of Naples	Building Department, 295 Riverside Circle, Naples, FL 34102.
Unincorporated Areas of Collier County	Collier County Growth Management Department, 2800 North Horse-shoe Drive, Naples, FL 34104.
Grafton County, New Hampshire (All Jurisdictions) Docket No.: FEMA-B-2262	
Town of Alexandria	Town Office, 47 Washburn Road, Alexandria, NH 03222.
Town of Ashland	Town Office, 20 Highland Street, Ashland, NH 03217.
Town of Benton	Town Hall, 221 Coventry Road, Benton, NH 03785.
Town of Bethlehem	Town Office, 2155 Main Street, Bethlehem, NH 03574.
Town of Bridgewater	Town Office, 297 Mayhew Turnpike, Bridgewater, NH 03222.
Town of Bristol	Town Office, 5 School Street, Bristol, NH 03222.
Town of Campton	Town Office, 12 Gearty Way, Campton, NH 03223.
Town of Canaan	Town Office, 1169 U.S. Route 4, Canaan, NH 03741.
Town of Dorchester	Town Office, 1021 NH Route 118, Dorchester, NH 03266.
Town of Ellsworth	Town Office, 3 Ellsworth Pond Road, Ellsworth, NH 03223.
Town of Franconia	Town Hall, 421 Main Street, Franconia, NH 03580.
Town of Grafton	Town Office, 7 Library Road, Grafton, NH 03240.
Town of Groton	Town Office, 754 North Groton Road, Groton, NH 03241.
Town of Hebron	Select Board Office, 7 School Street, Hebron, NH 03241.
Town of Holderness	Town Office, 1089 U.S. Route 3, Holderness, NH 03245.
Town of Lincoln	Town Hall, 148 Main Street, Lincoln, NH 03251.
Town of Orange	Town Office, 8 Town House Road, Orange, NH 03741.
Town of Orford	Town Office, 2529 Route 25A, Orford, NH 03777.
Town of Piermont	Selectmen's Office, 130 Route 10, Piermont, NH 03779.
Town of Plymouth	Town Office, 6 Post Office Square, Plymouth, NH 03264.
Town of Rumney	Town Office, 79 Depot Street, Rumney, NH 03266.
Town of Thornton	Town Office, 16 Merrill Access Road, Thornton, NH 03285.
Town of Warren	Selectmen's Office, 8 Water Street, Warren, NH 03279.

Community	Community map repository address
Town of Waterville Valley	Rust Municipal Building, 14 TAC Lane, Waterville Valley, NH 03215.
Town of Wentworth	Town Office, 7 Atwell Hill Road, Wentworth, NH 03282.
Town of Woodstock	Town Office, 165 Lost River Road, Woodstock, NH 03262.

Harney County, Oregon and Incorporated Areas
Docket No.: FEMA-B-2287

Burns Paiute Reservation	Burns Paiute Tribal Office, 100 Pasigo Street, Burns, OR 97720.
City of Burns	City Hall, 242 South Broadway Avenue, Burns, OR 97720.
City of Hines	City Hall, 101 East Barnes Avenue, Hines, OR 97738.
Unincorporated Areas of Harney County	Harney County Planning Department, 360 North Alvord Avenue, Burns, OR 97720.

[FR Doc. 2023-22690 Filed 10-12-23; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0002; Internal Agency Docket No. FEMA-B-2375]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before January 11, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective

Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2375, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the

revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Buckingham County, Virginia and Incorporated Areas Project: 20-03-0041S Preliminary Date: February 28, 2023	
Unincorporated Areas of Buckingham County	Buckingham County Administration, 13380 West James Anderson Highway, Buckingham, VA 23921.

[FR Doc. 2023-22688 Filed 10-12-23; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0002; Internal Agency Docket No. FEMA-B-2378]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before January 11, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective

Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2378, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the

revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Barber County, Kansas and Incorporated Areas Project: 23-07-0008S Preliminary Date: June 23, 2023	
City of Hardtner	City Hall, 104 East Woodworth Avenue, Hardtner, KS 67057.
City of Hazelton	City Hall, 408 East Main Street, Hazelton, KS 67061.
City of Isabel	Barber County Courthouse, 120 East Washington Avenue, Medicine Lodge, KS 67104.
City of Kiowa	Barber County Courthouse, 120 East Washington Avenue, Medicine Lodge, KS 67104.
City of Medicine Lodge	City Hall, 114 West 1st Avenue, Medicine Lodge, KS 67104.
City of Sharon	Barber County Courthouse, 120 East Washington Avenue, Medicine Lodge, KS 67104.
City of Sun City	Barber County Courthouse, 120 East Washington Avenue, Medicine Lodge, KS 67104.
Unincorporated Areas of Barber County	Barber County Courthouse, 120 East Washington Avenue, Medicine Lodge, KS 67104.

[FR Doc. 2023-22687 Filed 10-12-23; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-68]

30-Day Notice of Proposed Information Collection: Project Based Vouchers (PBV) Online Form; OMB Control No.: 2577-0296**AGENCY:** Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* November 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington,

DC 20410-5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4186, Washington, DC 20410; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov. 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 4, 2023 at 88 FR 28594.

A. Overview of Information Collection

Title of Information Collection: Project Based Vouchers (PBV) Online Form.

OMB Approval Number: 2577-0296.
Type of Request: Revision of a currently approved collection.

Form Number: HUD is developing a standardized electronic system that will collect this information. Within the scope of this collection, HUD requests the information in this notice from Public Housing Authorities (PHA) participating in the PBV program.

Description of the need for the information and proposed use: PHAs apply for funding to assist low-income

families to lease housing. One of the programs through which PHAs provide housing assistance is the Housing Choice Voucher (HCV) Program, a tenant-based rental assistance program. This program operates by providing vouchers that cover a portion of the rent to owner for a unit. Some PHAs project-base their vouchers (the rental assistance is connected to a unit, not a family). Project-based vouchers (PBVs) are becoming a larger percentage of PHAs overall HCV portfolios, rising from just over 110,000 in 2016 to approximately 307,000 at the end of 2022. The PBV portfolio is expected to grow even more with the on-going conversion of up to 455,000 public housing units to project-based assistance under the Congressionally authorized Rental Assistance Demonstration (RAD). HUD currently collects information on individual participants in the HCV program who are in PBV units.

This leaves a gap in HUD's information collection of PBVs between the individual tenant data and the aggregated PHA data. HUD does not systematically collect information on the development or project level, including the number of units at PBV projects, what exceptions apply, their rents, the terms of contract, and numerous other potential data points. This creates a challenge for monitoring, tracking and analyzing PBV projects, and limits HUD's ability to respond to requests for information on the PBV program from Congress and other sources. Additionally, it prevents HUD from having data with which to make informed decisions on risk-mitigation strategies with respect to PBVs.

Potential risks are particularly heightened in the case of RAD PBV where a PHA-owned property is required to have an independent entity that performs inspections and determines rent adjustments. Currently,

HUD has limited information about RAD PBV properties after conversion and is unable to adequately monitor their long-term viability. Through this collection, HUD is requiring the submission of project-level data on all PBVs, including but not limited to RAD PBV, Mixed Finance PBVs, all PBVs at Moving to Work (MTW) Agencies, and all PBVs at non-MTW Agencies.

Field Changes:

This data collection will be renewing the following fields of collection for PBV:

- HAP Contract Number
- Name of Project
- Primary Street Address
- Structure Type
- Effective Date of HAP Contract
- Expiration Date of HAP Contract
- Type of Project Based Voucher Section 8 Contract
- Is this a RAD HAP contract?
- Vacancy Payments Permitted?
- Ownership Structure
- If PHA-Owned: Name of Independent Entity or Entities
- Number of Total Units in the Project (PBV and non-PBV units)
- Number of Units Under HAP Contract by Bedroom Size
- Number and Bedroom Distribution of PBV-Assisted Section 504 Units at the Project
- Does an Exception to the Income-Mixing Requirement Apply?
- If Yes, which exception is applicable?
- Program Cap Exception?
- If yes, enter the number of units for each excepted category.

In addition to the data fields previously reviewed and approved by OMB, this PRA renewal includes new fields specific for RAD PBV projects that will need to be completed for each project with a RAD PBV HAP Contract annually.

The new fields of collection for RAD PBV projects include:

- Annual Replacement Reserve Deposit Amount
- Annual Replacement Reserve Withdrawal Amount
- Ending Balance for the Replacement Reserve Account
- Replacement Reserve Deposits Suspended/Waived Indicator?
- Date Replacement Reserve Deposits Suspended/Waived?

Within the PRA renewal the following fields will be discontinued and deleted from the form:

- Number of Units Under AHAP
- Effective Date(s) of AHAP
- Owner Name
- Owner Tax ID
- Management Entity
- Other Related Programs: Tax Credit, RAD, HUD-insured, VASH, or Other

- Population Served: General, Homeless, Veterans, Families Eligible for Supportive Services, Families Receiving Supportive Services, Elderly Family, Disabled Family
- Supportive Services Available (Y/N)?
- Unique Project Building Code
- Number of RAD PBVs
- Use Restriction End Date
- Year Built

HUD recognizes that some of this information may be submitted to HUD, for instance as part of the initial subsidy layering review process, however, these submissions are insufficient to give HUD a universal and currently accurate picture of the PBV universe. Therefore, HUD is proposing this information collection.

Definitions

HAP Contract Number

This is a unique number generated by the system when a new HAP Contract is entered into the HIP.

Name of Project

The name of the project as determined by the PHA as used in public or property records (where such records contain a name of the property as a whole) or the commonly used name of the project (such as the name on a sign at the property entrance). If no such name exists, a name for the project designated by the PHA for use in the system. "Project" is defined consistent with 24 CFR 983.3(b) as "a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land."

Primary Street Address

The street address (including text fields for city, state, and zip code) of the building or buildings covered by the HAP contract and all units covered under the HAP contract.

Structure Type

The most closely matching description of the project from among this list: Single-Family and Non-Single-Family. Single-family is defined in the 24 CFR 983.3(b) as "a building with no more than four dwelling units (assisted or unassisted)."

Effective Date of HAP Contract

Effective date listed in § 1(d) of Part 1 of the HAP contract. A single-stage project will have the same effective date for all contract units. For a multi-stage project, include the effective date of the first stage of the HAP contract. If the HAP contract has multiple stages, enter the effective date of the first stage.

Expiration Date of HAP Contract

The HAP contract term end date, as determined by adding the length of the HAP contract term (initial and any extensions) to the effective date listed in § 1(d) of Part 1 of the HAP contract (for a multi-stage project, use the effective date of the first stage). The length of the initial and extension HAP contract terms shall be those listed in the HAP contract (for existing projects: § 1(d) of Part 1 of the Form HUD-52530-B HUD and associated exhibits; for newly constructed and rehabilitated projects: § 1(e) of Part 1 of the Form HUD-52530-A and associated exhibits).

Type of Project Based Section 8 Contract

The following definitions apply consistent with 24 CFR 983.3(b), as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017):

a. *Existing Housing.* Housing units that already exist on the proposal selection date and that substantially comply with the Housing Quality Standards (HQS) on that date.

b. *Rehabilitated Housing.* Housing units that exist on the proposal selection date, but do not substantially comply with the Housing Quality Standards (HQS) on that date, and are developed, pursuant to an agreement between the PHA and owner, for use under the PBV program.

c. *Newly Constructed Housing.* Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an agreement between the PHA and owner for use under the PBV program. Upon amendment of 24 CFR 983.3(b), the new definitions therein will supersede the definitions listed here.

Is this a RAD HAP contract?

RAD PBV HAP Contract: A HAP contract for units in a post-conversion property in which assistance was converted from a non-PBV form of rental assistance to PBV under RAD ("Covered Project"), where the contract is for only those units converted to PBV under RAD ("RAD PBV units"). This includes a contract for RAD PBV units that are located in a Covered Project converted through a transfer of assistance.

Non-RAD PBV HAP Contract: A HAP contract for PBV units, none of which were converted to PBV under RAD ("non-RAD PBV units"). This includes a contract for non-RAD PBV units that are located within a property that also contains units that were converted under RAD.

Vacancy payments permitted?

Provide an answer (yes/no) to the question of whether the PHA has included the vacancy payment provision in this HAP contract (for existing projects: § 1(e)(2) of Part 1 of the Form HUD-52530-B HUD; for newly constructed and rehabilitated projects: § 1(f)(2) of Part 1 of the Form HUD-52530-A).

Ownership Structure

The following definitions apply consistent with 24 CFR part 983, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017):

a. PHA-owned:

- Owned by the PHA (which includes a PHA having a “controlling interest” in the entity that owns the unit);
- Owned; or
- Owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

“Controlling interest” means:

- i. Holding more than 50 percent of the stock of any corporation;
- ii. Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
- iii. Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
- iv. Holding more than 50 percent of all managing member interests in an LLC;
- v. Holding more than 50 percent of all general partner interests in a partnership; or
- vi. Having equivalent levels of control in other ownership structures. Most ownership structures are already covered in the categories listed above. This last category is meant to cover any ownership structure not already listed in the categories above. Also, under this category (f), a PHA must have more than 50 percent control in that ownership structure (an equivalent level of control) for the project to be considered PHA-owned.

b. PHA ownership interest but not PHA Owned: An ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds any direct or indirect interest in the project in which the units are located, including, but not limited to, an interest as:

- Titleholder;
- Lessee;
- Stockholder;

- Member, or general or limited partner; or
- Member of a limited liability corporation.

c. Not PHA-Owned and No PHA Ownership interest: The PHA does not own or has no ownership interest in the property.

Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed above.

If PHA-Owned: Name of Independent Entity or Entities

If the project is PHA-Owned, the independent entity or entities which perform the following functions consistent with 24 CFR part 983: 1. Review the PHA’s PBV selection process. 2. Establish PBV contract rents (initial rent to owner and redetermined rent to owner). 3. Determine rent reasonableness. 4. Provide a copy of the rent reasonableness determination to the PHA and the HUD field office where the project is located. 5. Establish term of initial and any renewal HAP contract as required in 24 CFR 983.205. 6. Inspect units. 7. Provide a copy of the inspection report to PHA and HUD field office where the project is located.

MTW PHAs with waivers may write in themselves as the independent entity.

Instructions: If user identifies the project as PHA-Owned then the user must list the independent entity(s).

Number of Total Units in the Project (PBV and Non-PBV Units)

Total number of units (PBV and non-PBV units) in the project, including those covered by an AHAP or HAP contract and non-contract units.

Number of Units Under HAP Contract by Bedroom Size

Total number of contract units in the project covered by the HAP contract, broken out by each bedroom size (0, 1, 2, 3, 4, 5+).

Number and Bedroom Distribution of PBV-Assisted Section 504 Units at the Project

This field captures the number of PBV-assisted units for each category listed below, broken out by each bedroom size (0, 1, 2, 3, 4, 5+), at the project that are accessible for persons with mobility impairments in accordance with Section 504 of the Rehabilitation Act of 1973 and HUD’s implementing regulations at 24 CFR part 8.

- Section 504 Mobility Units
- Section 504 Hearing Vision Units
- Section 504 Mobility + Hearing Vision Units

Such units must meet either the Uniform Federal Accessibility Standards (UFAS) or 2010 Americans with Disabilities Act (ADA) Standards (in accordance with HUD’s Deeming Notice published in the **Federal Register** on May 23, 2014 (79 FR 29671)).

Does an exception to the income mixing requirement apply?

Provide an answer (yes/no) to the question of whether the project qualifies for an exception to the income-mixing requirement under 24 CFR 983.56, and applicable guidance. Applicable program guidance includes, but is not limited to: 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017); 86 FR 53207 (Sept. 27, 2021); 87 FR 3570 (Jan. 24, 2022).

If Yes, Which Exceptions(s)

Choose the applicable exception from among those allowed by 24 CFR 983.56, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017). The definitions of the exception categories are found in the following locations:

a. Units that are exclusively made available to households eligible for supportive services: PIH Notice 2017–21, Attachment E.

b. Units that are specifically made available for families receiving supportive services: PIH Notice 2017–21, Attachment E, for grandfathered projects as described therein.

c. Units that are exclusively made available to elderly families: PIH Notice 2017–21, Attachment E.

d. Units that are specifically made available for disabled families: PIH Notice 2017–21, Attachment E, for grandfathered projects as described therein.

e. Units located in a census tract with a poverty rate of 20 percent or less: PIH Notice 2017–21, Attachment E.

f. Units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD: PIH Notice 2017–21, Attachment F, for projects that meet the additional requirements as described therein.

g. Units that are exclusively made available to eligible youth receiving FUP/FYI assistance: FR–6284–N–01

h. HUD–VASH vouchers: 86 FR 53207 (Sept. 27, 2021). Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.

i. MTW Waiver Authority: MTW agencies may increase PBV project caps under certain provisions of section 8(o)(13)(D) of the 1937 Act and 24 CFR 983.56(a)–(b), as superseded by HOTMA

Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21). The standard agreement may also provide additional PBV flexibilities, including the ability to waive provisions in 24 CFR part 983.

Program cap exception?

Provide an answer (yes/no) to the question of whether the project qualifies for an exception to the program cap under 24 CFR 983.6, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017).

If yes, under which category do they qualify?

Enter the number of excepted units from those allowed by 24 CFR 983.6, as amended by 82 FR 5458 (Jan. 18, 2017), 82 FR 32461 (Jul. 14, 2017). The definitions of the exception categories are found in the following locations:

- Units that are specifically made available to house homeless individuals and families: PIH Notice 2017–21.
- Units that are specifically made available to house families that are comprised of or include a veteran: PIH Notice 2017–21.
- Units that provide supportive housing to persons with disabilities or to elderly persons: PIH Notice 2017–21.
- Units located in a census tract with a poverty rate of 20 percent or less: PIH Notice 2017–21.
- Units that were previously subject to certain federal rent restrictions or receiving another type of long-term

housing subsidy provided by HUD: PIH Notice 2017–21, for projects that meet the additional requirements as described therein.

- Units that house eligible youth receiving FUP/FYI assistance: FR–6284–N–01.
- HUD–VASH vouchers specifically awarded by HUD for project-based assistance: PIH Notice 2017–21. Upon amendment of 24 CFR part 983, the new definitions therein will supersede the definitions listed here.
- MTW Waiver Authority: MTW agencies may increase PBV program caps under certain provisions of section 8(o)(13)(B) of the 1937 Act and 24 CFR 983.6(a)–(b), as superseded by the Housing Opportunity through Modernization Act of 2016 (HOTMA) Implementation Notices at 82 FR 5458 and 82 FR 32461 (see implementation guidance in Notice PIH 2017–21). The standard agreement may also provide additional PBV flexibilities, including the ability to waive provisions in 2.

Annual Replacement Reserve Deposit Amount

Specified in the RCC, this is the required annual amount that is to be deposited into the project’s replacement reserve account.

Annual Replacement Reserve Withdrawal Amount

The total amount of funds withdrawn from the project’s replacement reserve account within a given year (12-month period) to fund capital repairs.

Ending Balance for the Replacement Reserve Account

The ending balance of the replacement reserve account after all transactions (withdrawals and deposits) in a given 12-month period are accounted for.

Replacement Reserve Deposits Suspended/Waived Indicator?

Provide an answer (yes/no) to the question of whether a request to suspend/waive deposits to the replacement reserve was submitted by the Owner and approved by HUD for a given project.

Date Replacement Reserve Deposits Suspended/Waived?

If the response to “Replacement Reserve Deposits Suspended/Waived Indicator” is “yes”, provide the date HUD approved the request for replacement reserve deposits to be suspended/waived.

Burden Estimate

Respondents: Public housing authorities (PHAs) that have project-based vouchers (PBVs) as a part of their portfolio.

Estimated Number of Respondents: 819.

Estimated Number of Responses: 4,914.

Frequency of Response: 6.

Average Hours per Response: 1.5.

Total Estimated Burdens: 7,371.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
PBV Property Information	819	6	4,914	1.5	7,371	\$44.71	\$329,557

Our burden estimate for the number of respondents is based on a recent VMS total of the number of PHAs reporting PBVs in VMS and accounting for the subset of PBVs that are RAD. Specific to projects with a RAD PBV HAP Contract, the RAD Notice requires Project Owners to establish and maintain a replacement reserve in an interest-bearing account. At this time, there are approximately 1,200 projects with a RAD PBV HAP contract for which this requirement is applicable. To track the replacement reserve requirement, HUD is requesting PHA response to 3–5 questions for each project with a RAD PBV HAP Contract.

It is assumed PHAs will have to do a one-time submission for all the projects and potentially make updates when changes occur to the PBV projects

(frequency of responses). It is anticipated that this cost will decline in subsequent years as PHAs will only need to make the following updates:

- Changes to HAP contract information already entered into the system for PBV projects; and
- Responses to 3–5 questions (as applicable) regarding the replacement reserve account for each RAD project where the PHA serves as a contract administrator.

The “responses per annum” represents an estimate of the amount of PBV projects that will need to be entered into the system. This number is multiplied by the frequency of responses to arrive at an annual estimate of burden hours. This is then multiplied by median average wage of a

“Management Analyst” according to the Bureau of Labor Statistics for 2021 to arrive at a total annual cost.

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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. 3507.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023–22642 Filed 10–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–71]

30-Day Notice of Proposed Information Collection: Section 202 Supportive Housing for the Elderly Application Submission Requirements; OMB Control No.: 2502–0267

AGENCY: Office of Policy Development
and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* November 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street

SW, Washington, DC 20410; email; Colette.Pollard@hud.gov; telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and 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.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 6, 2022 at 87 FR 74650.

A. Overview of Information Collection

Title of Information Collection:
Section 202 Supportive Housing for the Elderly.

OMB Approval Number: 2502–0267.

OMB Expiration Date: 10/31/2023.

Type of Request: Extension of a currently approved collection.

Form Number: SF–424, Form HUD–92015–CA, Form HUD–2530, Form HUD–2880, Form HUD–2991, Form HUD–2993, Form HUD–92041, Form HUD–92042, SF–LLL.

Information collection	Number of respondents	Frequency of response	Responses per year	Burden hours per response	Annual burden hours	Hourly cost per response*	Total annual cost
Part 1—Application Form for Section 202 Supportive Housing—Capital Advance	150	1	150	2	300	\$94.25	\$28,275
Part 2—Narrative Responses and Forms BELOW:							
Tab A: Eligibility and Articles of Incorporation	150	1	150	2	300	94.25	28,275
Tab B: Demonstration of Need	150	1	150	2	300	94.25	28,275
Tab C: The Development Plan	150	1	150	3	450	94.25	42,412
Tab D: Development Budget	150	1	150	3	450	94.25	42,412
Tab E: Committed Funds	150	1	150	3	450	94.25	42,412
Tab F: Capital Needs Assessment	150	1	150	3	450	94.25	42,412
Tab G: Operating Pro Forma	150	1	150	3	450	94.25	42,412
Tab H: Site Control	150	1	150	3	450	94.25	42,412
Tab I: Site and Neighborhood Standards	150	1	150	3	450	94.25	42,412
Tab J: Real Property Acquisition and	150	1	150	3	450	94.25	42,412
Tab K: Physical Design	150	1	150	3	450	94.25	42,412
Tab L: Supportive Services	150	1	150	3	450	94.25	42,412
Tab M: Section 3 Employment Opportunities for Low and Very-Low Income Persons	150	1	150	2	150	94.25	28,275
Tab N: Market	150	1	150	3	450	94.25	42,412
Tab O: Capacity and Leverage	150	1	150	3	450	94.25	42,412
Tab P: Evidence of Compliance with Local Land Use and Zoning Regulations	150	1	150	1	150	94.25	28,275
Tab Q: Intergenerational Housing (Optional)	150	1	150	1	150	94.25	28,275
Environmental: Output Sheet verifying HEROS Submission, Phase I Environmental Assessment, Phase II (if required) and description of remedial actions, if required): and Related Laws and Authorities Screens	150	1	150	2	300	94.25	28,275
Form HUD–92041	150	1	150	.40	60	94.25	5,655
Form HUD–92042	150	1	150	.40	60	94.25	5,655
Form HUD–92015–CA	150	1	150	.50	75	94.25	7,069

Information collection	Number of respondents	Frequency of response	Responses per year	Burden hours per response	Annual burden hours	Hourly cost per response*	Total annual cost
Totals	150	.....	3300	.....	6795	.....	725,248

Associated Forms

****Forms are a part of another collection and burden hours are not included under 2502–0267. HUD–2530 is approved under OMB Control Number 2502–0118; HUD–2880 is approved under OMB Control Number 2501–0017; HUD 2993 is approved under OMB Control Number 2577–0259; Form SF–424 is approved under OMB Control Number 4040–0004; Standard Form LLL is approved under OMB Control Number 4040–0013.**

Form HUD–2530 **	150	1	150	0	0	0	0
Form HUD–2880 **	150	1	150	0	0	0	0
Form HUD–2993 **	150	1	150	.25	0	0	0

Standard Forms

Form SF–424 **	150	1	150	.75	0	0	0
Standard Form LLL **	150	1	150	.50	0	0	0

Description of the need for the information and proposed use: This information collection is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop affordable housing for very low-income elderly persons within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Respondents: Eligible applicants and any co-sponsors must be private, nonprofit organizations and nonprofit consumer cooperatives with tax-exempt status under Internal Revenue Service code.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 13,150.

Frequency of Response: Annual, dependent on new Congressional appropriation.

Average Hours per Response: 40.

Total Estimated Burden: 5,295.

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–22645 Filed 10–12–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–69]

30-Day Notice of Proposed Information Collection: Family Unification Program; OMB Control No.: 2577–0259

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 reinstatement without change of a previously approved collection for which approval has expired. The reinstatement of this previously approved PRA collection for which approval has expired is required in order to withdraw this PRA. The information collection required for the Family Unification Program (described below) is now covered under OMB# 2577–0169.

DATES: *Comments Due Date:* November 13, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email: Colette.Pollard@hud.gov; telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 30, 2023 at 88 FR 34512.

A. Overview of Information Collection

Title of Information Collection:

Family Unification Program (FUP).

OMB Approval Number: 2577–0259.

Type of Request: Reinstatement to discontinue the collection.

Form Number: HUD–52515; HUD–50058; HUD–2993; HUD–96011; HUD–2990; HUD–2991; and HUD–2880; SF–424; SF–LLL.

Description of the need for the information and proposed use: The

reinstatement of this previously approved PRA collection for which approval has expired is required in order to withdraw this PRA. The information collection required for the Family Unification Program (described below) is now covered under OMB# 2577–0169. The Family Unification Program (FUP) is a program, authorized under section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437(X)), that provides housing choice vouchers to PHAs to assist families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care; or the delay in the discharge of the child, or children, to the family

from out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. As required by statute, a FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months. Vouchers awarded under FUP are administered by PHAs under HUD's regulations for the Housing Choice Voucher program (24 CFR part 982).

Respondents: Public Housing Agencies.

Description of information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
SF424 (0348–0043) Application for Federal Assistance.	0	0	0	0	0	\$0	\$0
SF LLL (0348–0046) Lobbying Form.	0	0	0	0	0	0	0
HUD–96011 (2535–0118) 3rd Party Documentation Facsimile Transmittal.	265	Annual	1	1	265	35.00	9,275
HUD–2993 Acknowledgement of Application Receipt (2577–0259).	13	Annual	1	1	13	35.00	455
Logic Model-HUD–96010 (2535–0114).	265	Annual	1	1	0	35.00	0
PCWA Statement of Need (maximum of 5 pages).	265	Annual	1	2	596	35.00	20,860
Memorandum of Understanding between PHA and PCWA.	265	Annual	1	6	1,590	35.00	55,650
Rating Criteria 1: Area-Wide Housing Opportunities. Narratives (up to 20 pages). Logic Model (HUD–96010).	265	Annual	1	3	795	35.00	27,825
Rating Criteria 2: PCWA Commitments. Narratives (up to 10 pages). Other Documentation.	265	Annual	1	1	331	35.00	11,585
Rating Criteria 3: Self-Sufficiency Programs. Narrative: (up to 6 pages) Documentation: Excerpt from Administrative Plan or policies manual for FSS program operations Certification: FUP recipients enrolled in FSS.	265	Annual	1	1	133	35.00	4,655
Rating Criteria 4: Local Coordination Letter of Support.	265	Annual	1	1	265	35.00	9,275
PCWA Contractor Documentation ...	265	Annual	1	1	265	35.00	9,275
HUD2990, Certification of Consistency with the RC/EZ/EC–IIs Strategic Plan.	265	Annual	1	1	0	35.00	0
Funding Application HUD–52515 (2577–0169). Includes leasing schedule.	265	Annual	1	1	265	35.00	9,275
Affirmatively Furthering Fair Housing Statement (addendum).	265	Annual	1	1	265	35.00	9,275
HUD2880, Applicant/Recipient Disclosure/Update Report (2510–0011).	265	Annual	1	1	0	35.00	0
HUD2991, Certification of Consistency with the Consolidated Plan.	265	Annual	1	1	0	35.00	0
Subtotal (Application)	265	Annual	1	25	5,058	35	177,030
Family Report HUD–50058 (2577–0083).	242	Annual	75	1	363	35.00	12,705
Baseline adjustment	10	Annual	1	1	5	35.00	175

Description of information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
@ Program and Accounting Record-keeping.	242	Annual	1	5	1,210	35.00	42,350
Subtotal (Reporting/Record-keeping).	.....	.....	.....	11	1,578	35	55,230
Total	265	Annual	1	36	6,636	35.00	232,260

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2023-22643 Filed 10-12-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500174347]

Notice of Public Meeting of the Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Alaska Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will hold a hybrid public meeting, offering in-person and virtual attendance options, on Wednesday, November 29, 2023, from 9:00 a.m. to 3:00 p.m. Alaska Time, with public comments accepted at 1:50 p.m.

ADDRESSES: Meeting links and participation instructions will be made widely available to the public via news media, social media, the BLM Alaska RAC web page at blm.gov/Alaska/RAC, and through personal contact 2 weeks prior to the meeting.

The November 29, 2023, meeting will be held virtually through Zoom and at the BLM Alaska State Office, 4th floor, 222 W. 7th Avenue, Anchorage AK, 99516. Virtual attendees are required to register online: https://blm.zoomgov.com/webinar/register/WN_O4nSHmitRrOW-EpegzYmbQ.

FOR FURTHER INFORMATION CONTACT:

Melinda Bolton, RAC Coordinator, email: mbolton@blm.gov or telephone: (907) 271-3342. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Melinda Bolton. 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: The Alaska RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with BLM-managed public lands in Alaska. Agenda topics for the meeting include a briefing on land use planning projects, Areas of Critical Environmental Concern, regulatory updates, land transfers, recreation projects, youth and hiring initiatives, and cooperative efforts.

RAC meetings are open to the public. Each RAC meeting has time allotted for public comments. Depending on the number of people wishing to speak and the time available, the amount of time for verbal comments may be limited. Written public comments may be sent to the BLM Alaska State Office or RAC Coordinator listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written public comments will be provided to the Alaska RAC members.

Public Disclosure of Comments: 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.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Detailed minutes for the RAC meetings are maintained by the BLM Alaska State Office. Minutes are also posted to the BLM Alaska RAC web page at www.blm.gov/Alaska/RAC.

(Authority: 43 CFR 1784.4-2)

Steven M. Cohn,

*State Director, Bureau of Land Management
Alaska.*

[FR Doc. 2023-22525 Filed 10-12-23; 8:45 am]

BILLING CODE 4331-10-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0036746;
PPWOCRADNO–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Ventura County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after November 13, 2023.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email pcapone@fas.harvard.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the PMAE.

Description

The 76 cultural items were removed from San Nicolas Island in Ventura County, CA. In 1875, Paul Schumacher led a joint expedition on behalf of the Smithsonian Institution and the PMAE that included a visit to San Nicolas Island, where he excavated numerous burials. The human remains from these burials were sent to the Smithsonian Institution, but some funerary objects were sent to the PMAE. Museum documentation also indicates that Schumacher sold items he collected in the Channel Islands to private collectors.

In 1877, the PMAE acquired items from the Smithsonian Institution that were duplicate objects in their

collection from Paul Schumacher's 1875 San Nicolas Island expedition. The cultural items collected on San Nicolas Island during that expedition were from funerary contexts.

In 1896, Dr. George J. Engelmann donated two cultural items to the PMAE that were acquired from Paul Schumacher's 1875 San Nicolas Island expedition. The items are known to have been collected by Schumacher because he wrote his name, the island of origin, and a catalog number on each item. Based on the original catalog numbers, it appears the objects were collected during the 1875 joint Smithsonian Institution-PMAE expedition. The date Engelmann acquired the cultural items from Schumacher is unknown.

In 1910, PMAE received objects as part of an exchange with the American Antiquarian Society, including one cultural item collected by Schumacher. Schumacher labeled the mortar with his name, the island of origin, and a catalog number. Based on the original catalog number, it appears the object was collected during the 1875 joint Smithsonian Institution-PMAE expedition. It is unknown when the American Antiquarian Society acquired the mortar.

The 76 unassociated funerary objects include 70 objects present in the Peabody Museum collections and six that are currently missing. The 70 present unassociated funerary objects are 36 stone mortars, 28 stone pestles, five worked stones, and one spindle whorl. The six missing unassociated funerary objects are three stone mortars and three stone pestles.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of evidence were used to reasonably trace the relationship: oral traditional, geographical, biological, and archeological.

The combined oral traditional, geographical, biological, and archeological evidence indicates that a relationship of shared group identity can be reasonably traced between these unassociated funerary objects from San Nicolas Island, Ventura County, CA, and the Indian Tribes identified in this notice.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The 76 unassociated funerary objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items described in this notice and the La Jolla Band of Luiseno Indians, California; Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Rincon Band of Luiseno Indians (*Previously* listed as Rincon Band of Luiseno Mission Indians of Rincon Reservation, California); Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the Soboba Band of Luiseno Indians, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after November 13, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: October 10, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-22674 Filed 10-12-23; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-695-698 and 731-TA-1643-1657 (Preliminary)]

Aluminum Extrusions From China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701-TA-695-698 and 731-TA-1643-1657 (Preliminary) pursuant to the Tariff Act of 1930 ("the Act") to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of aluminum extrusions from China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates and Vietnam, provided for in subheadings 7604.10.10, 7604.10.30, 7604.10.50, 7604.21.00, 7604.29.10, 7604.29.30, 7604.29.50, 7608.10.00, 7608.20.00, 7609.00.00, 7610.10.00, and 7610.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China, Indonesia, Mexico, and Turkey. Unless the Department of Commerce ("Commerce") extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 20, 2023. The Commission's views must be transmitted to Commerce within five business days thereafter, or by November 28, 2023.

DATES: October 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Jordan Harriman ((202) 205-2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on October 4, 2023, by the U.S. Aluminum Extruders Coalition (consisting of Alexandria Extrusion Company, Alexandria, Minnesota; APEL Extrusions Inc., Coburg, Oregon; Bonnell Aluminum, Newnan, Georgia; Brazeway, Adrian, Michigan; Custom Aluminum Products, South Elgin, Illinois; Extrudex Aluminum, North Jackson, Ohio; International Extrusions, Garden City, Michigan; Jordan Aluminum Company, Memphis, Tennessee; M-D Building Products, Oklahoma City, Oklahoma; Merit Aluminum, Corona, California; MI Metals, Oldsmar, Florida; Pennex Aluminum, Wellsville, Pennsylvania; Tower Extrusions, Olney, Texas; and Western Extrusions, Carrollton, Texas) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under

investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Wednesday, October 25, 2023. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO NOT FILE ON EDIS) on or before October 23, 2023. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation will be available on the Commission's Public Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on October 30, 2023, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on October 24, 2023.

All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations,

audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22519 Filed 10–12–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1280]

Bulk Manufacturer of Controlled Substances Application: Chattem Chemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chattem Chemicals, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to

SUPPLEMENTARY INFORMATION listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 12, 2023. Such persons may also file a written request for a hearing on the application on or before December 12, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 14, 2023, Chattem Chemicals, Inc. 3801 Saint Elmo Avenue, Chattanooga, Tennessee 37409, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
4-Methoxyamphetamine	7411	I
Dihydromorphine	9145	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Methadone	9250	II
Methadone intermediate	9254	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II

Controlled substance	Drug code	Schedule
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances in bulk for distribution and sale to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as a synthetic. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the manufacturing of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023-22627 Filed 10-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1271]

Bulk Manufacturer of Controlled Substances Application: Cambridge Isotope Laboratories, Inc

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambridge Isotope Laboratories, Inc has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 12, 2023. Such persons may also file a written request for a hearing on the application on or before December 12, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 25, 2023, Cambridge Isotope Laboratories, Inc 50 Frontage Road, Andover, Massachusetts 01810-5413, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to synthetically bulk manufacture the controlled substance Tetrahydrocannabinols to produce analytical standards for distribution to its customers. No other activities for this drug code is authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023-22623 Filed 10-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1273]

Bulk Manufacturer of Controlled Substances Application: Curia New York, Inc

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curia New York, Inc has applied to be registered as a bulk

manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 12, 2023. Such persons may also file a written request for a hearing on the application on or before December 12, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not

instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 10, 2023, Curia New York, Inc, 33 Riverside Avenue, Rensselaer, New York 12144-2951, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
Codeine	8333	II
Dihydrocodeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Meperidine	9230	II
Morphine	9300	II

Controlled substance	Drug code	Schedule
Fentanyl	9801	II

The company plans to manufacture the above controlled substances as bulk active pharmaceutical ingredients for use in product development and for distribution to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023-22624 Filed 10-12-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1268]

Bulk Manufacturer of Controlled Substances Application: Cerilliant Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cerilliant Corporation, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 12, 2023. Such persons may also file a written request for a hearing on the application on or before December 12, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 12, 2023, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665-2402, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Para-Methoxymethamphetamine (PMMA), 1-(4-1245 I N methoxyphenyl)-N-methylpropan-2-amine	1245	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylamine	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
4,4'-Dimethylaminorex (4,4'-DMAR; 4,5-dihydro-4-1595 I N methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine)	1595	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Etizolam (4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine	2780	I
Flunazepam (8-chloro-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine)	2785	I
Clonazepam (6-(2-chlorophenyl)-1-methyl-8-nitro-4H-benzo [f][1,2,4]triazolo[4,3-a][1,4]diazepine	2786	I
Flubromazepam (8-bromo-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-a][1,4]diazepine	2788	I
Diclozepam (7-chloro-5-(2-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-benzo[e][1,4]diazepin-2-one	2789	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB-144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH-019 (1-Hexyl-3-(1-naphthyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) ...	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5F-AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboximide)	7025	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB, 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F-EDMB-PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F-MDMB-PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I

Controlled substance	Drug code	Schedule
4F-MDMB-BINACA (4F-MDMB-BUTINACA or methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate).	7043	I
MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide).	7047	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
5F-CUMYL-PINACA, 5GT-25 (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide)	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUML-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide).	7089	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-MEAP (4-Methyl-alpha-ethylaminopentiophenone)	7245	I
N-Ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (methoxetamine)	7286	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol])	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol])	7298	I
Lysergic acid diethylamide	7315	I
2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine)	7348	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4'-Chloro-alpha-pyrrolidinovaleophenone	7443	I
MPHP, 4'-Methyl-alpha-pyrrolidinohexiophenone	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alpha-pyrrolidinopropiophenone)	7498	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C-H 2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C-I 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C-C 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypropiovalerone)	7535	I

Controlled substance	Drug code	Schedule
25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	|
25C-NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	|
25I-NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	|
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	|
Butylone	7541	|
Pentylone	7542	|
N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	|
α-PHP, alpha-Pyrrolidinohexanophenone	7544	|
Slpha-pyrrolidinopentiophenone (α-PVP)	7545	|
Alpha-pyrrolidinobutiophenone (α-PBP)	7546	|
Ethylone	7547	|
PV8, alpha-Pyrrolidinoheptaphenone	7548	|
Eutylone	7549	|
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	|
Acetyldihydrocodeine	9051	|
Benzylmorphine	9052	|
Codeine-N-oxide	9053	|
Desomorphine	9055	|
Codeine methylbromide	9070	|
Brorphine	9098	|
Dihydromorphine	9145	|
Heroin	9200	|
Hydromorphenol	9301	|
Methyl-desorphine	9302	|
Methyldihydromorphine	9304	|
Morphine methylbromide	9305	|
Morphine methylsulfonate	9306	|
Morphine-N-oxide	9307	|
Normorphine	9313	|
Pholcodine	9314	|
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	|
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	|
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	|
Acetylmethadol	9601	|
Allylprodine	9602	|
Alphacetylmethadol except levo-alphacetylmethadol	9603	|
Alphameprodine	9604	|
Alphamethadol	9605	|
Betacetylmethadol	9607	|
Betameprodine	9608	|
Betamethadol	9609	|
Betaprodine	9611	|
Isotonitazene	9614	|
Dipipanone	9622	|
Etonitazene	9624	|
Hydroxypethidine	9627	|
Noracymethadol	9633	|
Norlevorphanol	9634	|
Normethadone	9635	|
Trimeperidine	9646	|
Phenomorphane	9647	|
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	|
Tilidine	9750	|
xybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine)	9751	|
-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine)	9756	|
Metonitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine)	9757	|
N-pyrrolidino etonitazene; etonitazepyrone (2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole)	9758	|
Protonitazene (N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine)	9759	|
Metodesnitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine)	9764	|
Etodesnitazene; etazene (2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine)	9765	|
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	|
Para-Fluorofentanyl	9812	|
3-Methylfentanyl	9813	|
Alpha-methylfentanyl	9814	|
Acetyl-alpha-methylfentanyl	9815	|
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	|
Para-Methylfentanyl	9817	|
4'-Methyl Acetyl Fentanyl	9819	|
Ortho-Methyl Methoxyacetyl Fentanyl	9820	|
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	|
Butyryl Fentanyl	9822	|
Para-fluorobutyryl fentanyl	9823	|
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	|
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	|

Controlled substance	Drug code	Schedule
Para-chloroisobutyl fentanyl	9826	I
Isobutyl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl Fentanyl	9839	I
Valeryl fentanyl	9840	I
Phenyl Fentanyl	9841	I
Beta'-Phenyl Fentanyl	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Crotonyl Fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
Ortho-Fluorobutyl Fenanyl	9846	I
Cyclopentyl fentanyl	9847	I
Ortho-Methyl Acetyl fentanyl	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl Carbamate	9851	I
Ortho-Fluoroacryl Fentanyl	9852	I
Ortho-Fluoroisobutyl Fentanyl	9853	I
Para-Fluoro Furanyl Fentanyl	9854	I
2'-Fluoro Ortho-Fluorofentanyl	9855	I
Beta-Methyl Fentanyl	9856	I
8Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Norfentanyl	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Methadone	9250	II
Methadone intermediate	9254	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Thebaine	9333	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Thiafentanil	9729	II
Racemethorphan	9732	II
Alfentanil	9737	II
Remifentanil	9739	II

Controlled substance	Drug code	Schedule
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates and analytical reference standards for sale to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–22626 Filed 10–12–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

[OMB Control No. 1225–0077]

Proposed Extension of Information Collection; Nondiscrimination Compliance Information Reporting

AGENCY: Civil Rights Center, 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 request for comment 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 request 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. Currently, the Civil Rights Center (CRC) is soliciting comments on the information collection for Nondiscrimination Compliance Information Reporting

DATES: All comments must be received on or before December 12, 2023.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Comments

submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

• If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

• *Mail Delivery:* Mail or visit DOL–CRC, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Suite N4123, Washington, DC 20210.

• CRC will post your comment 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: Naomi Barry-Perez, Director, Civil Rights Center, U.S. Department of Labor at barry-perez.naomi@dol.gov (email); (202) 693–6500 (voice); or (202) 693–6505 (facsimile); or please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Rights Center (CRC), located within the Department of Labor's (DOL or the Department) Office of the Assistant Secretary for Administration and Management, is responsible for the enforcement of Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which contains the Statute's nondiscrimination and equal opportunity provisions, and its implementing regulations at 29 CFR part 38.

In addition to WIOA, entities receiving any financial assistance from DOL are subject to four intersecting civil rights laws over which CRC has enforcement authority:

• Section 504 of the Rehabilitation Act of 1973, as amended, and DOL's

implementing regulations at 29 CFR part 32;

• The Age Discrimination Act of 1972, as amended, and DOL's implementing regulations at 29 CFR part 35;

• Title IX of the Education Amendments of 1972, as amended, and DOL's implementing regulations at 29 CFR part 36; and,

• Title VI of the Civil Rights Act of 1964, as amended, and DOL's implementing regulations at 29 CFR part 31.

The paperwork burdens imposed by 29 CFR parts 38 and the respective intersecting civil rights laws, as well as other Federal statutory provisions and regulations, are applicable to entities subject to the laws enforced by CRC.

II. Desired Focus of Comments

CRC is soliciting comments concerning the proposed information collection related to the Nondiscrimination Compliance Information Reporting. CRC 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 CRC's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL–CRC located at Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Suite N4123, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns Nondiscrimination Compliance Information Reporting. CRC 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: Revision of a currently approved collection.

Agency: Civil Rights Center.

OMB Number: 1225–0077.

Affected Public: Individuals or households.

Number of Respondents: 39,970.

Frequency: On occasion.

Number of Responses: 22,444,362.

Annual Burden Hours: 125,748 hours.

Annual Respondent or Recordkeeper Cost: \$8,803,624.09.

CRC Forms: CRC Form DL 1–2014A, Complaint Information Form.

Comments submitted in response to this notice will be summarized 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>.

Carolyn Angus-Hornbuckle,
Certifying Officer.

[FR Doc. 2023–22498 Filed 10–12–23; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; ATUS Leave and Job Flexibilities Module

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 13, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting

“Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Leave and Job Flexibilities Module includes questions about workers’ access to and use of paid and unpaid leave, job flexibility, and their work schedules. Information collected in the supplement will be published as a public use data set to facilitate research on numerous topics, such as: the characteristics of people with paid and unpaid leave; occupations with the greatest and least access to paid leave; reasons workers are able to take leave from their jobs; how many workers have access to job flexibilities such as the ability to work from home or adjust their start and stop times; and the relationship between workers’ time use and their access to job flexibilities. Sponsored by the Department of Labor’s Women’s Bureau, the supplement is asked of eligible respondents immediately upon their completion of the American Time Use Survey (ATUS). The Leave and Job Flexibilities Module supports the mission of the Bureau of Labor Statistics by providing relevant information on economic and social issues and providing a richer description of work. The module surveys eligible wage and salary workers aged 15 and up from a nationally representative sample of households each month. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 13, 2023 (88 FRN 38543).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently

valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: ATUS Leave and Job Flexibilities Module.

OMB Control Number: 1220–0191.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 4,542.

Total Estimated Number of Responses: 4,542.

Total Estimated Annual Time Burden: 379 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–22497 Filed 10–12–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Thursday, November 16, 2023. This meeting will be held virtually from 10:00 a.m. to 4:00 p.m. EST.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, data science, and survey design. The schedule and agenda for the meeting are as follows:

10:00 a.m. Acting Commissioner’s Welcome and Review of Agency Developments

10:30 a.m. Using record linkage techniques to improve data import rates into the Survey of Occupational Injuries and Illnesses

1:00 p.m. Development of Small Domain Estimation Models for Occupational Requirements Survey (ORS)

2:30 p.m. Productivity Dispersion Statistics for Retail Trade

4:00 p.m. Approximate Conclusion

The meeting is open to the public. Any questions concerning the meeting

should be directed to Michael Giandrea, Bureau of Labor Statistics Technical Advisory Committee, at BLSTAC@bls.gov. Individuals planning to attend the meeting should register at <https://blstac.eventbrite.com>. Individuals who require special accommodations should contact Mr. Giandrea at least two days prior to the meeting date.

Signed at Washington, DC, this 6th day of October 2023.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2023–22541 Filed 10–12–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0012]

Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of Rechartering

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of rechartering of the Federal Advisory Council on Occupational Safety and Health (FACOSH).

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby announces that the FACOSH charter will be renewed for a two-year period pursuant to the Federal Advisory Committee Act (FACA) and in accordance with the Committee Management Secretariat, General Services Administration.

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) 693–2491; 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: On September 29, 2023, President Joseph Biden signed Executive Order (E.O.) 14109 continuing certain federal advisory committees, including FACOSH, until September 30, 2025 (88 FR 68447 (October 04, 2023)). In response, the Secretary approved the

renewal of the FACOSH charter. The Department of Labor (DOL) will file the renewed FACOSH charter before the current FACOSH Charter expires on October 14, 2023. FACOSH will terminate on September 30, 2025, unless continued by the President. The FACOSH charter is available to read or download at <http://www.osha.gov>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice pursuant to 5 U.S.C. 7902; 5 U.S.C. App. 2; 29 U.S.C. 668; E.O. 12196 (45 FR 12629 (2/27/1980)), as amended; 41 CFR part 102–3; and Secretary of Labor's Order 08–2020 (85 FR 58393).

Signed at Washington, DC, on October 5, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–22537 Filed 10–12–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–105]

Information Collection: Generic Clearance for NASA Citizen Science and Crowdsourcing Projects

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by November 13, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA

Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–7998, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Citizen science and crowdsourcing are tools that engage, educate and empower the public to apply their curiosity and contribute their talents to a wide range of scientific and societal issues. NASA's mission to *reach for new heights and reveal the unknown so that what we do and learn will benefit all humankind*. NASA uses the vantage point of space to achieve with the science community and our partners a deep scientific understanding of our planet, other planets and solar system bodies, the interplanetary environment, the Sun and its effects on the solar system, and the universe beyond. Citizen science and crowdsourcing can support NASA's mission and purpose by providing new opportunities to explore our solar system and our own home planet like never before, producing critical data that expands our knowledge of the universe, and advancing our ability to provide societal benefit through the synergy of satellite and ground based observations.

II. Methods of Collection

Citizen science and crowdsourcing collections submitted under this generic clearance can be stand-alone projects or the methods may be incorporated into an existing or new project, including, but not limited to, projects in the following typology:

- *Data gathering projects.* These projects may include: (1) Observation, characterization and documentation of natural phenomena or general environmental health observations, opinions, or preferences or (2) surveying participants or screening environmental conditions, including using specialized equipment provided by project leaders to record and submit data, or submitting samples plus descriptors (e.g., of air or water) for testing. Data may be collected using technologies mentioned above, through structured data forms, surveys, focus groups or interviews, submitting photographs or other media, surveys or questionnaires, or providing written observations.

- *Classification/problem solving projects.* Participants' tasks may include: (1) Observation of recorded materials provided by project organizers (images, video, etc.) through structured data submission forms, surveys or questionnaires in an online or computer program, clicking boxes, highlighting parts of text or image, and providing comments and/or annotations; (2)

Classification of images or sounds using structured data submission forms or clicking boxes in an online or computer program; (3) Transcribing information, by typing handwritten logs or notes; (4) Performing a function meant to generate human behavior data; or (5) Problem-solving or manipulation of data. Tasks 1–5 may be conducted via structured actions or instructions or through the use of “human-based computational game” or “game with a purpose”, a human-based computational technique in which a computational process performs its function by presenting certain steps to humans in an entertaining way.

III. Data

Title: Generic Clearance for NASA Citizen Science and Crowdsourcing Projects.

OMB Number: 2700–0168.

Type of Review: Extension of approval for a collection of information.

Affected Public: Individuals.

Annual Responses: 50,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 8,333 hours.

Estimated Total Annual Cost: \$100,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA’s estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–22629 Filed 10–12–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold twenty-four meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during November 2023. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: November 1, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Public Humanities Project: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

2. Date: November 1, 2023

This video meeting will discuss applications for the Humanities Connections Implementation Grants program, submitted to the Division of Education Programs.

3. Date: November 1, 2023

This video meeting will discuss applications on the topic of World History (Pre-Modern), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. Date: November 2, 2023

This video meeting will discuss applications on the topic of Discussions, for the Humanities Projects: Humanities Discussions Grants program, submitted to the Division of Public Programs.

5. Date: November 2, 2023

This video meeting will discuss applications for the Humanities Connections Planning Grants program, submitted to the Division of Education Programs.

6. Date: November 3, 2023

This video meeting will discuss applications for the Humanities Connections Planning Grants program, submitted to the Division of Education Programs.

7. Date: November 3, 2023

This video meeting will discuss applications on the topic of Military History, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

8. Date: November 6, 2023

This video meeting will discuss applications on the topic of Podcasts, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

9. Date: November 6, 2023

This video meeting will discuss applications for the Humanities Connections Planning Grants program, submitted to the Division of Education Program.

10. Date: November 7, 2023

This video meeting will discuss applications for the Humanities Connections Planning Grants program, submitted to the Division of Education Programs.

11. Date: November 7, 2023

This video meeting will discuss applications on the topic of World Studies (Modern), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

12. Date: November 8, 2023

This video meeting will discuss applications on the topic of American Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

13. Date: November 8, 2023

This video meeting will discuss applications for the Humanities Connections Implementation Grants program, submitted to the Division of Education Programs.

14. Date: November 8, 2023

This video meeting will discuss applications for the Humanities Connections Planning Grants program,

submitted to the Division of Education Programs.

15. Date: November 9, 2023

This video meeting will discuss applications on the topic of U.S. History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

16. Date: November 13, 2023

This video meeting will discuss applications for the Humanities Connections Implementation Grants program, submitted to the Division of Education Programs.

17. Date: November 13, 2023

This video meeting will discuss applications on the topic of New World Archaeology, for the Archaeological and Ethnographic Field Research grant program, submitted to the Division of Research Programs.

18. Date: November 14, 2023

This video meeting will discuss applications on the topics of Art and Architectural History, for the Humanities and Reference Resources grant program, submitted to the Division of Preservation and Access.

19. Date: November 20, 2023

This video meeting will discuss applications on the topics of Old World Archaeology and Ethnography, for the Archaeological and Ethnographic Field Research grant program, submitted to the Division of Research Programs.

20. Date: November 21, 2023

This video meeting will discuss applications on the topics of U.S. History Regional, State, and Local, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

21. Date: November 27, 2023

This video meeting will discuss applications for the Dynamic Language Infrastructure—Documenting Endangered Languages Fellowships grant program, submitted to the Division of Research Programs.

22. Date: November 27, 2023

This video meeting will discuss applications on the topic of Ethnography, for the Archaeological and Ethnographic Field Research grant program, submitted to the Division of Research Programs.

23. Date: November 29, 2023

This video meeting will discuss applications on the topics of U.S.

History Regional, State and Local, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

24. Date: November 30, 2023

This video meeting will discuss applications on the topic of Indigenous Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: October 10, 2023.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2023–22648 Filed 10–12–23; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments on this notice must be received by December 12, 2023, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: NSF's Safe and Inclusive Fieldwork (SAIF) Pilot in Biological Sciences (BIO) and Geosciences (GEO) PI Survey.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The National Science Foundation (NSF) on 8 February 2018, in Important Notice No. 144 (8 Feb 2018) to Presidents of Universities and Colleges and Heads of Other National Science Foundation Grantee Organizations, emphasized that the agency does not tolerate sexual harassment, or any kind of harassment, *anywhere* NSF-funded science and education are conducted. The memo elaborated that the NSF is committed to “. . . promoting safe, productive research and education environments . . .,” including those outside the organization, such as at field sites or facilities. Two NSF-wide policy changes quickly followed the memo to make clear that the agency was committed to safe research and learning environments. The first was a new Term and Condition that required awardee organizations to notify the NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding an NSF funded Principal Investigator (PI) or co-PI, or of the placement of the PI or co-PI on administrative leave, or the imposition of any administrative action relating to harassment or sexual assault finding or investigator. The second was a new requirement for all NSF supported conferences to have a policy or code-of-conduct that addresses sexual harassment, other forms of harassment, and sexual assault, and that includes clear and accessible means of reporting violations of the policy or code-of-conduct. Proposers were not, however, required to submit that policy or code-

of-conduct for review. Additional policy changes have since followed, including this year (as of 30 January 2023) when all organizations submitting proposals to the NSF with off-site or off-campus research (*i.e.*, fieldwork) were henceforth required to certify that they have a proposal-specific plan in place for safe and inclusive research (Chapter II.E.9 of the Proposal and Award Policy and Procedures Guide); however, the plan itself is not required to be submitted to the NSF or subject to review.

Two of the NSF directorates [Biological Sciences (BIO) and Geosciences (GEO)] fund disproportionately large numbers of awards to researchers with significant fieldwork components, and because fieldwork is known to be particularly risky with respect to safety and inclusion (*e.g.*, Clancy et al. 2014, Nelson et al. 2017, John and Khan 2018, Giles et al. 2020), BIO and GEO initiated a pilot program to require Principal Investigators (PIs) of submitted projects involving fieldwork to include a 2-page Supplementary Document summarizing how the project team would ensure a safe and inclusive working environment for all associated personnel. This plan is called the Safe and Inclusive Fieldwork (SAIF) Plan and is required for several solicitations in BIO and GEO, but not all. Importantly the SAIF Plans are subject to merit review as part of the NSF Broader Impacts criterion.

Recent research has repeatedly demonstrated that fieldwork can be especially challenging, and uniquely so, with respect to inclusion (*e.g.*, Demery and Pipkin 2020, Marin-Spiotta et al. 2020, O'Brien et al. 2020, Ramirez-Castaneda et al. 2022; Yarincik et al. 2023), and without inclusion, attrition from the STEM workforce is accelerated (NASEM 2018, 2019). To ensure that the United States leads the world in discovery and innovation, it is critical to broaden participation and empower all STEM talent to fully participate in science, and in fact this is one of NSF's top strategic goals (NSF 2022–2026 Strategic Plan), along with the corresponding strategic objective—to ensure accessibility and inclusivity. In addition, broadening participation/inclusion is a key component of NSF's Broader Impacts review criterion.

Because research proposals with fieldwork are common at the NSF, especially in BIO and GEO, the SAIF Pilot aims to (a) empower those scientific communities to develop promising practices and strategies to ensure safe and inclusive working environments, (b) collect and analyze the diversity of approaches used, and (c)

speed culture change beyond what is accomplished by compliance (*e.g.*, NASEM 2018). For solicitations participating in the SAIF Pilot, SAIF Plans will be associated directly with each submitted NSF proposal and subject to merit review. The lead PI of a submitted project that includes any off-campus or off-site research (*i.e.*, fieldwork) must (a) describe the unique challenges for their teams; (b) provide information on the steps that will be taken to nurture an inclusive environment; (c) outline the communication processes within the field team and the organization, and (d) list the organizational mechanisms to be used for reporting, responding to, and resolving issues of harassment if they arise. All of these steps are based on best practices from the literature (see Yarnick et al. 2023).

For all of the aforementioned reasons, the NSF BIO and GEO Directorates request the Office of Management and Budget (OMB) approval of this clearance to aid in the evaluation of NSF's Safe and Inclusive Fieldwork (SAIF) Pilot. The approval would cover PI surveys and interviews as described below.

—*PI Survey.* We seek approval to conduct a web-based survey of Principal Investigators (PIs) who have submitted proposals to the solicitations participating in the SAIF Pilot. The PI survey is to assess key information on the preparation of the plans (*e.g.*, time and resources) and whether the NSF review criteria are clear. The survey data will help to enable the NSF to better assess the value of requiring PIs with proposals that have off-campus or off-site research (*i.e.*, fieldwork) to include SAIF Plans as a Supplementary Document subject to merit review, in lieu of the PAPPG NSF 23–1 Chapter II.E.9 requirement that requires *only* that the AOR *certify* that the organization has a plan in place for safe and inclusive research but does not submit that plan to the NSF for review.

—*Interviews with PIs who have submitted and/or reviewed SAIF Plans.* Interviews with PIs who have submitted proposals to solicitations participating in the SAIF Pilot, and/or have reviewed proposals that have included a SAIF Plan, are important to provide in-depth information about specific topics of interest to NSF (*e.g.*, institutional support for the creation of the SAIF Plans; details on process and implementation; perceptions of value; etc.). The interviews will be conducted using a virtual meeting platform at a time convenient for the

participants. An added purpose is to corroborate findings obtained through the PI surveys and to dive more deeply on selected areas that are of interest to BIO and GEO staff and other stakeholders.

This data collection is necessary to provide NSF with timely and actionable information about the preparation, common strategies and activities, organizational involvement, clarity and value of merit review, and outcomes associated with SAIF Plans. We note that the U.S. Department of Energy now requires Promoting Inclusive and Equitable Research (PIER) Plans for every submission, regardless of whether the work is on- or off-campus. An early assessment of the NSF BIO and GEO SAIF Pilot will be important for understanding the (1) administrative burden required to write and review SAIF Plans, (2) their perceived value, and (3) promising strategies to creating safe and inclusive working environments.

Use of the Information: Aggregate results from the survey and interviews will be summarized in reports. While the individual survey and interview responses will be identifiable to NSF staff, no information about individuals participating in the surveys and interviews will be released to anyone outside of the NSF. The data collected and reported on will be used for planning, management, and evaluation purposes only. These data are needed for effective evaluation and for measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

Expected Respondents: The respondents are either Principal Investigators (PIs) and/or other key personnel (*e.g.*, coPIs) on grants submitted to programs participating in the SAIF Pilot. As a control, and as a way to gather information on the views of PIs to the new PAPPG NSF 23–1 Chapter II.E.9 requirement, PIs submitting to solicitations in BIO and GEO that do not require SAIF Plans will also be included. The numbers of PIs who are likely to respond to the survey are estimated below under Estimate of Burden. The interviews will be a random subset of PIs.

Estimate of Burden

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be \$21,712.

The following table shows the estimated burden and costs to respondents, who are PIs or coPIs of NSF proposals to the BIO and GEO directorates. This estimated hourly rate is based on a report from the Bureau of Labor Statistics' Occupational Employment

and Wages, May 2022.¹ According to this report, the mean hourly rate is \$46.38 for biological scientists (code 191020), and \$42.96 for geoscientists (code 192040). We used \$46 as the amount to calculate burden. Estimated numbers are based on FY22 # of

submissions to each of the participating solicitations and then estimating the % with field work for each solicitation, using advice from Program Officers familiar with each program.

Directorate	Solicitation	Number of submitters in FY22	% with fieldwork	# PIs with fieldwork	Burden hours per respondent	Total hour burden	Estimated annual cost
BIO	23–580	147	7	10	.5	5.2	237
BIO	23–578	84	7	6	.5	2.9	135
BIO	23–547	444	40	178	.5	88.8	4,085
BIO	23–559	98	50	49	.5	24.5	1,127
BIO	23–548	394	5	197	.5	98.5	4,531
BIO	23–542	109	100	109	.5	54.5	2,507
BIO	23–549	318	75	239	.5	119.3	5,486
GEO	23–572	211	67	141	.5	70.7	3,252
GEO	23–540	14	75	11	.5	5.3	242
GEO	23–539	16	30	5	.5	2.4	110

Estimated Number of Responses (given ~85% response rate) for PI Survey: We will survey approximately 800 individuals, given the information in the table above, which includes the estimated number of submissions to each of the solicitations in the SAIF Pilot, and the % of those proposals with fieldwork.

Estimated Number of PI Interviews: We will interview approximately 70 individuals, with sampling across all of the solicitations participating in the SAIF Pilot.

Dated: October 10, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

Citations

- Clancy, K.B., H., R.G. Nelson, J.N. Rutherford, and K. Hinde. 2014. Survey of academic field experiences (SAFE): Trainees report harassment and assault. *PLoS ONE* 9:e102172.
- Demery, A.C., and M.A. Pipkin. 2021. Safe fieldwork strategies for at-risk individuals, their supervisors and institutions. *Nature Ecology and Evolution* 5:5–9.
- Giles, S., C. Jackson, and N. Stephen. 2020. Barriers to fieldwork in undergraduate geology degrees. *Nature Reviews Earth & Environment* 1:77–78. <https://doi.org/10.1038/s43017-020-0022-5>.
- John, C.M., and S.B. Khan. 2018. Mental health in the field. *Nature Geoscience* 11:618–620.
- Marin-Spiotta, E., R.T. Barnes, A.A. Berhe, M.G. Hastings, A. Mattheis, B. Schneider, and B.M. Williams. 2020. Hostile climates are barriers to diversifying the geosciences. *Advances in Geosciences* 53:117–127. <https://doi.org/10.5194/adgeo-53-117-2020>.
- National Academies of Sciences,

Engineering, and Medicine. 2018. Sexual harassment of women: Climate, culture, and consequences in academic sciences, engineering, and medicine. The National Academies Press. <https://doi.org/10.17226/24994>.

National Academies of Sciences, Engineering, and Medicine. 2019. The science of effective mentorship in STEM. The National Academies Press. <https://doi.org/10.17226/25568>.

Nelson, R.G., et al. 2017. Signaling safety: Characterizing fieldwork experiences and their implications for career trajectories. *American Anthropologist* 119:710–722.

O'Brien, L.T., H.L. Bart, and D.M. Garcia. 2020. Why are there so few ethnic minorities in ecology and evolutionary biology? Challenges to inclusion and the role of sense of belonging. *Social Psychology of Education* 23:449–477.

Ramirez-Castaneda, V., E.P. Westeen, J. Frederick, et al. (+30) 2022. A set of principles and practical suggestions for equitable fieldwork in biology. *Proceedings of the National Academy of Sciences* 119:e2122667119. <https://doi.org/10.1073/pnas.2122667119>.

Yarincik, K., A. Kelly, T. McGlynn, R.M. Verble. 2023. Best practices to promote field science safety. *Integrative and Comparative Biology* 63:145–161.

[FR Doc. 2023–22679 Filed 10–12–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: Directorate for Technology, Innovation, and Partnerships, National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the Directorate for Technology, Innovation, and Partnerships (TIP), National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed information collection.

DATES: Written comments on this notice must be received by December 12, 2023, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the

¹ <https://www.bls.gov/oes/current/oes251021.htm>.

use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Clearance for the Regional Innovation Engines Evaluation and Monitoring Plan.

OMB Number: 3145-NEW.

Expiration Date of Approval: Not applicable.

Type of Request: New information collection.

Description: The instruments will collect data on (1) individuals in leadership or governance roles in funded NSF Regional Innovation Engine (NSF Engine), and individuals engaged or participating in the NSF Engine's activities; (2) organizations that are partnering with the NSF Engine or participating in NSF Engine activities; and (3) information on the programmatic activities, outputs, impact, and/or outcomes of the Engine (*i.e.*, use-inspired research, development and translation, impact on the economy, new jobs created, new industries launched, and others).

Background: The CHIPS and Science Act of 2022 codified the National Science Foundation's cross-cutting Directorate for Technology, Innovation and Partnerships (TIP), NSF's first new directorate in more than 30 years, and charged it with the critical mission of advancing U.S. competitiveness through investments that accelerate the development of key technologies and address pressing national, societal and geostrategic challenges. NSF's TIP directorate deepens the Agency's commitment to support use-inspired research and the translation of research results to the market and society. In doing so, TIP strengthens the intense interplay between foundational and use-inspired work, enhancing the full cycle of discovery and innovation.

TIP integrates with NSF's existing directorates and fosters partnerships—with government, industry, nonprofits, civil society, and communities of practice—to leverage, energize and rapidly bring to society use-inspired research and innovation. TIP spurs use-inspired research and innovation to meet the nation's priorities by accelerating the development of breakthrough technologies and advancing solutions.

The NSF Regional Innovation Engines (NSF Engines) program serves as a flagship funding program of the TIP directorate, with the goal of expanding and accelerating scientific and technological innovation within the U.S. by catalyzing regional innovation ecosystems throughout every region of

our nation. The NSF Engines program was authorized in the CHIPS and Science Act of 2022 (Section 10388) to

(1) advance multidisciplinary, collaborative, use-inspired and translational research, technology development, in key technology focus areas;

(2) address regional, national, societal, or geostrategic challenges;

(3) leverage the expertise of multidisciplinary and multi-sector partners, including partners from private industry, nonprofit organizations, and civil society organizations; and

(4) support the development of scientific, innovation, entrepreneurial, and STEM educational capacity within the region of the Regional Innovation Engine to grow and sustain regional innovation.

The NSF Engines program aims to fund regional coalitions of partnering organizations to establish NSF Engines that will catalyze technology and science-based regional innovation ecosystems. Each NSF Engine is focused on addressing specific aspects of a major national, societal and/or geostrategic challenge that are of significant interest in the NSF Engine's defined "region of service." The NSF Engines program envisions a future in which all sectors of the American population can participate in and benefit from advancements in scientific research and development equitably to advance U.S. global competitiveness and leadership. The program's mission is to establish sustainable regional innovation ecosystems that address pressing regional, national, societal, or geostrategic challenges by advancing use-inspired and translational research and development in key technology focus areas. The programmatic level goals of NSF Engines are to:

- *Goal 1:* Stimulate innovation in regions with low levels of innovation;
- *Goal 2:* Build and train an inclusive workforce;
- *Goal 3:* Advance key technologies;
- *Goal 4:* Create a culture that promotes inclusive and equitable prosperity;
- *Goal 5:* Cultivate new, sustainable, trusting cross-sector partnerships;
- *Goal 6:* Create a sustainable innovation ecosystem;
- *Goal 7:* Increase economic growth;
- *Goal 8:* Increase job creation.

To achieve these goals, each NSF Engine will carry out an integrated and comprehensive set of activities spanning use-inspired research, translation-to-practice, entrepreneurship, and workforce development to nurture and accelerate regional industries. In addition, each NSF Engine is expected

to embody a culture of innovation and have a demonstrated, intense, and meaningful focus on improving diversity throughout its regional science and technology ecosystem. NSF Engines are awarded as cooperative agreements and are expected to undergo an annual comprehensive evaluation assessment of the NSF Engine's performance, which will inform subsequent year funding. The total funding for each NSF Engine is up to \$160 million over 10 years with the first-ever group of NSF Engines expected to be announced in late 2023.

Effective monitoring, assessment, and evaluation of NSF Engines will be critical for making programmatic funding decisions and increasing the understanding of how regional innovation ecosystems are created. Systematic data and information collection will be qualitative, quantitative, and descriptive in nature and will provide a means for managing Program Directors to monitor progress throughout a given NSF Engine the award and ensure that the award is in good standing. These data will also allow NSF to assess the NSF Engines Program in terms of intellectual, technological, societal, commercial, and economic impacts that are core to the NSF merit review criteria. Finally, in compliance with the Evidence Act of 2019, information collected will be used for both internal and external program evaluation and assessment, satisfying Congressional requests, and supporting the Agency's policymaking and reporting needs.

Methodology: This information collection, which entails collecting information from NSF Engines grantees and participants through a series of surveys, interviews, focus groups, and case studies, is in accordance with the Agency's commitment to improving service delivery as well as the Agency's strategic goal to "advance the capability of the Nation to meet current and future challenges."

For this effort, four categories of survey instruments have been developed, each of which will include closed-ended and open-ended questions to generate quantitative and qualitative data. For ease of use for our respondent pool, survey questionnaires will be programmed into interactive web surveys and distributed to eligible respondents by email.

The surveys, which will serve as a census for all applicable NSF Engines grantees, partner organizations, and participants, will be used to collect baseline measures at the start of the program and vital information on how grantees, partner organizations, and participants progress through the

program. All data collected through web surveys will be made available to the external evaluator(s) for each NSF Engine to be used for their own analyses, assessments, and evaluation. The four categories of data that will be collected for each NSF Engine through web-based surveys are outlined below:

- Input data for a given NSF Engine
 - The Chief Executive Officer, or designated personnel, will be asked to provide basic information on each NSF Engine participant (e.g., name of individual, email address of individual, which NSF Engine activity the individual is involved in), each partner organization (e.g., name and address of partner organization, point of contact for organization's involvement with NSF Engines, email address for organization's point of contact), and each programmatic activity (e.g., title of activity, activity lead name and email address, short description of the activity). Automated web-based surveys will be sent to the email addresses collected from this input. Data will be collected on a rolling basis as NSF Engine activities may start at any time during the award.

- Individual level data
 - Demographic and personal data (e.g., age, gender, race, educational attainment, socioeconomic status, job status) will be collected for all participants in a given NSF Engine, including the Chief Executive Officer; members of the leadership team, governance board, and advisory committees, as applicable; researchers; and workforce development participants. Data collected from individuals will be used to monitor and assess whether the NSF Engine's participants reflect the demographic diversity of the region of service defined by the NSF Engine. In addition, these data can be used by individual NSF Engines to assess whether they are meeting their diversity, equity, inclusion, and accessibility (DEIA) objectives and targets. Surveys for individuals will be conducted once a year.

- Partner organization level data
 - Partner organizations that are involved in any NSF Engines activities or provide any monetary, in-kind, or other contributions will be surveyed twice a year and asked to provide basic information about its organization (e.g., employer identification number, legal name of organization, type of organization); in which NSF Engine activities the organization participated; the monetary or estimated value of in-kind and other resources they

contributed to the NSF Engine; with which other partner organizations within the NSF Engine they collaborated; why they are a partner of the NSF Engine; and other information related to the roles and responsibilities an organization has within NSF Engine. Individual Engines may use the data for internal assessments and to help inform decision making. Data collected from this effort will be used to monitor and assess the level of cross-sector partnerships created within and across NSF Engines.

- Programmatic-level data
 - NSF Engines activities fall into one of four programmatic categories: (1) use-inspired and translational research, (2) workforce development, (3) diversity, equity, inclusion, and accessibility (DEIA), and (4) ecosystem building (e.g., stakeholder engagement, strategic planning, building of infrastructure, partner outreach). The lead of each activity will be asked to provide information about the activity twice a year. Different survey questionnaires will be used for each of the four programmatic categories. Basic information to be collected for all activities include activity status (i.e., active, completed, on hold, or cancelled); identification of milestones; and milestone status (i.e., on track, at risk, or off track). Information specific to each programmatic category will also be collected. For instance, the survey questionnaire on use-inspired and translational research activities will also collect information on intellectual property (e.g., invention disclosures, patents granted, licensing agreements, royalties earned) as well as where along is the research spectrum of an activity (e.g., technology and adoption readiness levels). For the workforce development survey questionnaire, information will also be collected on the targeted population(s) of the workforce development activity. Individual NSF Engines may use the data for internal assessments and to help inform decision making. Data collected from this effort will also be used to monitor and assess the progress made in use-inspired and translational research, workforce development, DEIA, and ecosystem building within and across NSF Engines.

In addition to the web-based surveys, follow-up interviews and focus groups will be conducted with project team leaders, such as Principal Investigators (PIs), Principal Directors (PDs), Chief Executive Officers (CEOs), and members of the governance boards, as well as

NSF Engines stakeholders, such as NSF Engines participants, and partner and community-based organizations. Case studies and focus group interviews will be used to collect qualitatively rich discursive and observational information that cannot be collected within web surveys. Both interviews (focus groups and/or follow-up) and case studies will be conducted virtually with the possibility of in-person interviews and non-participant observation to be held in the future.

NSF's TIP directorate will only submit a collection for approval under this clearance if it meets the following conditions:

- The collection has a reasonably low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for the Federal government;

- The collection is non-controversial and does not raise issues of concern for other Federal agencies; and

- Information gathered will be used for the dual and interrelated purposes of disseminating information about the NSF Engines program and using this information to conduct enhanced program monitoring for NSF Engines, identify and implement efficiencies, and make programmatic improvements.

Feedback collected under this clearance provides useful information for the continued evolution of the NSF Engines program, but it may not yield data that can be generalized to the overall population in all instances. Our qualitative data collection campaigns—follow-up interviews, focus groups, and case studies—are designed to provide contextual understanding of the progress made by each NSF Engine, and to identify NSF Engines or projects that demonstrate exceptional performance in efforts to build an inclusive, sustainable innovation ecosystem. All data collection campaigns (e.g., web-based surveys, interviews, focus groups), collectively, will help TIP monitor the progress of individual NSF Engines, identify trends over time, and assess overall program performance.

Affected Public: Please refer to the detailed descriptions of each programmatic category for the targeted groups.

Average Expected Annual Number of Activities: For each Engine award, we anticipate the following lower and upper bounds for the numbers of responses and response burdens by collection method:

Collection method	Programmatic category	Estimated lower bound (number of responses)	Estimated upper bound (number of responses)	Estimated average response time (min)	Frequency of data collection	Approximate lower bound response burden (hours)	Approximate upper bound response burden (hours)
Web-based surveys	NSF Engine input ...	45	350	5	Rolling basis	4	29
	Individuals	20	200	10	Once a year	3	33
	Partner organiza- tions.	10	100	30	Twice a year	10	100
	Programmatic ac- tivities.	15	50	45	Twice a year	23	75
Interviews and focus groups.	NSF Engine wide ...	15 individuals	50 individuals	90	Up to twice a year ..	45	150

Respondents: Lower bound estimate of 60 individuals and upper bound estimate of 400 individuals per NSF Engine award per year.

Annual Responses: Lower and upper bound estimates of 100 and 600 responses per NSF Engine per year, respectively. The total number of annual responses will be based on the total number of NSF Engines awarded, which is determined by annual funding availability.

Frequency of Response: Please refer to the description of programmatic categories for frequency of data collection.

Average Minutes per Response: 30.

Burden Hours: Lower and upper bound estimates of approximately 85 and 400 hours per NSF Engine award, respectively.

Dated: October 6, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-22598 Filed 10-12-23; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

710th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on November 1–3, 2023. The Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301-576-2978, passcode 861933379#. A more detailed agenda including the MSteam link may be found at the ACRS public website at <https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html>. If

you would like the MSteam link forwarded to you, please contact the Designated Federal Officer as follows: Quynh.Nguyen@nrc.gov, or Lawrence.Burkhart@nrc.gov.

Wednesday, November 1, 2023

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Level 3 Probabilistic Risk Assessment (Open)—The Committee will have presentations and discussion with the NRC staff regarding the subject topic.

10:30 a.m.–1 p.m.: Level 3 Probabilistic Risk Assessment Committee Deliberation (Open)—The Committee will have deliberations with the NRC staff regarding the subject topic.

1 p.m.–6 p.m.: Planning and Procedures Session/Future ACRS Activities/Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [Note: Pursuant to 5 U.S.C. 552b(c)(2), a portion of this session may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS.] [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed to discuss and protect information designated as proprietary.]

Thursday, November 2, 2023

8:30 a.m.–10:30 a.m.: Increased Enrichment Rulemaking Regulatory Basis (Open)—The Committee will have presentations and discussion with the NRC staff regarding the subject topic.

10:30 a.m.–1 p.m.: Increased Enrichment Rulemaking Regulatory Basis Committee Deliberation (Open)—The Committee will have deliberations

with the NRC staff regarding the subject topic.

1 p.m.–6 p.m.: Committee Deliberation/Preparation of Reports (Open)—The Committee will deliberate and continue its discussion of proposed ACRS reports.

Friday, November 3, 2023

8:30 a.m.–6 p.m.: Committee Deliberation/Preparation of Reports (Open)—The Committee will deliberate and continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301-415-5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least one day before the meeting.

In accordance with subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are

available through the NRC Public Document Room (PDR) at pdr.resource@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html> or <https://www.nrc.gov/reading-rm/doc-collections/#ACRS/>.

Dated: October 10, 2023.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2023-22673 Filed 10-12-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341; NRC-2023-0177]

DTE Electric Company; Fermi, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. NPF-43, issued to DTE Electric Company, for operation of Fermi, Unit 2 (Fermi 2). The proposed amendment requests an amendment to the Fermi 2 Technical Specifications (TS) 3.8.1, to allow for a one-time extension of the Required Action B.4 Completion Time to allow repair of Division 1 Mechanical Draft Cooling Tower A and C fan pedestals while online. In addition, the proposed amendment requests an editorial correction to the one-time footnote added to TS 3.7.2 in the previously approved amendment 225. The proposed amendment is being requested under exigent circumstances pursuant to NRC regulations.

DATES: Submit comments by October 27, 2023. Request for a hearing or petitions for leave to intervene must be filed by December 12, 2023.

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-2023-0177. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email:

Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail Comments To:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Surinder S. Arora, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1421, email: *Surinder.Arora@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0177 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-2023-0177.

- *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-2023-0177 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF-43, issued to DTE Electric Company, for operation of Fermi, Unit 2, located in Monroe County, Michigan.

The proposed amendment (ADAMS Accession No. ML23271A188) requests an amendment to the Fermi, Unit 2, Technical Specifications (TS) 3.8.1, to allow for a one-time extension of the Required Action B.4 Completion Time to allow repair of Division 1 Mechanical Draft Cooling Tower A and C fan pedestals while online. In addition, the proposed amendment requests an editorial correction to the one-time footnote in TS 3.7.2, which was added in the previously approved amendment 225 (ADAMS Accession No. ML23243A885). The proposed amendment is being requested under exigent circumstances pursuant to paragraph 50.91(a)(6) of title 10 of the *Code of Federal Regulations* (10 CFR).

On July 18, 2023, the Division II Residual Heat Removal Service Water Mechanical Draft Cooling Tower (MDCT) fan D tripped due to high vibrations caused by a degraded, non-conforming gearbox pedestal. Corrective actions were required to correct the conditions and restore the equipment to an operable status, using extra time allowed by the Notice of Enforcement Discretion approved by the NRC on July 20, 2023. During that time the ultimate heat sink was declared inoperable. During the 'extent of condition' review by DTE, it was discovered that the MDCT A and C fan pedestals were also

degraded and non-conforming but remained operable and also in need of similar repair. DTE submitted this amendment request to repair the Division I MDCT A and C fan pedestals. Additionally, the request provides justification for obtaining an extension of the Completion Time to repair the Division I MDCT fan pedestals online instead of waiting until the next refueling outage.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

DTE will use the compensatory measures and Fermi 2 Configuration Risk Management program requirements outlined [in] Section 3.3 [in ML23271A188] and in previously approved amendment 225 (Reference 6.6) [in ML23271A188] during the duration of the proposed extension of the Completion Time for the MDCT fan pedestal repair. Note: A risk-informed justification for this change had been previously evaluated and approved under Reference 6.6 [in ML23271A188].

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a change in design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment is initiated,

nor will the functional demands on credited equipment be changed. The proposed changes do not impact the interaction of any systems whose failure or malfunction can initiate an accident. There are no identified redundant components affected by these changes and thus, there are no new common cause failures or any existing common cause failures that are affected by extending the Completion Time. The proposed changes do not create any new failure modes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the plant design, nor do they affect the assumptions contained in the safety analyses. Specifically, there are no changes being made to the MDCT fan design. The proposed changes have been evaluated and margins of safety ascribed to Emergency Equipment Cooling Water (EECW) availability and to plant risk have been determined to be not significantly reduced. The risk impact of the proposed changes is acceptable to the compensatory measures and other requirements, as outlined [in] Section 3.3 [in ML23271A188] and [in] previously approved amendment in Reference 6.6 [in ML23271A188]. As analyzed in the UFSAR [Updated Final Safety Analysis Report], the loss of the Division I MDCT fans would not cause a significant reduction in safety because the MDCT system is redundant and can perform its function with one division unavailable.

The evaluation provided above shows that the proposed changes will not significantly increase the probability or the consequences of any accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. If the Commission takes this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the

amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c). For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its

counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their

documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 28, 2023 (ADAMS Accession No. ML23271A188).

Attorney for licensee: Jon P. Christinidis, DTE Electric Company, Expert Attorney—Regulatory, 1635 WCB, One Energy Plaza, Detroit, MI 48226. *NRC Branch Chief:* Jeff Whited.

Dated: October 5, 2023.

For the Nuclear Regulatory Commission.

Surinder S. Arora,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023-22510 Filed 10-12-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-438 and 50-439; NRC-2023-0178]

Nuclear Development, LLC; Tennessee Valley Authority; Bellefonte Nuclear Plant, Units 1 and 2; Construction Permit Transfer Application; Withdrawal by Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Nuclear Development, LLC (ND) to withdraw its application, dated November 13, 2018, to transfer the construction permits (CPs) for Bellefonte Nuclear Plant (BLN), Units 1 and 2 (Construction Permit Nos. CPPR-122 and CPPR-123, respectively). ND had requested that the NRC consent to the transfer of the BLN CPs from Tennessee Valley Authority (TVA) to ND. The CPs for BLN, Units 1 and 2, expired on October 1, 2021.

DATES: The effective date of the withdrawal of the construction permit transfer application is October 6, 2023.

ADDRESSES: Please refer to Docket ID NRC-2023-0178 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 <http://www.regulations.gov> and search for Docket ID NRC-2023-0178. Address questions about Docket IDs to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. 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:

Omid Tabatabai, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6616; email: Omid.Tabatabai@nrc.gov.

SUPPLEMENTARY INFORMATION: By letter dated November 13, 2018 (ADAMS Accession No. ML18318A428), ND submitted an application requesting that the NRC consent to the transfer of the CPs for the BLN, Units 1 and 2 from the TVA to ND. In its application, ND also requested that the NRC issue conforming administrative amendments and amend the CPs to reflect the revised completion dates discussed in the application. On November 5, 2019, the NRC staff accepted and docketed ND's application for detailed review (ADAMS Accession No. ML19298A194).

The NRC previously issued a Notice of Consideration of Approval of Transfer of Construction Permits and Conforming Amendment, and Opportunity to Comment, Request a Hearing, and Petition for Leave to Intervene in the **Federal Register** on November 21, 2019 (84 FR 64355). However, by letter dated August 28, 2023 (ADAMS Accession No. ML23263A100), ND requested that the NRC withdraw ND's application.

Dated: October 10, 2023.

For the Nuclear Regulatory Commission.

Omid Tabatabai-Yazdi,

Senior Project Manager, New Reactor Licensing Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023-22657 Filed 10-12-23; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2021-114]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 13, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2021-114; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 74, Filed Under Seal; *Filing Acceptance Date:* October 5, 2023; *Filing Authority:*

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: October 13, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023-22628 Filed 10-12-23; 8:45 am]

BILLING CODE 7710-FW-P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information To Support the Development of a Federal Environmental Justice Science, Data, and Research Plan

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI).

SUMMARY: The Office of Science and Technology Policy (OSTP) seeks information to assist in developing a coordinated Federal strategy to identify and address gaps in science, data, and research related to environmental justice. Information received through this RFI will inform the biennial Environmental Justice Science, Data, and Research Plan.

DATES: Interested persons and organizations are invited to submit comments on or before December 12, 2023.

ADDRESSES: Interested individuals and organizations should submit comments electronically via [regulations.gov](https://www.regulations.gov). Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be incorporated or taken into consideration.

Instructions: *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on how to use *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ” (<https://www.regulations.gov/fdq>).

Privacy Note: OSTP’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. OSTP requests that no proprietary information, copyrighted information, or personally identifiable

information be submitted in response to this RFI.

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. The National Science and Technology Council Environmental Justice Subcommittee welcomes any responses to inform and guide the work of the subcommittee. Please feel free to respond to as many prompts as you choose, indicating the section number and question letter being addressed. Responses are encouraged to include the name of the person(s) or organization(s) filing the comment, and may also include the respondent type (e.g., academic, non-profit, professional society, community-based organization, industry, trainee/student, member of the public, government, other). Respondent’s role in the organization may also be provided (e.g., researcher, faculty, student, program manager, journalist) on a voluntary basis. Additionally, please include the Docket ID at the top of your comments.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Dr. Kristi Pullen Fedinick, OSTP Assistant Director of Environmental Justice Science and Technology at EJ@ostp.eop.gov or via phone at (202) 881-9335.

SUPPLEMENTARY INFORMATION: On April 21, 2023, President Biden signed Executive Order (E.O.) 14096 to revitalize our nation’s commitment to environmental justice for all.¹ As set forth in section 2 of E.O. 14096, “Environmental justice” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including

those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

To address the need for a coordinated Federal strategy to identify and address gaps in science, data, and research related to environmental justice, Section 5 of E.O. 14096 directs the Director of the Office of Science and Technology Policy (OSTP) to establish an Environmental Justice Subcommittee of the National Science and Technology Council (Environmental Justice Subcommittee). As directed by the E.O., the Environmental Justice Subcommittee is preparing an Environmental Justice Science, Data, and Research Plan (Research Plan) to:

(A) analyze any gaps and inadequacies in data collection and scientific research related to environmental justice, with a focus on gaps and inadequacies that may affect agencies’ ability to advance environmental justice, including through the Environmental Justice Strategic Plans required under section 4 of E.O. 14096;

(B) identify opportunities for agencies to coordinate with the research efforts of State, Tribal, territorial, and local governments; academic institutions; communities; the private sector; the non-profit sector; and other relevant actors to accelerate the development of data, research, and techniques—including consideration of Indigenous Knowledge—to address gaps and inadequacies in data collection and scientific research that may affect agencies’ ability to advance environmental justice;

(C) provide recommendations to agencies on the development and use of science, data, and research to support environmental justice policy and the agency responsibilities outlined in section 3 of the E.O.;

(D) provide recommendations to the Chair of the White House Council on Environmental Quality (CEQ) on data sources to include in the Climate and Economic Justice Screening Tool established pursuant to section 222(a) of *Executive Order 14008*;

(E) provide recommendations to agencies on ethical standards, privacy protections, and other requirements for the development and use of science, data, and research addressed in the Research Plan, including recommendations with respect to

¹ E.O. 14096, Revitalizing Our Nations Commitment to Environmental Justice for All, 88 FR 25, 351 (Apr. 26, 2023); White House Fact Sheet (Apr. 21, 2023).

engaging in consultation with and obtaining consent of Tribal Nations; and (F) provide recommendations to agencies on:

(1) encouraging participatory science, such as research or data collection undertaken by communities or the public, and, as appropriate, integrating such science into agency decision-making processes;

(2) taking steps to ensure or encourage, as appropriate, that collections of data related to environmental justice include data from the Territories and possessions of the United States;

(3) improving the public accessibility of research and information produced or distributed by the Federal Government, including through the use of machine-readable formats, where appropriate;

(4) disaggregating environmental risk, exposure, and health data by race, national origin, income, socioeconomic status, age, sex, disability, and other readily accessible and appropriate categories;

(5) identifying and addressing data collection challenges related to patterns of historical or ongoing racial discrimination and bias;

(6) analyzing cumulative impacts (including risks) from multiple sources, pollutants or chemicals, and exposure pathways, and accounting for non-chemical stressors and current and anticipated climate change;

(7) in collaboration with Tribal Nations, as appropriate, collecting, maintaining, and analyzing information on consumption patterns of fish, wildlife, and plants related to subsistence and cultural practices of Tribal and Indigenous populations;

(8) providing opportunities for meaningful engagement for communities with environmental justice concerns on the development and design of data collection and research strategies relevant to those communities; and

(9) implementing sections 3–3 and 4–4 of *Executive Order 12898* in an efficient and effective manner.

Information Requested

Respondents may provide information as many topics below as they choose. The Subcommittee on Environmental Justice formed under the National Science and Technology Council Committee on the Environment, co-chaired by OSTP, the White House Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), and Department of Transportation (DOT), will develop an Environmental Justice Science, Data, and Research Plan. Input is welcome

from stakeholders and members of the public representing all backgrounds and perspectives.

To support the development of the Federal Environmental Justice, Science, Data, and Research Plan, OSTP seeks information on the collection and use of science, data, and research in Federal decision making, including on the following topics:

1. Development and Use of Science, Data, and Research To Support Environmental Justice Policy

a. What kinds of Federal activities² do you think should better include or consider data or research related to environmental justice? Are there specific data types of research you would prioritize?

b. What are the biggest opportunities for advancing research and development to support environmental justice-related decision making, both within the Federal research programs and in Federal extramural grant programs?

c. What types of data and evidence, including Indigenous Knowledge³ as appropriate, do you find most important or most needed for advancing governmental decision-making related to environmental justice?

d. What data sources should the Environmental Justice Subcommittee consider recommending to the Chair of CEQ for inclusion in the Climate and Economic Justice Screening Tool established pursuant to section 222(a) of *Executive Order 14008*?

e. Please provide specific examples in which data have been used to improve conditions in communities with environmental justice concerns or any other communities?

f. Please provide examples of data, research, local or Indigenous Knowledge, and/or science—or the lack thereof—that have been misused or misinterpreted in environmental justice-related decisions and actions?

² As set forth in E.O. 14096, section 3, “‘Federal activity’ means any agency rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment, including an agency action related to climate change. Federal activities may include agency actions related to: assuring compliance with applicable laws; licensing, permitting, and the reissuance of licenses and permits; awarding, conditioning, or oversight of Federal funds; and managing Federal resources and facilities. This may also include such activities in the District of Columbia and the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and other Territories and possessions of the United States.”

³ <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IE-Guidance.pdf>.

2. Identifying and Addressing Data Gaps and Inadequacies in Data Collection and Scientific Research Related to Environmental Justice

a. What data gaps or data collection challenges have you encountered related to patterns of historical or ongoing discrimination and bias (e.g., related to income, race, color, national origin, Tribal affiliation, or disability)?

b. What datasets have you used that may be relevant to assessing environmental, health, economic, or environmental justice burdens or impacts in the U.S. Territories?

c. What recommendations do you have to ensure or encourage, as appropriate, that collection of data related to environmental justice include data from U.S. Territories?

3. Encouraging Participatory Science and Meaningful Engagement for Communities

a. What role should the Federal government play in collecting, storing, and managing community-derived data, including information collected from communities with environmental justice concerns?

b. What suggestions do you have for use of community-derived data in Federal decisions with varying needs for quality assurance, reproducibility, and peer review across different decision contexts?

c. What are the priority decision contexts in which community-derived data should be applied?

d. What other actions could the Federal government take to encourage use of community-generated data in state or local decision making?

e. What recommendations do you have for encouraging, implementing, and institutionalizing community and/or participatory science, such as research or data collection undertaken by communities or the public, and, as appropriate, integrating such science into agency decision-making processes?

f. What practices could ensure that effective, respectful, and meaningful public engagement is built into the research process?

g. What methods, processes, or structures do you know of for respectfully collecting, maintaining, and analyzing information with communities?

h. What mechanisms of submitting community-derived data to the Federal government for use in decision-making would you find the most useful?

i. What types of research strategies are most meaningful to you, and how do you prefer to be engaged in environmental justice research? Please

feel free, if appropriate, to indicate if your perspective is grounded in any personal experience, including any experiences as a member of any community with environmental justice concerns. If you are providing comments as a representative of a Tribal Nation, or as a representative of a U.S. Territory, or any other governmental entity please also feel free to note that as relevant to this or any other question.

4. Ethical Standards, Privacy Protections, and Other Requirements for the Development and Use of Science, Data, and Research

a. What systems or approaches to privacy protections, attribution, and ethical standards have you encountered or developed that have been useful in community-derived experiential data?

b. What suggestions do you have on ethical standards, privacy protections, and other requirements for the development and use of science, data, and research?

5. Research Coordination and Public Access to Federal Data

a. Are there datasets not owned by the Federal government that you have utilized to help support the advancement of environmental justice? If you have used non-Federal data sets to advance environmental justice, which ones have you used and why?

b. How can the Federal government better collaborate across Federal agencies, and partner with State, Tribal, territorial, and local governments, academic institutions, the private sector, the non-profit sector, and other entities to accelerate the development of data, research, and techniques to address gaps and inadequacies in data collection and scientific research that may affect agencies' ability to advance environmental justice?

c. What kinds of tools and resources would help communities and local decision makers better access data and information and address environmental justice in decision making?

d. What recommendations do you have for improving the public accessibility of data and information produced or distributed by the Federal Government, including through the use of digital and spatial formats, where appropriate?

6. Data Analysis and Methodological Considerations

a. What methods do you recommend for disaggregating environmental risk, exposure, and health data by race, national origin, income, socioeconomic status, age, sex, disability, and/or other

readily accessible and appropriate categories?

b. What methods do you recommend for analyzing cumulative impacts (including risks) from multiple sources, pollutants or chemicals, and exposure pathways, and accounting for non-chemical stressors and current and anticipated climate change?

c. What methods, processes, or structures do you recommend for respectfully collecting, maintaining, and analyzing information, in collaboration with Tribal Nations, on consumption patterns of fish, wildlife, and plants related to subsistence and cultural practices of Tribal and Indigenous populations?

7. Additional Considerations

a. Is there anything else you would like to be considered in the development of the Environmental Justice Science, Data, and Research Plan as described in E.O. 14096?

Dated: October 6, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2023-22527 Filed 10-12-23; 8:45 am]

BILLING CODE 3270-F1-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98692; File No. SR-PEARL-2023-35]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity Fees and Ports Fees

October 5, 2023.

On August 8, 2023, MIAX PEARL LLC ("MIAX Pearl Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment

in the **Federal Register** on August 25, 2023.⁴ On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,⁵ the Commission: (1) temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determinewhether to approve or disapprove the proposed rule change.⁷ On October 2, 2023, the Exchange withdrew the proposed rule change (SR-PEARL-2023-35).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22506 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98693; File No. SR-NYSEARCA-2023-69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

October 5, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 29, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the Customer Incentive Program and Market Maker Penny and SPY Posting Credit Tiers. The Exchange proposes to implement the fee change effective October 2, 2023.

⁴ See Securities Exchange Act Release No. 98180 (August 21, 2023), 88 FR 58404.

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 98658, 88 FR 68770 (October 4, 2023).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(iii).

The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify certain qualifying bases for the Customer Incentive Program and the Market Maker Penny and SPY Posting Credit Tiers (the "Market Maker Posting Credit Tiers"). The Exchange proposes to implement the rule change on October 2, 2023.

Customer Incentive Program

The Customer Incentive Program offers OTP Holders and OTP Firms (collectively, "OTP Holders") an additional (\$0.03) credit on Customer Posting Credits if they achieve one of two qualifying criteria.⁴ Currently, an OTP Holder may earn this credit by achieving either (1) an ADV from Market Maker total electronic volume of at least 0.60% of TCADV, plus at least 0.10% of TCADV from Customer posted interest in non-Penny issues, or (2) at least 0.30% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.60% of U.S. equity market share posted and executed on the NYSE Arca Equities [sic] market.

The Exchange proposes to modify the first of these qualifications by increasing the required amount of Market Maker total electronic volume to at least 1.00% of TCADV and eliminating any required volume from Customer posted interest. The Exchange does not propose any changes to the second qualifying basis for the Customer Incentive Program or

to the amount of the credit available to qualifying OTP Holders, which will remain at (\$0.03). In addition, OTP Holders would continue to be eligible to earn only one (\$0.03) credit through the Customer Incentive Program.

The Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Customer Incentive Program, but believes that the proposed change would continue to encourage OTP Holders to direct Market Maker interest to the Exchange to earn an additional credit on the Customer Posting Credits. Although the proposed change would increase the level of Market Maker posted interest required to qualify for the additional credit, it would also remove the Customer posted interest component of the qualification, which could make earning the credit more achievable for OTP Holders.

Market Maker Posting Credit Tiers

The Exchange currently offers qualifying OTP Holders tiered credits on electronic executions of Market Maker posted interest in Penny issues and SPY through the Market Maker Posting Credit Tiers.⁵ Currently, an OTP Holder may qualify for Super Tier II of the Market Maker Posting Credit Tiers by achieving at least 0.10% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker posted volume in Tape B securities that is equal to at least 1.50% of US Tape B consolidated average daily volume ("CADV") for the billing month executed on NYSE Arca Equities [sic] market. The Exchange proposes to modify this qualification for Super Tier II to require at least 0.15% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker Tape B adding ADV that is equal to at least 1.40% of US Tape B CADV for the billing month executed on NYSE Arca Equities [sic] market.

The Exchange does not propose any changes to the amounts of the credits available to OTP Holders that qualify for Super Tier II or to any of the other qualifications for or credits offered through the Market Maker Posting Tiers.

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Market Maker Posting Credit Tiers, the Exchange believes that the proposed change would continue to encourage OTP Holders to direct Market Maker interest to the Exchange to earn the credits offered in Super Tier II. In addition, although the proposed change would increase the level of Market

Maker posted interest required to qualify for Super Tier II, it would also reduce the requirement for posted volume in Tape B securities, which could make the incentive more achievable for OTP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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."⁸

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.⁹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.¹⁰

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

⁹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁰ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options increased slightly from 11.36% for the

⁴ See Fee Schedule, Customer Incentive Program.

⁵ See Fee Schedule, Market Maker Penny and Spy Posting Credit Tiers.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed changes to the qualifying criteria for the Customer Incentive Program and Market Maker Posting Credit Tiers are reasonable because they are intended to continue to incent OTP Holders to direct interest to the Exchange (and, in particular, Customer and Market Maker posted interest) in order to benefit from the credits offered through the Customer Incentive Program and Market Maker Posting Credit Tiers. Although the proposed changes would increase certain of the requirements to qualify for the credits offered through these programs, the proposed changes would also reduce or eliminate certain other requirements; accordingly, the Exchange believes that the proposed changes would not discourage OTP Holders from seeking to qualify for the credits and could instead make the credits more attainable for OTP Holders.

To the extent the proposed rule change attracts greater volume and liquidity by encouraging OTP Holders to increase their options volume on the Exchange, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can attempt to qualify for the Customer Incentive Program and Market Maker Posting Credit Tiers or not. Moreover, the proposal is designed to incent OTP Holders to continue to direct Customer and Market Maker interest to the Exchange and to aggregate

such interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more opportunities for execution of Customer or Market Maker interest on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed changes to the Customer Incentive Program and Market Maker Posting Credit Tiers are not unfairly discriminatory because they would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the proposed qualifications to earn the credits, nor are they obligated to execute posted interest. To the extent that the proposed changes attract more interest, including Customer and Market Maker posting interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹¹

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange, including both Customer and Market Maker posting interest. The Exchange believes that the proposed changes would continue to incent OTP Holders to direct order flow to the Exchange in order to qualify for the Customer Incentive Program and Market Maker Posting Credit Tiers. Greater liquidity benefits all market participants on the Exchange and increased order flow would increase opportunities for execution of other trading interest. The proposed changes to the qualifications for the Customer Incentive Program and Market Maker Posting Credit Tiers would apply to all similarly-situated market participants and, accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹² Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2023, the

¹¹ See Reg NMS Adopting Release, *supra* note 8, at 37499.

¹² The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.¹³

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct Customer and Market Maker posted interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-69 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-NYSEARCA-2023-69. 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-NYSEARCA-2023-69 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22507 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98702; File No. SR-ISE-2023-22]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Complex Order Rules

October 6, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2023, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc.

¹³ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options increased slightly from 11.36% for the month of August 2022 to 11.37% for the month of August 2023.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“Nasdaq”) functionality, the Exchange proposes to amend certain auction rules³ which describe the short sale price test in Rule 201 of Regulation SHO. Specifically, the Exchange proposes to adopt a new sentence within Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions, to add further detail to the recently adopted stock-tied rule text. This rule change is identical to a rule change filed by Nasdaq MRX, LLC (“MRX”).⁴

Background

Today, ISE Members may trade certain Stock-Option Orders as described in ISE Options 3, Section 14(a)(2)⁵ and Stock-Complex Orders as described in ISE Options 3, Section 14(a)(3),⁶ among other things. ISE recently filed a rule change to amend its stock-tied functionality in connection with a technology migration.⁷ Among other things, the proposal added

³ See Securities Exchange Act Release No. 98066 (August 7, 2023), 88 FR 54672 (SR-ISE-2023-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rules Related to Complex Orders with Respect to a System Migration) (“SR-ISE-2023-13”).

⁴ See Securities Exchange Act Release No. 98599 (September 28, 2023) (SR-MRX-2023-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Complex Order Rules) (not yet published).

⁵ The term “Stock-Option Order” refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See ISE Options 3, Section 14(a)(2).

⁶ The term “Stock-Complex Order” refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See ISE Options 3, Section 14(a)(3).

⁷ See SR-ISE-2023-13.

Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13⁸ to address the short sale price test in Rule 201 of Regulation SHO with respect to Complex PIM Orders,⁹ Complex Facilitation Orders¹⁰ and Complex SOM Orders.¹¹ The rule states that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Nasdaq Execution Services, LLC (“NES”),¹² will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if the price is equal to or below the current national best bid.¹³ However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid.¹⁴ Further, if NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or Complex PIM Order and/or Improvement Order, in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response or Complex PIM Order and/or Improvement Order to the entering Member.

⁸ *Id.*

⁹ A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). See ISE Options 3, Section 14(b)(18).

¹⁰ A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). See ISE Options 3, Section 14(b)(16).

¹¹ A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). See ISE Options 3, Section 14(b)(17).

¹² NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.

¹³ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13. The term “covered security” has the same meaning as in Rule 201(a)(1) of Regulation SHO.

¹⁴ See ISE Supplementary Material .08(c) to Options 3, Section 11 and ISE Supplementary Material .09(c) to Options 3, Section 13.

Proposal

At this time, the Exchange proposes to amend its Complex SOM, Complex Facilitation, and Complex PIM rules to add a new sentence within Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13 that describes the manner in which NES would execute a short sale order in the underlying covered security component of Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book (1) when the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order in the underlying covered security component; or (2) when the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order in the underlying security component. As described more fully below, in the first case NES would execute the underlying covered security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price. In the second case, NES would execute the underlying security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price or better.

The proposed rules will make clear to Members who submit auction responses or Improvement Orders that include a short sale order, or Members that place orders on the Complex Order Book that include a short sale order, the manner in which NES will execute the short sale component of their order when their Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book executes in the Complex SOM, Complex Facilitation, and Complex PIM auction, (*i.e.*, their short sale order will execute at its stated limit price, but not at a better price) if the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order. However their short sale order will execute at its stated limit price or better if the facilitating Electronic Access Member’s contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order. Thus, whether a short sale order included in an auction receives its stated limit price, or potentially receives a better price

than its limit price, depends on whether the contra-side order submitted to the auction with an agency order also included a short sale order. Although the availability of the potential for price improvement for the responder's short sale order will vary, depending on whether the contra-order also included a short sale order, ISE notes that for the reasons described below the alternative would be to exclude auction orders that include a short sale order from the Complex SOM, Complex Facilitation, and Complex PIM altogether, which would decrease competition in the auction and potentially reduce opportunities for the agency order to receive price improvement in the auctions. Below are some examples of Complex PIM Auction responses ("Improvement Orders") executing within a Complex PIM Auction.¹⁵

Example No. 1—Complex PIM Auction Utilizing Stated Limit Price

ISE BBO for option leg is 0.05×0.10 .

Underlying equity NBBO is 1.05×1.10 .

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.20).

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @1.08 and options @ 0.05);¹⁶ Counter-Side Order does not include a short sale order.

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.11 (sell stock @ 1.06 and options @0.05).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.07 and options @0.05).

Complex PIM auction timer concludes:

Improvement Complex Order1 trades with Complex PIM Agency Order, option @0.05 and stock @1.06 for net price of 1.11. The Improvement Complex Order may not trade the underlying equity at 1.05 because it cannot execute a short sale order at a price that is equal to the NBB of the underlying equity.

Example No. 2—Complex PIM Auction Utilizing Stated Limit Price

ISE BBO for option leg is 0.05×0.10 .

Underlying equity NBBO is 1.05×1.10 .

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.20).

Complex PIM to buy strategy, 100 @ 1.13 (buy stock @1.08 and options @ 0.05); Counter-Side Order does not include a short sale order.

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.10 (sell stock @ 1.05 and options @0.05).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.06 and options @0.06).

Complex PIM auction timer concludes:

Improvement Complex Order2 trades with Complex PIM Agency Order, option @0.06 and stock @1.06 for net price of 1.12. Since the Counter-Side Order does not include a short sale order, Improvement Complex Order1 is considered for execution at its stated limit price of 1.10; since it cannot trade at 1.10 due to Reg SHO, it does not trade with the Complex PIM Agency Order.

Example No. 3—Complex PIM Auction Where Counter-Side Is Also Short Selling

ISE BBO for option leg is 0.05×0.10 .

Underlying equity NBBO is 1.05×1.20 .

Counter-Side Order includes a short sale order.

Reg SHO short sale price test is triggered in the underlying.

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.30).

Complex PIM to Buy strategy, 100 @ 1.13, Counter-Side Order is a Market Order that is willing to auto-match at any price point within Reg SHO price restriction bound and has 'sell short' stock leg instructions and therefore cannot trade the stock component at any price less than or equal to the underlying best bid of \$1.05. In this example, if the Counter-Side Order did not have a "sell short" instruction it would not be required to trade at a price that is better than the NBB for security (\$1.05) and could execute at a price equal to or less than the underlying best bid of \$1.05. The price of 1.10 is the cBB (net of option and underlying NBB).

Improvement Complex Order1 is to sell, sell short stock leg, 100 @1.10 (selling stock at 1.05 and options at 0.05; note it cannot trade at 1.10 due to Reg SHO).

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (selling stock at 1.06 and options at 0.06).

Complex PIM auction timer concludes:

The Complex PIM Agency Order first executes 40 contracts with the Counter-Side Market Order, the option leg at 0.05 and stock leg at 1.06 for a net price of 1.11. The remaining 60 contracts from the Complex Agency Order then execute with Improvement Complex Order1 at the same price. In this example, both the Complex Counter-Side Order and the Improvement Complex Order are marked short sale, which permits the Improvement Complex Order to trade at a price that is better than its stated limit price.

In this example, the Improvement Complex Order traded at its next available price in lieu of its stated limit price because both the Counter-Side Order and the Improvement Complex Order included a short sale order in the underlying component security. In contrast, if the Counter-Side Order did not include a short sale order than [sic] the Counter-Side Order and Improvement Complex Order2 trade with the Complex PIM Agency Order for [sic] net price of 1.12 (option @0.06 and stock @1.06).

The Exchange proposes to amend the rule text in Supplementary Material .08 to Options 3, Section 11 with respect to a SOM and Facilitation auction to provide:

When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member's contra order or contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member' contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security.

With respect to a Complex PIM auction, the Exchange proposes to amend the rule text within Supplementary Material .09 to Options 3, Section 13 to provide:

When an improvement order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the counter-side order includes a short sale order in the underlying covered security.

In such case where a response or an unrelated limit complex order on the complex order book includes a short

¹⁵ While the examples utilize the Complex PIM auction, the same examples apply to a Complex SOM or Complex Facilitation auction.

¹⁶ The Exchange notes that different combinations of stock and options prices could determine the strategy prices in this Example 1 as well as Examples 2 and 3. The Exchange is assuming the noted prices for the examples, however the Exchange notes that multiple price points could achieve the net prices in these examples. In this particular case in Example 1, the agency order could buy stock @1.07 and buy options @0.06 in lieu of the prices noted.

sale order in the underlying covered security, NES will execute the order at its stated limit price if the facilitating Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying covered security because the Exchange desires to foster competition by including responses that have a short sale order in the underlying covered security. In this scenario, the Exchange would consider all prices submitted by responders at which the auction may execute because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. By using the order's stated limit price in this case, the Exchange would allow the responder with a short sale order to participate in the auction and allocate the best price possible to the agency order while complying with the short sale price test.¹⁷ The Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunity for potential price improvement for the agency order.

When a response, Improvement Order, or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price or better if the facilitating Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order *includes a short sale order* in the underlying security component. In this case, each short sale compliant price would be considered in determining the price at which the auction may execute, which would be at its stated limit price or better. In this scenario, because the Electronic Access Member contra order, solicited contra-

side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. In this case, all prices that are compliant with the short sale price test are considered when allocating the auction, and both the agency order and responders may receive a better price. The auction would allocate at the agency order's stated limited price or better depending on the prices of the responses. The auction responses may execute at their stated limited price or better depending on the final auction price.

This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide price improvement opportunity to the agency order.

Implementation

The Exchange intends to begin implementation of the proposed rule change prior to December 20, 2024. The implementation would commence with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal does not raise any issues of compliance with the currently operative provisions of Regulation SHO²⁰ and, therefore, the proposal promotes just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. NES, as a trading center

under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to ISE with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

In the case where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying security would protect investors and the public interest by considering all prices at which the auction could execute. Under these circumstance, the Response, Improvement Complex Order, or unrelated Limit Complex Order would be considered for execution at its stated limit price (provided the limit price is compliant with the short sale price test in Rule 201 of Regulation SHO) while the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Utilizing the order's stated limit price in this case allows the responder with a short sale order to participate in the auction while the agency order is allocated the best price possible while complying with the short sale price test. The Exchange believes that this behavior is consistent with the protection of investors and the public interest because it attempts to afford price improvement to the agency order over the responder to the auction. Finally, the Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction and provides the agency order with additional opportunities for potential price improvement.

In contrast, when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *includes a short sale order* in the underlying covered security, the auction must be allocated at a price that is short sell compliant. In this case, each short sale compliant price would be considered in determining the price at which the Complex SOM, Complex Facilitation and Complex PIM auction may execute

¹⁷ For example, utilizing a Complex PIM auction with a BBO of 0.05 × 0.10 and an NBBO for the underlying security component of 1.05 × 1.10, if the Initiating Order submitted an agency order to buy @1.13 and a contra-order to sell @1.13, with auto-match at any price point, and Responder1 was long @1.10, and Responder2 was short @1.10 (in this scenario 1.10 would not comply with the short sale price test), pursuant to the proposed amendment, the agency order would receive a price improvement allocation @1.10. In this scenario the improved price of 1.11 would not be allocated to the responder with a short sale rather the price improvement would be applied to the agency order. The Exchange believes it is important to offer price improvement to the agency order over the responder to the auction. Of note, the responder that was short @1.10 would be cancelled.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 242.200 *et seq.*

and, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. As a result, the auction may allocate at the agency order's stated limited price or better depending on the prices of the responses. Also, the auction responses may execute at their stated limited price or better depending on the final auction price. The Exchange believes its proposal is consistent with the Act and the protection of investors because both the agency order and responders may receive a better price in this case. This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide a price improvement opportunity to the agency order and to the auction response. With the proposed amendments, Complex SOM, Complex Facilitation, and Complex PIM auction responders who submit a response would be aware of the auction price that would comply with the short sale price test in Rule 201 of Regulation SHO. The proposed amendment allows Members to participate in auctions with a short sale response and such participation facilitates competition in these auctions. This proposed approach is in lieu of prohibiting Members whose auction Responses or resting Limit Complex Orders include a short sale order from responding to these auctions, which would limit competition in the auction. By allowing additional responses to participate in the auction, the Exchange believes that the proposal would benefit investors and the public interest because the additional interest may increase competition in these auctions, which may lead to better prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side

Complex Order, or Counter-Side Order *does not include a short sale order* in the underlying covered security does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices submitted by responders in determining the allocation price because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order *is also a short sale order* in the underlying covered security component does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices that are compliant with the short sale price test when allocating the auction.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security and executing such order its stated limit price or better when the facilitating Electronic Access Member contra-order, solicited contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-22 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-ISE-2023-22. 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

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-ISE-2023-22 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023-22611 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98691; File No. SR-EMERALD-2023-19]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity Fees and Ports Fees

October 5, 2023.

On August 8, 2023, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 25, 2023.⁴ On September 29, 2023, pursuant to section 19(b)(3)(C) of the Act,⁵ the

Commission: (1) temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On October 2, 2023, the Exchange withdrew the proposed rule change (SR-EMERALD-2023-19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22505 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98703; File No. SR-FINRA-2023-013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure To Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations

October 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 5, 2023, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 12208(b) through (d) of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”), FINRA Rule 13208(b) through (d) of the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) and FINRA Rule 14106(b) through (d) of the Code of Mediation Procedure (“Mediation Code” and collectively, “Codes”), to

revise and restate the qualifications for representatives in arbitrations and mediations in the forum administered by FINRA Dispute Resolution Services (“DRS”); to disallow compensated representatives who are not attorneys from representing parties in the DRS forum; to codify that a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney may represent investors in the DRS forum; and to clarify the circumstances in which any person, including attorneys, would be prohibited from representing parties in the DRS forum.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

Background

The Codes currently permit parties to arbitrations and mediations in the DRS forum to represent themselves, to be represented by an attorney at law in good standing or to be represented by a non-attorney representative (“NAR”).³ Some NARs receive compensation in connection with their representation of parties (“compensated NARs”). Compensated NARs receive monetary or non-monetary compensation in connection with the representation of parties—including, for example, advance fees, consulting fees, payments in kind, referral fees or fees pursuant to a contingent fee arrangement. Other NARs, often friends or relatives of a party, may assist parties with their cases without compensation (“uncompensated NARs”). In addition, although not specifically provided for in

²³ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release No. 98176 (August 21, 2023), 88 FR 58342.

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 98656, 88 FR 68680 (October 4, 2023).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See FINRA Rules 12208, 13208 and 14106.

the Codes, law students typically represent parties pro bono while practicing under the supervision of an attorney through securities arbitration clinics (“SACs”).⁴

In response to forum users’ concerns regarding the conduct of compensated NARs,⁵ FINRA has reviewed their representation of parties in arbitration and mediation in the DRS forum.⁶ FINRA observes that compensated NARs represent customers in a small percentage of the customer cases in the DRS forum—one percent—and that only a few compensated NARs regularly operate in the DRS forum today.⁷ Compensated NARs often possess a background in the securities industry and primarily represent individuals in arbitration or mediation claims against broker-dealers and their associated persons.⁸ Less commonly, they may represent associated persons in expungement claims brought against broker-dealers. Compensated NARs often associate with companies (“NAR firms”) that are in the business of bringing these claims and providing related services, such as evaluations of customer account activity.

Despite the low number of compensated NARs, FINRA’s review identified several recent allegations of improper conduct by compensated NARs in connection with their representation of parties in the DRS forum. In contrast, FINRA has not identified any allegations of improper conduct by uncompensated NARs or

law students. Unlike compensated NARs, uncompensated NARs (often friends or relatives of a party) lack a direct pecuniary incentive to engage in misconduct when seeking new client relationships or bringing claims in the DRS forum. In addition, unlike uncompensated NARs, law students seeking educational opportunities to gain legal experience participate in SACs under the supervision of attorneys and typically represent parties pro bono. Thus, FINRA’s focus at this time is on the representation of parties in the DRS forum by compensated NARs. For example, the State of California recently brought a civil enforcement action against several compensated NARs for engaging in the unauthorized practice of law, in part in the DRS forum; falsely promising to help customers recover their past failed investments through, in part, arbitration in the DRS forum; and charging advance fees in violation of California law.⁹ Another compensated NAR was criminally sentenced in New York for felony grand larceny, engaging in a scheme to defraud, and falsification of business records in connection with proceedings that the compensated NAR initiated in the DRS forum. A different compensated NAR misrepresented his identity in order to represent parties in DRS proceedings even though he was not qualified to do so. In addition, forum users have asserted that compensated NARs cold call investors with aggressive sales tactics;¹⁰ pursue

frivolous claims;¹¹ misrepresent or willfully fail to disclose important facts relating to their background;¹² achieve worse outcomes or awards for their clients or settle cases for lower amounts than attorneys;¹³ and work in coordination with persons who are suspended or barred from the securities industry.¹⁴

FINRA is concerned about these serious allegations and the potential harm to parties represented by compensated NARs, particularly to customers. This concern is heightened because parties are compensating these NARs to represent them in the DRS forum, yet there is no direct regulation of compensated NAR conduct. Although compensated NARs may be subject to state laws governing general business practices,¹⁵ they are not subject to the specific and extensive professional qualification requirements, ethical rules, disciplinary processes and client protections that the states and other U.S. jurisdictions apply to attorneys who represent parties in the DRS forum.¹⁶ FINRA is concerned that compensated NARs’ interactions with customers are not subject to regulation like the state disciplinary rules on lawyer advertising and solicitation,¹⁷ and that this also is

¹¹ See *infra* note 89 and accompanying text.

¹² See, e.g., PIABA, *infra* note 115.

¹³ See David E. Robbins, 1 Sec. Arb. Proc. Manual § 6–2, Release No. 26 (5th ed. 2022); *infra* note 90 and accompanying text.

¹⁴ See *infra* note 87 and accompanying text.

¹⁵ See, e.g., Cal. Bus. & Prof. Code § 17200 (amended 1992) (prohibiting any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising).

¹⁶ Generally, licensed attorneys are required to have: (1) completed a bachelor’s degree program (or its equivalent) and a legal education as required by a licensing state; (2) passed a state bar exam; (3) passed the Multistate Professional Responsibility Examination; (4) passed a licensing state’s character and fitness review, which includes questions about academic conduct at law school, criminal history, social conduct in general and any applicable disciplinary actions; and (5) taken a legal binding oath with a licensing state’s supreme court or high-court equivalent. In addition, many states require attorneys to complete continuing legal education, including ethics credits, to maintain a law license. For more information on state-by-state requirements to become a lawyer, see generally <https://www.lawyeredu.org>.

In addition, all jurisdictions require lawyers to abide by rules of professional conduct, which are enforced through state disciplinary processes. See Peter A. Joy, Making Ethics Opinions Meaningful: Toward More Effective Regulation of Lawyers’ Conduct, 15 Geo. J. Legal Ethics 313, 317 (2002).

¹⁷ See, e.g., Cal. Rules of Prof’l Conduct R. 7 (2018) (ensuring that attorney advertisements or solicitations are not misleading, clearly identifiable as advertisements; ensuring the advertiser’s accountability; and mitigating the use of any undue duress or pressure by prohibiting, for example, solicitation of a potential client through in-person, telephone or real-time electronic communication); N.Y. Rules of Prof’l Conduct R. 7.3 (amended 2017) (prohibiting attorneys from engaging in solicitation

⁴ SACs are affiliated with law schools and are typically staffed by second- or third-year law students. SACs provide pro bono legal representation to individual customers who seek to arbitrate or mediate claims under \$100,000 and who cannot find or afford an attorney to represent them. Generally, SACs require that potential clients not exceed specified household income and asset requirements. Currently, 10 SACs operate in the District of Columbia, Florida, Illinois, New Jersey, New York and Pennsylvania. For more information on SACs, see <https://www.finra.org/arbitration-mediation/how-find-attorney>.

⁵ The suggestion to study the role of compensated NARs in arbitration and mediation originated from the FINRA Dispute Resolution Task Force (“Task Force”). The Task Force was formed to suggest strategies to enhance the transparency, impartiality and efficiency of the DRS forum and included representatives from the industry and the public with a broad range of interests in securities dispute resolution. See Final Report and Recommendations of the FINRA Dispute Resolution Task Force, <https://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf>.

⁶ In *Regulatory Notice 17–34* (October 2017) (“Notice”), FINRA sought responses to questions related to forum users’ experiences with compensated NARs and whether it would be prudent to further restrict their representation of parties. See *infra* Item II.C. (discussing the Notice and summarizing comments).

⁷ See *infra* Item II.B. (discussing *Economic Impact Assessment*).

⁸ See *infra* note 87 and accompanying text.

⁹ See Complaint for Injunctive Relief, Civil Penalties and Other Ancillary Relief, *People v. Chambliss Corp.*, No. 18STCV05586 (Cal. Super. Ct. filed Nov. 19, 2018); see also *People v. Chambliss Corp.*, No. 18STCV05586, 2020 Cal. Super. LEXIS 72668 (Cal. Super. Ct. Nov. 12, 2020) (order granting stipulated judgment against Defendant Casey C. Mielnik, a compensated NAR, for violations of false advertising, unfair competition law, and telephonic sellers law); *Chambliss Corp.*, No. 18STCV05586 (Cal. Super. Ct. Nov. 24, 2020) (order regarding Defendant National Advisory Network, Inc. and granting default judgment against 11 defendants, nine compensated NARs and two nonlegal corporations, for false advertising, unfair competition law, telephonic sellers law, and unauthorized practice of law); *Chambliss Corp.*, No. 18STCV05586 (Cal. Super. Ct. Nov. 24, 2020) (order regarding Defendants Jay R. Jeskie, Eric D. Harris, Elijah Schnell, Matthew J. Cano, John W. Martynec, Gordon A. Herman and granting default judgment against 11 defendants, nine compensated NARs and two nonlegal corporations, for false advertising, unfair competition law, and telephonic sellers law); *People v. Chambliss Corp.*, No. 18STCV05586, 2022 Cal. Super. LEXIS 86977 (Cal. Super. Ct. Sept. 29, 2022) (judgment against attorney Peter A. Bumerts for the unauthorized practice of law, false advertising, unfair competition law, and aiding and abetting the unauthorized practice of law).

¹⁰ See *infra* note 88 and accompanying text.

not an area that FINRA regulates. Although they are engaged in the business of representing parties in the DRS forum, compensated NARs also are not required to purchase malpractice insurance and their clients are not protected by statewide client protection funds.¹⁸ In contrast, all U.S. jurisdictions require attorneys to finance client protection funds through association dues, lawyer registration fees or annual assessments. Because customers of compensated NARs do not benefit from the client protections and disciplinary processes that apply to attorneys, they may have limited recourse if they are harmed by the misconduct of compensated NARs.¹⁹

FINRA also is concerned that parties may be harmed due to the lack of recourse when compensated NARs are found to be engaged in the unauthorized practice of law pursuant to the law of the relevant U.S. jurisdiction. Compensated NARs have, for example, been enjoined from continuing their representation of parties during pending arbitrations after courts determined that the representation constituted the unauthorized practice of law.²⁰ DRS

or advertisement by in-person or telephone contact or by real-time or interactive computer-accessed communication unless the recipient is a close friend, relative, former client or existing client; providing examples of prohibited forms of solicitations and advertisements); Restatement (Third) of The Law Governing Lawyers § 1 cmt. b (2000) (providing that federal courts often apply the ethical rules and standards adopted by the state in which the court sits). NARs may be subject to more general state marketing regulations. See, e.g., Cal. Bus. & Prof. Code § 17511 (amended 2023) (requiring telephone solicitors to register prior to doing business in California).

¹⁸ A “client protection fund” is a pool of money funded and maintained by a bar association or regulatory agency, the purpose of which is to reimburse clients who have suffered financial loss due to the dishonest acts of lawyers. See American Bar Association (“ABA”), A History of Client Protection Rules, https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/history; see also ABA Center on Professional Responsibility, Survey of Lawyers’ Funds for Client Protection 2017–2019, at 8 (2020), https://qa.americanbar.org/content/dam/aba/administrative/professional_responsibility/2017-2019-cp-survey.pdf.

¹⁹ FINRA notes that it does not have direct authority to investigate or discipline representative misconduct in the DRS forum. Cf. FINRA Rule 8310 (allowing FINRA to impose sanctions on member firms and persons associated with member firms). Currently, if an attorney is allegedly engaging in misconduct in the DRS forum, FINRA may make a referral to the attorney’s disciplinary agency, which has processes to respond to misconduct of attorneys subject to its jurisdiction. If a compensated NAR is allegedly engaging in misconduct in the DRS forum, FINRA may make a referral to law enforcement or an appropriate state agency.

²⁰ See, e.g., *Empire Asset Mgmt. Co. v. Sherer*, 19–555–CB (Mich. 5th Cir. Ct. Feb. 7, 2020); see also *Disciplinary Counsel v. Alexicole, Inc.*, 822 NE2d 348, 350 (Ohio 2004) (finding that the representation of parties in securities arbitration by

arbitrators have also issued awards dismissing claims, or finding against investors, after determining that a compensated NAR’s representation of the investor constituted the unauthorized practice of law in the jurisdiction.²¹ The compensated NAR’s unauthorized practice of law may also be part of a broader pattern of misconduct that harms customers.²²

The current rule’s prohibition on representing a party if state law prohibits the representation does not fully address the concern with the unauthorized practice of law by compensated NARs, because it is not always clear in advance of the arbitration or mediation whether a compensated NAR’s representation of a party in arbitration or mediation in a particular jurisdiction is legally permissible.²³ FINRA is not aware of any U.S. jurisdiction that explicitly allows parties to be represented by compensated NARs in the DRS forum by statute or rule. Only a few U.S. jurisdictions’ unauthorized practice of law or professional conduct committees have specifically addressed compensated NAR representation of parties in arbitration or mediation in the DRS forum, and those that have done so concluded that their representation in the DRS forum constitutes the

non-attorneys constituted the unauthorized practice of law).

²¹ See, e.g., *Simon v. Aegis Cap. Corp.*, FINRA Disp. Resol. Case No. 15–02865 (2016) (Parker, Arb.) (finding that customer claimant was not entitled to an award and was responsible for the DRS forum fees, either because the claimant’s submissions were invalidated by the compensated NAR’s unauthorized practice of law, or because the claimant had not sustained his burden of proof); *Halling v. Cape Sec. Inc.*, FINRA Disp. Resol. Case No. 16–00519 (2017) (Brahin, Arb.) (finding that representation by compensated NARs in the DRS forum was not legally permissible in Kansas, and striking customer claimant’s pleadings); see also *Wells v. Worden Cap. Mgmt., LLC*, FINRA Disp. Resol. Case No. 19–02241 (2020) (Carvell, Arb.) (ordering claimant to proceed pro se or retain an attorney following compensated NAR’s withdrawal in response to respondents’ motion to strike the statement of claim on the basis that claimant’s compensated NAR engaged in the unauthorized practice of law by filing the claim); *Neuss v. Wells Fargo Inv., LLC*, FINRA Disp. Resol. Case No. 10–01320 (2011) (Albini, Arb.) (partially granting respondents’ motion in limine to disqualify claimants’ compensated NAR, and denying claimants’ motion to suspend the hearing and dismiss claims without prejudice); *Best v. Columbus Advisory Group, Ltd.*, FINRA Disp. Resol. Case No. 18–03337 (2020) (Putnam, Arb.) (dismissing claimant’s case with prejudice as a sanction for material and intentional failure to comply with the arbitrator’s order issued during the compensated NAR’s representation of the claimant).

²² See *Chambliss*, *supra* note 9 and accompanying text. A number of commenters raised other concerns about compensated NARs’ unauthorized practice of law. See *infra* notes 96–99 and accompanying text.

²³ See FINRA Rules 12208(c), 13208(c) and 14106(c).

unauthorized practice of law.²⁴ Many other U.S. jurisdictions’ standards may be less clear, but could potentially be interpreted as prohibiting compensated NARs from representing parties in the DRS forum.²⁵ In New York, compensated NARs rely on trial-level court opinions to represent parties in the DRS forum.²⁶

Proposed Rule Change

FINRA Rules 12208(c), 13208(c) and 14106(c) currently prohibit

²⁴ Unauthorized practice of law or professional conduct committees in Florida, Illinois and Ohio have concluded that compensated NAR representation of parties in securities arbitration constitutes the unauthorized practice of law. See Fla. Bar Re Advisory Op. on Nonlawyer Representation in Sec. Arbitration, 696 So. 2d 1178, 1180 (Fla. 1997) (concluding that compensated non-attorney representation of customers in securities arbitration constitutes the unauthorized practice of law and enjoining non-attorneys from representing customers for compensation in securities arbitration proceedings); Ill. State Bar Ass’n Standing Comm’n on Prof’l Conduct, Advisory Op. 13–03, at 7 (2013), <https://www.isba.org/sites/default/files/ethicsopinions/13-03.pdf> (stating that non-attorney representation in a FINRA arbitration generally constitutes the unauthorized practice of law and suggesting that FINRA arbitrators notify FINRA and the Illinois Attorney Registration and Disciplinary Committee if a non-attorney represents a party in FINRA arbitration); *Disciplinary Counsel v. Alexicole, Inc.*, 822 NE2d 348, 350 (Ohio 2004) (finding that the representation of parties in securities arbitration and mediation by non-attorneys constitutes the unauthorized practice of law); see also Sara Rudolph Cole, *Blurred Lines: Are Non-Attorneys Who Represent Parties in Arbitrations Involving Statutory Claims Practicing Law?* 48 U.C. Davis L. Rev. 921, 948–958 (2015) (noting that unauthorized practice of law or professional conduct committees in Florida, Illinois and Ohio have concluded that compensated NAR representation of parties in securities arbitration constitutes the unauthorized practice of law). In addition, two committees of the Illinois State Bar Association sent three comment letters to the *Notice* in support of prohibiting compensated NARs and argued that their representation of parties in the DRS forum constituted the unauthorized practice of law. See *infra* note 83 and accompanying text.

²⁵ See, e.g., Tex. Gov’t Code § 81.101 (amended 1999) (stating that practice of law includes “a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge,” and that this definition was “not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law”); Ky. SCR Rule 3.020 (amended 1978) (defining the practice of law as “any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.”).

²⁶ See *DePalo v. Lapin*, Index No. 114656/2008 (Sup. Ct. NY June 30, 2009); but cf. *Aegis J. Frumento & Stephanie Korenman, Rethinking Non-Lawyer Advocacy in FINRA Customer Arbitrations*, Sec. Arb. Commentator, March 17, 2017, at 1 (noting that the New York state court in *Lapin* only considered the status of a non-lawyer advocate in the context of deciding that his status as a non-lawyer did not render his statements any less privileged than those of any of the other participants in the arbitration).

compensated and uncompensated NARs from representing parties in arbitration and mediation if: (1) state law prohibits such representation; (2) the person is currently suspended or barred from the securities industry in any capacity; or (3) the person is currently suspended from the practice of law or disbarred. FINRA Rules 12208(d), 13208(d) and 14106(d) further provide that issues regarding the qualifications of a person to represent a party in arbitration or mediation are governed by applicable law and may be determined by an appropriate court or other regulatory agency.

FINRA is proposing to amend the Codes to revise and restate the qualifications for representatives of parties using the DRS forum, and, for the reasons discussed above and below, to disallow compensated NARs from representing parties in the DRS forum.²⁷ In addition, the proposed amendments would codify that a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney may represent investors in the DRS forum.²⁸ The proposed amendments would also clarify the circumstances in which any person, including attorneys, would be prohibited from representing a party in the DRS forum,²⁹ and that a challenge to the qualifications of a representative made outside of the proceeding would not stay or otherwise delay the proceeding without a court order.³⁰

A. Disallowing Compensated NARs in the DRS Forum

The proposed rule change would disallow a person who is not an attorney and who may receive compensation in any manner in connection with the representation (*i.e.*, a compensated NAR) from representing a party at any stage of an arbitration or mediation proceeding held in a U.S. hearing location.³¹ This prohibition would apply if any form of monetary or non-monetary compensation would be

received by the NAR in connection with the representation.

As noted above, compensated NARs represent customers in one percent of customer cases and only a few compensated NARs regularly practice in the DRS forum today.³² Despite the infrequency of compensated NAR representation, as discussed above, FINRA's review identified multiple allegations of improper conduct by compensated NARs, whose clients are not protected by the professional qualification requirements, ethical rules, disciplinary processes and client protections that apply when parties retain licensed attorneys.³³ Moreover, parties may be harmed due to the lack of recourse when compensated NARs are found to be engaged in the unauthorized practice of law.³⁴ These concerns are heightened due to the pecuniary incentives of compensated NARs when seeking new customer relationships or bringing claims in the DRS forum, such as engaging in aggressive sales techniques to obtain their business, pursuing frivolous claims, and charging clients non-refundable processing or investigation fees.

Accordingly, FINRA believes that it is appropriate to disallow their representation of parties in proceedings in the DRS forum.

FINRA understands that some parties with claims of \$100,000 or less may have difficulty obtaining legal counsel. An attorney may, for example, believe that their share of a potential award might be too small to justify the effort. In addition, not all investors will qualify for assistance by, or are able to be serviced by, SACs.³⁵ FINRA recognizes that some parties with smaller claims who might otherwise consider representation by a compensated NAR may not be able to obtain representation as a result of the proposed rule change.³⁶

³² See *supra* note 7 and accompanying text.

³³ See *supra* Item II.A.1. (discussing *Background*).

³⁴ See *supra* notes 20 and 21 and accompanying text.

³⁵ See *supra* note 4; see also *infra* Item II.C.(B) (summarizing comments, including from SACs, about the limitations on the availability of representation in the DRS forum).

³⁶ FINRA notes that it makes available efficient and cost-effective alternative processes to a full arbitration proceeding for certain smaller claims. For example, claimants may proceed "on the papers," where a chair-qualified arbitrator will make a decision based solely on the documents submitted. See FINRA Rules 12800 and 13800; see also Simplified Arbitrations: Three Ways to Present Your Case to Arbitrators, <https://www.finra.org/arbitration-and-mediation/simplified-arbitrations>.

FINRA has also introduced several incentives to encourage parties with smaller claims to resolve their disputes through FINRA mediation. For

B. Required Statement of No Compensation for Uncompensated NAR Representation

Proposed Rules 12208(b)(1)(C), 13208(b)(1)(C) and 14106(b)(1)(C) would provide that a party could be represented in arbitration or mediation by an uncompensated NAR, provided that prior to the representation, the uncompensated NAR or party files the required written statement with the Director through the Party Portal.³⁷ The written statement would have to be signed by the uncompensated NAR and the party and attest that the uncompensated NAR has not received, and will not receive, compensation in connection with the representation.³⁸ The proposed amendment would help ensure that the NAR is truly uncompensated.

FINRA believes that it would generally be appropriate to allow persons who wish to assist a party without receiving compensation, such as relatives or friends, to represent them in the proceeding. FINRA has not become aware of any concerns with uncompensated NARs' conduct. On the other hand, as discussed above and below, forum users have asserted that compensated NARs could call investors with aggressive sales tactics;³⁹ pursue frivolous claims;⁴⁰ misrepresent or willfully fail to disclose important facts relating to their background;⁴¹ achieve worse outcomes or awards for their

example, FINRA may offer mediation by telephone at no cost or at a significantly reduced hourly fee to parties arbitrating certain smaller claims. FINRA also encourages parties in arbitration to mediate by waiving the fee to postpone a hearing, except in cases of late postponement requests. See FINRA's Mediation Program for Small Arbitration Claims, <https://www.finra.org/arbitration-mediation/finras-mediation-program-small-arbitration-claims>.

³⁷ Under the Customer and Industry Codes, the term "Director" means the Director of DRS. See FINRA Rules 12100(m), 12103, 13100(m) and 13103. Under the Mediation Code, the term "Director" refers to the Director of Mediation of DRS. See FINRA Rules 14100(d) and 14103.

The Party Portal provides forum users with a secure, online location for claim filing and interactions relating to case administration. Parties use the Party Portal to, among other things, file claims, pay filing fees, receive documents from and send documents to DRS, receive service of claims, submit answers to claims, submit additional case documents, view the status of cases, select arbitrators, schedule hearings and send documents to other Party Portal case participants. See, e.g., FINRA Rules 12300, 12302, 12402, 12403, 13300, 13302 and 13404. Since mediation is voluntary in all instances, DRS permits parties to a mediation proceeding to use the Party Portal on a voluntary basis to submit and view their mediation case information and documents. See FINRA Rule 14109(b) and (h).

³⁸ See proposed Rules 12208(b)(1)(C), 13208(b)(1)(C) and 14106(b)(1)(C).

³⁹ See *infra* note 88 and accompanying text.

⁴⁰ See *infra* note 89 and accompanying text.

⁴¹ See, e.g., PIABA, *infra* note 115.

²⁷ See proposed Rules 12208(b)(1), 13208(b)(1) and 14106(b)(1). The proposed rule change would apply to all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

²⁸ See proposed Rules 12208(b)(1)(B), 13208(b)(1)(B) and 14106(b)(1)(B).

²⁹ See proposed Rules 12208(b)(2), 13208(b)(2) and 14106(b)(2).

³⁰ See proposed Rules 12208(c), 13208(c) and 14106(c).

³¹ See proposed Rules 12208(b)(2)(D), 13208(b)(2)(D) and 14106(b)(2)(D); see also proposed Rules 12208(b)(1)(C), 13208(b)(1)(C) and 14106(b)(1)(C).

clients or settle cases for lower amounts than attorneys;⁴² and work in coordination with persons who are suspended or barred from the securities industry.⁴³ The proposed rule change would prohibit compensated NARs from representing parties in the DRS forum, decreasing the risk of potential harm to parties. Unlike compensated NARs, uncompensated NARs lack a direct pecuniary incentive to engage in misconduct when seeking new client relationships or participating in arbitrations or mediations in the DRS forum. However, uncompensated NARs would continue to be disallowed from representing a party if the laws of the relevant U.S. jurisdiction prohibits the representation.⁴⁴

C. Codifying the Role of Law Students and SACs

FINRA also is proposing to amend the Codes to codify the current practice whereby a party may be represented by a student enrolled in a law school participating in a law school clinical program or its equivalent and practicing under the supervision of an attorney.⁴⁵ Currently, the Codes do not specifically address the representation of parties in the DRS forum by law students. Currently, 10 SACs operate in five states and the District of Columbia.⁴⁶ SACs and the law students who participate in these programs provide an inexpensive option for customers who qualify and may not be able to find or afford an attorney. Moreover, these representations may be regulated by state rules that govern the performance of legal services by law students and the attorneys who supervise them.⁴⁷ Accordingly, FINRA believes that it would be appropriate to codify the role of law students—who would otherwise technically be considered NARs under the proposed rule change—in providing representation to investors through SACs.

D. Persons Prohibited From Representing Parties in the DRS Forum

The Codes currently provide that non-attorneys may not represent a party if state law prohibits such representation, the person is currently suspended or barred from the securities industry in any capacity or the person is currently suspended from the practice of law or disbarred.⁴⁸ The proposed rule change would retain the substance of these provisions, while clarifying that the laws of U.S. jurisdictions that are not states may also disqualify the person from representing a party.⁴⁹ In addition, because FINRA believes that all persons should be prohibited from practicing in the DRS forum for these reasons, the proposed amendments would also apply these prohibitions generally to all persons including attorneys.⁵⁰

The proposed rule change would also specify that a person who is currently suspended from or denied the privilege of appearing or practicing before the Commission may not represent a party in the DRS forum.⁵¹ FINRA believes that incorporating these standards into the proposed rule change would help

protect the integrity and quality of the DRS forum and protect investors.

E. Determinations of Qualifications of Representatives

The Codes currently provide that issues regarding the qualifications of a person to represent a party in arbitration or mediation are governed by applicable law and may be determined by an appropriate court or other regulatory agency, and that in the absence of a court order, the proceeding shall not be delayed, or an arbitration stayed, pending resolution of such issues.⁵² The proposed rule change would retain the substance of the current provision, which prevents delay while a challenge to the qualifications of a person to represent a party is resolved outside of the DRS forum. However, the proposed rule change would make some clarifying changes to the current provision. Specifically, the proposed rule change would state that a challenge to the qualifications of a representative made outside of the arbitration proceeding shall not stay or otherwise delay the proceeding in the absence of a court order.⁵³ The proposal would remove the explicit reference to courts and regulatory agencies' separate authority to determine issues regarding the qualifications of a person to represent a party in arbitration (by, for example, determining that doing so would constitute the unauthorized practice of law) as unnecessary and to simplify the language.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*. If approved, the amendments would be effective for arbitrations and mediations filed in the DRS forum on or after the effective date.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵⁴ which requires, among other things, that FINRA rules must 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. The proposed rule change balances the need for parties, including investors, to be able to avail themselves of representation in the DRS forum with protecting those parties, the integrity of the DRS forum, and the

⁴² See David E. Robbins, 1 Sec. Arb. Proc. Manual § 6–2, Release No. 26 (5th ed. 2022); *infra* note 90 and accompanying text.

⁴³ See *infra* note 87 and accompanying text.

⁴⁴ See *infra* note 49 and accompanying text.

⁴⁵ See proposed Rules 12208(b)(1)(B), 13208(b)(1)(B) and 14106(b)(1)(B).

⁴⁶ See *supra* note 4.

⁴⁷ See, e.g., N.Y. CLS Rules Sup. Ct. 805.5 (amended 2019); Cal. R. Ct. 9.42 (amended 2019); Fla. Bar Reg. R. 11 (amended 2023); Kan. Sup. Ct. R. 715 (adopted 2022); D.C. Ct. App. R. 48 (amended 2014); O.C.G.A. Title 15, Ch. 20 (amended 1994); see also Peter A. Joy & Robert R. Kuehn, Conflict of Interest and Competency Issues in Law Clinic Practice, 9 Clinical L. Rev. 493 (2002) (describing the ethical obligations of law students and supervising attorneys).

⁴⁸ See FINRA Rules 12208(c), 13208(c) and 14106(c).

⁴⁹ See proposed Rules 12208(b)(2)(A), 13208(b)(2)(A) and 14106(b)(2)(A).

⁵⁰ See proposed Rules 12208(b)(2)(C), 13208(b)(2)(C) and 14106(b)(2)(C). If the SEC approves the proposed rule change, the prohibitions would not apply retroactively to attorneys who were suspended or barred from the securities industry prior to the effective date of the proposed rule change.

⁵¹ See proposed Rules 12208(b)(2)(D), 13208(b)(2)(D) and 14106(b)(2)(D). If the SEC approves the proposed rule change, this prohibition would not apply retroactively to persons who were suspended or denied the privilege of appearing or practicing before the Commission prior to the effective date of the proposed rule change. Pursuant to SEC Rule of Practice 102(e), the Commission may (1) deny the privilege of appearing or practicing before it to any person about whom the Commission has made certain findings after notice and opportunity for hearing in the matter; (2) suspend professionals from appearing or practicing before it upon their disbarment, license revocation or suspension, or conviction of a crime involving moral turpitude; or (3) temporarily suspend from appearing or practicing before it professionals who become subject to certain permanent injunctions or findings. See 17 CFR 201.102(e) (amended 2005). The rule was adopted “to protect the integrity and quality of [the Commission’s] system of securities regulation and, by extension, the interests of the investing public.” See Securities Exchange Act Release No. 40567 (October 19, 1998), 63 FR 57164, 57165 (October 26, 1998) (Order Approving File No. S7–16–98) (adopting amendments to Rule 102(e)(1)). In addition, pursuant to Section 205.6(b) of the Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an Issuer, the Commission may also deny attorneys the privilege of appearing or practicing before the Commission if they violate minimum standards of professional conduct in connection with the representation of an issuer. See 17 CFR 205.6(b) (2003).

⁵² See FINRA Rules 12208(d), 13208(d) and 14106(d).

⁵³ See proposed Rules 12208(c), 13208(c) and 14106(c).

⁵⁴ 15 U.S.C. 78o–3(b)(6).

public interest generally from the potential harmful conduct and lack of recourse that may come from representation by compensated NARs.

FINRA believes that by disallowing compensated NARs from representing parties in the DRS forum, the proposed rule change will reduce the risk that parties, including investors, may be harmed by the activities of compensated NARs, only a few of which currently practice in the DRS forum. Although compensated NARs represent customers in one percent of the customer cases in the DRS forum, their actions may result in significant harm to those customers. This risk of harm is especially concerning because there is no direct regulation of compensated NAR conduct. As discussed above, FINRA's review identified multiple allegations of improper conduct by compensated NARs, who are not subject to the specific and extensive professional qualification requirements, ethical rules, disciplinary processes and client protections that apply to attorneys.⁵⁵

These concerns are heightened due to the pecuniary incentives of compensated NARs when seeking new customer relationships or bringing claims in the DRS forum, such as engaging in aggressive sales techniques to obtain their business,⁵⁶ pursuing frivolous claims,⁵⁷ and charging clients non-refundable processing or investigation fees.⁵⁸

Unlike compensated NARs, uncompensated NARs (often friends or relatives of a party) lack this direct pecuniary incentive to engage in misconduct when seeking new client relationships or bringing claims in the DRS forum. In addition, unlike uncompensated NARs, law students seeking educational opportunities to gain legal experience participate in SACs under the supervision of attorneys and typically represent parties pro bono. Accordingly, FINRA believes that to protect investors and the public interest, it is appropriate to disallow compensated NARs' representation of parties in the DRS forum.

The proposed amendments will also protect investors and the public interest by requiring uncompensated NARs, or the party they are representing, to submit a written statement that the NAR has not received, and will not receive, compensation in connection with the arbitration or mediation. This will help ensure that the NAR is truly uncompensated.

The proposed rule change will also help protect investors and the public interest by codifying the ability of parties to be represented by law students through SACs.⁵⁹ SACs provide an inexpensive option for customers who qualify and may not be able to find or afford an attorney. Codifying the ability of customers to be represented by law students through SACs may also make customers more aware of this alternative option for representation.

The proposed rule change will also protect investors and the public interest by explicitly prohibiting any person, including attorneys, from representing a party if they are prohibited from doing so by the laws of the relevant U.S. jurisdiction; if they are currently suspended or barred from the securities industry; suspended or disbarred from the practice of law; or currently suspended or denied the privilege of appearing or practicing before the Commission.

Finally, the proposed rule change will help ensure the fair, orderly and efficient administration of the DRS forum by providing that a challenge to the qualifications of a representative made outside of the arbitration or mediation proceeding shall not delay the proceeding in the absence of a court order.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. A discussion of the economic impacts of the proposed rule change follows.

Economic Impact Assessment

1. Regulatory Need

A large body of literature on the economics of expert services considers the necessity of professional standards and other restrictions on service providers when individuals have little ability to evaluate the quality of the service that they receive.⁶⁰ This

literature suggests that in the DRS forum, parties with little prior experience seeking representation would be vulnerable, absent sufficient restrictions, to retaining lower-quality services.

Allegations relating to the conduct of compensated NARs in the DRS forum suggest that these concerns are not just hypothetical.⁶¹ Compensated NARs are not subject to the client protections and disciplinary processes that apply to attorneys. Parties in the DRS forum may have little prior experience bringing claims and seeking representation.⁶² The result may be that these parties are not sufficiently protected by competition, the reputation of providers, and the client protections and disciplinary procedures that apply to attorneys. In addition, harm may be incurred not only by the parties who retain compensated NARs but also by the other parties to the dispute.

To address this risk of harm, the proposed rule change would prohibit compensated NARs from representing parties in the DRS forum. The proposed rule change, however, would not prohibit representation by uncompensated NARs or law students, as discussed further below.

2. Economic Baseline

The economic baseline for the proposed rule change is the current provisions of the Codes. The economic baseline also includes the laws of the relevant U.S. jurisdiction relating to the representation of parties. The proposed rule change is expected to affect compensated and uncompensated NARs, SACs and attorneys who may represent parties in the DRS forum. The proposed rule change also is expected to affect the parties to arbitrations and mediations including customers, member firms and associated persons.

Customers in the DRS forum retain compensated NARs and SACs in a relatively small number of cases.⁶³ From

⁶¹ See *infra* note 71 (discussing the harm that may relate to the pecuniary incentives of compensated NARs); see also *supra* notes 9–14 and accompanying text.

⁶² FINRA has taken a number of steps to make arbitration and mediation accessible and affordable to parties. See *supra* note 36.

⁶³ FINRA can reasonably estimate, through a search and textual match of representative and organizational names, the number of compensated NARs and SACs that have represented parties in the DRS forum. This methodology, however, may not identify all such cases. The estimates herein describing the number of cases in which a party was represented by compensated NARs or SACs can, therefore, be considered a lower bound of the number of cases in which compensated NARs and SACs represented parties during the sample period (defined below). In general, information is not available for FINRA to reasonably estimate the

⁵⁵ See *supra* Item II.A.1. (discussing *Background*).

⁵⁶ See *infra* note 88 and accompanying text.

⁵⁷ See *infra* note 89 and accompanying text.

⁵⁸ See *infra* note 91 and accompanying text.

⁵⁹ See *supra* note 45 and accompanying text.

⁶⁰ A general survey is in Uwe Dulleck & Rudolf Kerschbamer, On Doctors, Mechanics, and Computer Specialists: The Economics of Credence Goods, 44(1) J. Econ. Literature, 5–42 (2006); see also Organization of Economic Cooperation and Development [OECD], *Competitive Restrictions in Legal Professions*, (April 27, 2009), <https://www.oecd.org/regreform/sectors/40080343.pdf> (discussing the regulation of legal services); Camille Chaserant & Sophie Harnay, *The Regulation of Quality in the Market for Legal Services: Taking the Heterogeneity of Legal Services Seriously*, 10(2) Eur. J. Compar. Econ. 267–291 (2013) (reviewing the public and private interest approaches to the regulation in the market for legal services).

January 2017 to December 2021 (the “sample period”), 12,024 cases with a customer as a claimant were closed in the DRS forum.⁶⁴ A customer was represented by a compensated NAR in 119 of the 12,024 cases (one percent),⁶⁵ and by a SAC in 67 of the 12,024 cases (less than one percent). Four different compensated NAR firms represented

customers in the sample period, with two of the firms representing customers in 102 of the 119 cases (86 percent).⁶⁶ Fifteen SACs also represented customers during the sample period.⁶⁷ In the remaining cases, the customer was represented by an attorney in 10,620 cases (88 percent), and appeared *pro se* in 1,218 cases (10 percent).⁶⁸

The customers who were represented by compensated NARs or SACs had a higher percentage of smaller claims than customers who were represented by attorneys. The following table describes the size of claims by representation type.

Amount of Damages Claimed by Customer Representation Type								
	Compensated NARs		SACs		Attorneys		Pro Se	
Claim Size	N	%	N	%	N	%	N	%
< \$100K	51	43%	47	70%	1,366	13%	665	55%
≥ \$100K	62	52%	19	28%	7,451	70%	282	23%
Not Specified	6	5%	1	1%	1,803	17%	271	22%
Total	119	100%	67	100%	10,620	100%	1,218	100%

The subsequent table describes case outcomes by representation type. In the table below, FINRA identified case outcomes as resulting in settlement (Settlements), closed by hearing or “on the papers” (Awards), withdrawn (Withdrawn), or closed by other means

(All Others).⁶⁹ For the cases closed by hearing or “on the papers,” FINRA also identified the number of cases where customers were awarded damages (Award >\$0). The relative outcomes for compensated NARs (e.g., that they settle a smaller proportion of cases) may

neither support nor contradict the anecdotal evidence that compensated NARs achieve worse outcomes or awards for their clients than attorneys, but may instead reflect the characteristics of the claims.

Case Outcomes by Customer Representation Type								
	Compensated NARs		SACs		Attorneys		Pro Se	
	N	%	N	%	N	%	N	%
How Cases Closed (as the Percent of Cases)								
Settlements	58	49%	41	61%	8,226	77%	425	35%
Awards	34	29%	15	22%	1,068	10%	443	36%
Withdrawn	22	18%	10	15%	997	9%	132	11%
All Others	5	4%	1	1%	329	3%	218	18%
Customers Awarded Damages (as the Percent of Awards)								
Award > \$0	16	47%	6	40%	502	47%	91	21%

number of uncompensated NARs who have represented parties in the DRS forum.

⁶⁴ FINRA did not identify any cases during the sample period where a customer who was a respondent was represented by a compensated NAR or SAC. Cases in the DRS forum are typically filed in arbitration rather than mediation. Of the 12,024 cases that were closed in the DRS forum, 9,824 cases were filed and closed in arbitration (82 percent), 2,069 cases were filed in arbitration but resulted in a mediation (17 percent), and 131 cases were both filed and closed in mediation (one percent). FINRA also identified 373 instances where customers initiated a pre-arbitration mediation but no mediation took place, often because the opposing party did not agree to mediate the dispute

or the matter was not eligible for mediation. In most of these instances, customers initiated the mediation without representation.

⁶⁵ FINRA identified 52 cases filed during the sample period where a compensated NAR represented a customer as claimant at the time of the filing, but was then not retained for the duration of the arbitration.

⁶⁶ FINRA identified one case among the 12,024 sample customer cases in which a compensated NAR represented an associated person. To simplify the analysis, the *Economic Impact Assessment* focuses on compensated NAR representation of customers only. FINRA also identified one compensated NAR who represented associated

persons in multiple expungement claims brought against broker-dealers in 2020 and 2021.

⁶⁷ Currently, 10 SACs provide representation to parties in the DRS forum. See *supra* note 4.

⁶⁸ The 10,620 cases may include some instances in which customers were represented by uncompensated NARs rather than an attorney. However, in the experience of FINRA staff, few customers are represented by uncompensated NARs.

⁶⁹ The cases that closed by other means include claims that were deficient and therefore not served on respondents, claims where the use of the DRS forum was not permitted, and claims that were combined with separate but related claims.

3. Economic Impact

A. Overview

In general, the proposed rule change would address the representation of parties by NARs and law students through SACs. The economic effects relating to these proposed amendments are discussed below.⁷⁰

B. Anticipated Benefits

Prohibiting compensated NARs from representing parties in the DRS forum ensures that no party faces the risk of harm that has been associated with compensated NARs.⁷¹ The parties who may benefit include those who would have retained a compensated NAR (with the associated risks) and that achieve the same or superior arbitration outcome with different representation net of any additional financial cost. The other parties to the arbitration or mediation may benefit if there is a reduction in frivolous claims or arguments, thereby reducing the costs (e.g., the legal expense and time that would otherwise be used for other business) to resolve disputes. Parties with fewer resources to resolve disputes (e.g., small firms) may benefit more from the reduction in frivolous claims or arguments than parties with greater resources.⁷²

Parties may also benefit from increased certainty, at the outset of the proceeding, as to whether a party's representative is permitted to represent a party in the DRS forum. For example, the laws that govern the representation of parties differ from state to state, and

it may be unclear whether compensated NARs can represent parties in the DRS forum or are engaged in the unauthorized practice of law.⁷³ Parties would not incur the costs associated with retaining a compensated NAR who is later determined to be engaging in the unauthorized practice of law. In these instances, compensated NARs may be enjoined from continuing their representation of parties during pending arbitrations, and parties may incur the costs to seek and retain new representation.⁷⁴ Arbitrators may also issue awards dismissing claims, or finding against parties, if they determine that a compensated NAR's representation of the party constitutes the unauthorized practice of law in the jurisdiction.⁷⁵ Parties would also have reasonable certainty that NAR representation is uncompensated and permitted under the Codes, subject to specified conditions.

Lastly, customers to an arbitration or mediation may benefit from the codification of the role of law students and SACs in the DRS forum. Parties would have reasonable certainty that the law students enrolled in law school are under the supervision of an attorney and permitted to represent parties in the DRS forum. To the extent that customers may become more aware of the availability of SACs as a result of the proposed rule change, and SACs have the capacity to represent them, customers who have determined the need for representation may incur fewer costs.

C. Anticipated Costs

The proposed rule change also could impose costs on some parties who may be more likely to consider compensated NARs for representation under the baseline (e.g., parties with smaller claims). Some of these parties may choose compensated NARs who do not engage in misconduct. Under the proposed rule change, parties who have determined to seek representation, and would otherwise retain compensated NARs who do not engage in misconduct, may incur additional costs (e.g., higher fees) to retain alternative representation (e.g., attorneys) or may forgo representation and appear *pro se*. Given the limited data, however, it is not clear whether the cost of attorney

services may increase as a result of the proposal in states where compensated NARs currently provide services, but any effect would likely be small given the small number of matters handled by compensated NARs in any year. Parties alternatively may forgo representation and appear *pro se*. These parties may be less experienced in the DRS forum and as a result may be inconvenienced or possibly obtain worse outcomes or awards.⁷⁶ We cannot, however, estimate the extent of this effect.

Compensated NARs would lose the business of representing parties in the DRS forum which may be their sole business. Although compensated NARs may replace the lost business with other opportunities or employment, they would incur search costs in the form of time, effort and expense. These other opportunities or employment may also not be as profitable as representing parties in the DRS forum. The costs to compensated NARs from the loss of business would depend on their earnings from representing parties in the DRS forum, the costs of searching for other business opportunities or employment, and the profitability of these other ventures.⁷⁷

Uncompensated NARs, or the party they are representing, would incur the cost to prepare and submit a written statement to the Director attesting that the NAR has not received, and will not receive, compensation in connection with the representation. FINRA anticipates, however, that these costs should not be material and would not restrict uncompensated NARs from representing parties in the DRS forum.⁷⁸

D. Anticipated Competitive Effects

The proposed rule change may result in other economic effects. These other economic effects relate to the choice of representation in the DRS forum and the efficiency of the DRS forum.

⁷⁰ FINRA anticipates the other proposed amendments would not result in material economic impacts. For example, the proposed rule change would clarify that the laws of U.S. jurisdictions that are not states may also disqualify attorneys or non-attorneys from representing parties, and prohibit attorneys from representing a party if they are currently suspended or barred from the securities industry. FINRA is not aware of previous instances where these amendments would impact the representation of parties in the DRS forum or result in its associated benefits or costs. These other proposed amendments are not discussed below.

⁷¹ The risk of harm would relate to the pecuniary incentives of compensated NARs when seeking new client relationships (e.g., aggressive sales techniques such as cold calling) or bringing claims in the DRS forum. See *infra* notes 88, 89 and 91 and accompanying text. FINRA cannot quantify the extent to which the absence of client protections and disciplinary processes that apply to attorneys may influence the conduct of compensated NARs or the effectiveness of those disciplinary processes on the conduct of attorneys. Survey evidence from 43 states and the District of Columbia reported by the ABA suggests that in 2019 approximately 0.2 percent of all practicing attorneys were publicly disciplined for misconduct. See ABA Profile of the Legal Profession 2022, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf>.

⁷² See M. Kaplan, *infra* note 89.

⁷³ See *supra* notes 24–26 and accompanying text.

⁷⁴ See *supra* note 20.

⁷⁵ See *supra* note 21. As discussed below in Item II.B.3.D., “Anticipated Competitive Effects,” parties may benefit from an increase in DRS forum efficiency (relating to the operation of forum proceedings) resulting from a decrease in the number of challenges to compensated NAR representation.

⁷⁶ FINRA notes that it advises arbitrators on the treatment of *pro se* parties, including advising arbitrators to be sensitive to the fact that the *pro se* party is most likely inexperienced in either litigation or the arbitration process, and that *pro se* parties may need some guidance from the panel. See FINRA Dispute Resolution Services Arbitrator's Guide, <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.

⁷⁷ The loss of business by compensated NARs attributable to the proposed rule change includes only that which does not constitute the unauthorized practice of law. The extent to which the representation of parties by compensated NARs in arbitration or mediation in a particular jurisdiction is legally permissible is often not known. See *supra* note 24 and accompanying text.

⁷⁸ See *supra* Item II.A.1.B. and accompanying text. The proposed rule change would not permit uncompensated NARs, or the party they are representing, to refile a previously obtained statement of no compensation from another case, as these statements will necessarily be specific to the individual representation.

Attorneys would have less competition to provide legal services to parties who may have otherwise considered compensated NARs for representation, and some attorneys may experience an increase in business from representing these parties. The shift of business from the compensated NARs, who would have otherwise been retained by parties in the DRS forum, is likely not a new economic cost or benefit of the proposed rule change but is instead an economic transfer from compensated NARs to attorneys.

The proposed rule change may also impact the efficiency of the DRS forum to process and resolve disputes in a timely manner. The efficiency of the DRS forum may increase if the conduct of compensated NARs would have hindered or delayed the proceedings.⁷⁹ The efficiency of the DRS forum may also increase as a result of arbitrators no longer being required to resolve issues regarding the ability of NARs to represent parties in arbitration.⁸⁰ The efficiency of the DRS forum to process and resolve disputes may decrease, however, if parties who have determined the need for representation, and would otherwise retain compensated NARs if not for the proposed rule change, forgo representation. These parties may be less familiar with DRS forum procedures, and this unfamiliarity may result in delays.

4. Alternatives Considered

FINRA considered establishing additional requirements on compensated NARs before they could represent a party in an arbitration or mediation in the DRS forum, such as requiring compensated NARs to demonstrate that the applicable state or other U.S. jurisdiction considers the representation by the compensated NAR in the DRS forum to be appropriate and legally permissible. FINRA rejected this alternative as unworkable due to the uncertainty as to whether NARs could legally represent parties in the DRS forum in different U.S. jurisdictions and feedback from state institutions indicating that they would not opine on the ability of a NAR to represent parties in securities arbitration in the DRS forum.

The proposed rule change would not prohibit uncompensated NARs from representing parties in the DRS forum. Like compensated NARs, uncompensated NARs are not subject to

the client protections and disciplinary processes the states and jurisdictions have determined should apply to attorneys. Unlike compensated NARs, however, uncompensated NARs do not have the direct pecuniary incentive to engage in misconduct when seeking new client relationships or bringing claims in the DRS forum, and FINRA is not aware of any assertions of misconduct by uncompensated NARs. Further, prohibiting uncompensated NARs in addition to prohibiting compensated NARs would remove the possibility of substituting compensated with uncompensated NARs, although the extent to which individuals would do so is not known. These parties, and parties who would have otherwise retained uncompensated NARs, would instead have been required to retain an attorney or appear *pro se*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In October 2017, FINRA published the *Notice* requesting comment on forum users' experiences with compensated NARs and whether FINRA should further restrict their representation of parties.⁸¹ FINRA received 59 comment letters in response to the *Notice*. A copy of the *Notice* is available on FINRA's website at <http://www.finra.org>. A list of the comment letters received in response to the *Notice* is available on FINRA's website.⁸² Copies of the comment letters received in response to the *Notice* are available on FINRA's website.

Most of the commenters supported restricting compensated NARs' ability to represent parties in the DRS forum. Twenty-eight commenters supported prohibiting the representation of parties by compensated NARs entirely.⁸³ Four commenters supported limiting the dollar value or complexity of the cases

that compensated NARs could handle,⁸⁴ and six other commenters supported imposing other restrictions on representation by compensated NARs.⁸⁵ Twenty-one commenters, 15 of whom were clients of a single NAR firm, supported continuing to allow compensated NARs to represent parties in the DRS forum.⁸⁶ A summary of the comments and FINRA's responses are discussed below.

(A) Comments That Supported Prohibiting Compensated NARs From Representing Parties in the DRS Forum

Criticisms of Compensated NARs

In the *Notice*, FINRA requested comment on experiences with NAR firms in the DRS forum and whether FINRA should amend the Codes to prohibit entirely compensated NARs from representing parties in the DRS forum. In response, a number of commenters criticized compensated NARs' conduct in the DRS forum. Some commenters stated that some compensated NARs are, or work in coordination with, persons who are: (1) suspended or barred from the securities industry; (2) the subject of customer complaints; (3) associated with broker-dealers that were expelled from FINRA membership; or (4) guilty of criminal charges.⁸⁷ Some commenters stated that compensated NARs may engage in improper business practices, such as cold calling investors with aggressive sales tactics, that would be prohibited if they were attorneys.⁸⁸ Other commenters asserted that compensated NARs bring frivolous cases.⁸⁹ A number of commenters also stated that compensated NARs mishandle or achieve worse outcomes or awards for their clients than attorneys, or that they were not competent, were inexperienced, or were a danger to investors or to the quality or integrity of the DRS forum.⁹⁰ Several commenters expressed concerns that compensated

⁸¹ Although the *Notice* was focused on compensated NAR firms, the commenters who addressed uncompensated NARs and SACs generally supported continuing to allow them to represent parties in the DRS forum. See Aidikoff, Bakhtiari, Cornell, Cottone, FSI, Georgia, Harris, J. Kaplan, M. Kaplan, Pace, PIABA, Port, SIFMA, St. John's and Wexler. But see CSAG and Sacks (questioning the efficacy of SACs).

⁸² See SR-FINRA-2023-013 (Form 19b-4, Exhibit 2b) for a list of abbreviations assigned to commenters (available on FINRA's website at <http://www.finra.org>).

⁸³ See Aidikoff, Bakhtiari, Bandes, Caruso, Commonwealth, Cottone, Dobin, Edwards, Feldman, Glick, Harris, Ilgenfritz, ISBA Business, ISBA Unauthorized, ISBA Task, J. Kaplan, Kohler, M. Kaplan, Lincoln Financial, Meyer, Nelson, PIABA, Port, Sabino, SIFMA, St. John's, Sutherland and Wexler.

⁸⁴ See BFS, Cornell, Sec. Arb. Commentator and Wall.

⁸⁵ See Benade, FSI, Georgia, Pace, Starr and Wood.

⁸⁶ See Abrahamsen, A. Lincoln, Bartness, Byrd, CSAG, Flack, Hambright, Inglis, Kabat, Kashouty, Kuefler, Mitchell, Mulligan, Neuman, Pate, Sacks, Scronce, Stein, Steinmetz, Stott and Wilson.

⁸⁷ See Bakhtiari, Caruso, Dobin, Ilgenfritz, J. Kaplan, Meyer, M. Kaplan, PIABA and Shepherd.

⁸⁸ See Caruso, Meyer, M. Kaplan, PIABA and Wexler; see also Kohler.

⁸⁹ See Bandes, Commonwealth, Edwards, Lincoln Financial, M. Kaplan and SIFMA; see also Kohler.

⁹⁰ See Aidikoff, Caruso, Commonwealth, Cottone, Edwards, Feldman, Glick, Harris, J. Kaplan, Kohler, Nelson, PIABA, Port, Sutherland and Wexler.

⁷⁹ Commenters stated that participation by compensated NARs resulted in longer or additional hearings. See Commonwealth and Harris, *infra* note 90.

⁸⁰ See *supra* note 21.

NARs charge clients non-refundable processing or investigation fees.⁹¹

Several commenters also described how clients, and others who deal with NARs, do not receive the benefit of the numerous protections that are available to persons who interact with attorneys, including disciplinary oversight, malpractice insurance, client trust accounts, rules of professional conduct, legal skills, legal education, or legal training.⁹² PIABA stated that, unlike attorneys, information about NARs' disciplinary history was not readily available. Some commenters described specific ethical duties that lawyers have that do not apply to NARs, including the duties of loyalty and honesty, to safeguard client funds and confidentiality.⁹³ Some commenters stated that clients' communications with NARs were not protected by the attorney-client privilege, a legal principle that prevents the disclosure of confidential communications with attorneys.⁹⁴

FINRA's review of compensated NARs validated some of the commenters' serious concerns and, as previously noted, identified allegations about NAR misconduct.⁹⁵ Accordingly, FINRA believes it is appropriate to disallow compensated NARs from representing parties in arbitrations and mediations in the DRS forum.

Compensated NARs Engage in the Unauthorized Practice of Law

Many of the commenters who supported prohibiting compensated NARs argued that their representation of parties in the DRS forum constituted the unauthorized practice of law.⁹⁶ These and other commenters stated that DRS arbitrations were complex or legal in nature, or had evolved to become more so over time, and that representing parties in DRS arbitration necessarily required legal skills, knowledge and

training.⁹⁷ For example, PIABA stated that "NARs interview clients, draft pleadings, develop litigation strategy, engage in discovery, negotiate settlements, engage experts, and conduct examination of witnesses at the arbitration hearing, all of which involves legal skill and knowledge."

One commenter, Nelson, stated that the current prohibition on NARs representing parties when state law prohibits such representation was insufficient because the requirements of state law may be unclear.⁹⁸ PIABA stated that some claimants have had their claims dismissed because their NARs were found to have engaged in the unauthorized practice of law, and suggested that NARs may be operating in states even where they are prohibited from doing so. Commonwealth and Wexler suggested that NAR firms were assisting customers with small claims decided "on the papers" without disclosing their representation of the party to the DRS forum.⁹⁹ Harris and Nelson expressed concern that as arbitrators, they could be placed in the position of aiding the unauthorized practice of law when NARs represent parties in the DRS forum.

FINRA shares commenters' concerns about compensated NARs engaging in the unauthorized practice of law. When represented by compensated NARs, forum participants do not receive the benefit of the type of specific professional qualification requirements, ethical rules, disciplinary processes and other protections that the relevant jurisdiction has determined should apply to attorney representation. In addition, as previously noted, customers have had their claims dismissed or delayed when compensated NARs engaged in the unauthorized practice of law.¹⁰⁰

(B) Comments Addressing Potential Benefits of NARs

Compensated NARs Fill a Void for Customers Who Cannot Find Representation

In the *Notice*, FINRA requested comment on the factors that limit customers' access to attorney

representation in arbitration. Several commenters stated that compensated NARs fill a void for customers who cannot find or afford counsel.¹⁰¹ Some commenters stated that attorneys are sometimes unwilling to take smaller cases because the prospects of recovery are low, or because potential claimants may not be able to afford the retainer fee.¹⁰² Other commenters stated that compensated NARs were willing to represent them at a lower cost than attorneys.¹⁰³ CSAG and Neuman stated that customers who retain compensated NARs are often from small towns where there is limited access to counsel who are knowledgeable about securities arbitration.

One commenter, Georgia, stated that until SACs can receive sustained funding, "entirely eliminating" compensated NARs may cause more valid claims to go unfilled. Georgia recommended that FINRA work with SACs to identify funding sources to sustain and grow SACs. Pace stated that when SAC representation is "not available due to lack of funding, jurisdictional issues, client preference, or other reasons, investors who cannot afford a private attorney may turn to NAR firms to assist them with their claims rather than bringing them *pro se* or not at all."

Twenty-two commenters, 15 of whom were clients of a single NAR firm, stated that compensated NARs provided effective representation in the DRS forum or described how they had done so in specific arbitrations.¹⁰⁴ Some commenters who had retained the services of a compensated NAR suggested that they would not have obtained the same recovery if not for the compensated NAR's involvement.¹⁰⁵ Kashouty stated that claimants and respondents should be allowed to make their own decision as to who will represent them, based on pecuniary or other considerations. Steinmetz and Neuman stated that it should be a customer's decision whether to retain a compensated NAR.

As noted above, FINRA has taken a number of steps to make arbitration and mediation accessible and affordable to parties, particularly those with small claims, and continues to look for ways

⁹¹ See, e.g., PIABA and Wexler. Other commenters stated that attorneys also charge upfront fees, in the form of a retainer. See, e.g., Neuman.

⁹² See Aidikoff, Bakhtiari, Caruso, Commonwealth, Dobin, Edwards, Feldman, Ilgenfritz, J. Kaplan, Lincoln Financial, M. Kaplan, Meyer, PIABA, Port, Sabino, SIFMA, St John's, Sutherland and Wexler; see also FSI. Other commenters stated that not all attorneys have malpractice insurance. See, e.g., Neuman.

⁹³ See Dobin, Feldman, Ilgenfritz, J. Kaplan, Nelson and PIABA; see also Caruso.

⁹⁴ See Dobin, Edwards and PIABA.

⁹⁵ See *supra* Item II.A.1. (discussing *Background*).

⁹⁶ See Caruso, Dobin, Feldman, Glick, Harris, Ilgenfritz, ISBA Business, ISBA Task, ISBA Unauthorized, Kohler, Nelson, PIABA, Port, Sabino, Sutherland and Wexler. Compare Steinmetz (stating that if any restrictions were imposed, they should be "ones which prevent the unauthorized practice of law and to prevent fraud.")

⁹⁷ See Aidikoff, Feldman, Glick, Ilgenfritz, ISBA Business, ISBA Task, ISBA Unauthorized, Kaplan, Kohler, Meyer, PIABA, Port, Sabino, SIFMA and Wexler.

⁹⁸ See also PIABA (stating that most states have been silent on the issue of whether the appearance of NARs in an arbitration forum constitutes the unauthorized practice of law).

⁹⁹ Wexler stated that NAR firms had done so in order to avoid appearing in a state that would consider the appearance to be the unauthorized practice of law.

¹⁰⁰ See *supra* notes 20 and 21 and accompanying text.

¹⁰¹ See CSAG, FSI, Georgia, Hambright, Neuman, Pace, Scronce, Steinmetz and Wall.

¹⁰² See Hambright, Neuman, Scronce, Steinmetz and Wall.

¹⁰³ See, e.g., Abrahamsen, A. Lincoln, Inglis, Kabat and Scronce.

¹⁰⁴ See Abrahamsen, A. Lincoln, Bartness, Benade, Byrd, CSAG, Flack, Hambright, Inglis, Kabat, Kashouty, Kuefler, Mitchell, Mulligan, Neuman, Pate, Sacks, Scronce, Stein, Steinmetz, Stott and Wilson.

¹⁰⁵ See Flack, Hambright, Inglis and Mulligan.

to improve the DRS forum in this regard.¹⁰⁶ As also previously noted, despite the low numbers of compensated NARs, FINRA's review identified multiple allegations of improper conduct by compensated NARs, who are not subject to the specific and extensive professional qualification requirements, ethical rules, disciplinary processes and client protections that apply to attorneys.¹⁰⁷ On balance, FINRA believes it is appropriate to disallow compensated NARs from representing parties in arbitrations and mediations in the DRS forum.

Compensated NARs Educate Uninformed Customers

In the *Notice*, FINRA requested comment on the factors that limit customers' access to attorney representation in arbitration. In response, several commenters stated that compensated NARs educate customers about their ability to arbitrate a claim in the DRS forum.¹⁰⁸ Several investors who commented stated that they were unaware of having a valid claim until a NAR firm offered services through a cold call or unsolicited letter and reviewed their account statements.¹⁰⁹ Steinmetz and CSAG stated that some customers with small claims against brokerage firms and associated persons might only be made aware of the availability of the DRS forum through the compensated NARs' marketing efforts.

FINRA notes that it educates customers regarding dispute resolution and representation in the DRS forum through initiatives led by FINRA's Office of Investor Education ("OIE") and the FINRA Investor Education Foundation ("Foundation").¹¹⁰ For

example, both OIE and the Foundation participate at in-person investor education events. Separately, the Foundation has published a guide for customers on how to prevent and resolve securities industry disputes,¹¹¹ and OIE has provided guidance on what customers should consider when trying to decide whether to hire an attorney in arbitration or mediation.¹¹² In addition, staff from FINRA's Securities Helpline for Seniors[®]¹¹³ have been trained to guide senior customers, and individuals caring for seniors, about the availability of mediation and the ability to file an arbitration claim in the DRS forum.

FINRA is concerned that compensated NARs' interactions with customers are not subject to regulation like the state disciplinary rules on lawyer advertising and solicitation,¹¹⁴ and that this also is not an area that FINRA regulates. FINRA is concerned with allegations that some compensated NARs have misrepresented or willfully failed to disclose important facts to their clients. For example, FINRA is aware of compensated NARs who have omitted their disciplinary history in order to represent clients or assured customers that they would recover their investments despite almost never doing so.¹¹⁵ Compensated NARs' largely unregulated access to potential claimants is another reason that FINRA believes that it would be appropriate to disallow compensated NARs from representing parties in arbitrations and mediations in the DRS forum.

education and research. More information can be found at <https://www.finrafoundation.org>.

¹¹¹ See Investor's Guide to Securities Industry Disputes: How to Prevent and Resolve Disputes with Your Broker (2009, rev. 2013; rev. 2017), https://www.finra.org/sites/default/files/Investors_Guide_to_Securities_Industry_Disputes.pdf. The Guide was authored by a SAC, Pace Investor Rights Clinic, through a grant from the Foundation.

¹¹² See Securities Arbitration—Should You Hire an Attorney? (Jan. 3, 2019), <https://www.finra.org/investors/highlights/securities-arbitration-should-you-hire-attorney>. The article was co-authored by FINRA staff and The PIABA Foundation and provides guidance on how to find an attorney, including questions to ask when screening attorneys. The article also provides cautionary language about compensated NARs and notes the important role of SACs in representing customers with small claims.

¹¹³ FINRA's Securities Helpline for Seniors[®] provides a toll-free number that senior investors can call to get assistance from FINRA or raise concerns about issues with brokerage accounts and investments. More information can be found at <http://www.finra.org/investors/highlights/finra-securities-helpline-seniors>.

¹¹⁴ See *supra* note 17.

¹¹⁵ See, e.g., PIABA; Chambliss, *supra* note 9 and accompanying text.

(C) Comments Supporting Restrictions or Conditions on Representation by Compensated NARs

In the *Notice*, FINRA requested comment on alternatives to the rule proposal that FINRA should consider to reduce the incidence of harmful activities by compensated NARs while ensuring customers are able to retain representation. In response, several commenters suggested restrictions or conditions on the ability of compensated NARs to represent parties in the DRS forum. Four commenters recommended that FINRA allow compensated NARs to continue to represent parties in the DRS forum in smaller or less complicated cases.¹¹⁶ Nine commenters recommended that FINRA exercise some additional form of oversight over compensated NARs.¹¹⁷ These commenters suggested that FINRA could: (1) train or certify compensated NARs to meet standards, skills or experience criteria; (2) require compensated NARs to make disclosures to their clients that are approved by FINRA; (3) require compensated NARs to adhere to a fiduciary standard; (4) require compensated NARs to carry insurance; or (5) limit the fees compensated NARs charge clients. FSI recommended that if FINRA chose this approach, it should provide a list of qualified compensated NARs on its website or to claimants. SIFMA, however, stated that FINRA has no current means to measure or ensure the competency of compensated NARs and it should not put itself in the business of doing so.¹¹⁸ Pace stated that NAR firms should provide documentation that they are not in violation of state law.

FINRA believes that it would be impractical to create its own system of training, certifying or otherwise overseeing compensated NARs.¹¹⁹ FINRA further notes that it does not have direct authority to investigate or discipline compensated NAR conduct.¹²⁰

(D) Commenters Suggesting That FINRA Should Broaden Its Review

In the *Notice*, FINRA requested comment on the other types of representation or assistance investors retain in arbitration. In response, several commenters recommended that FINRA

¹¹⁶ See BFS, Cornell, Sec. Arb. Commentator and Wall.

¹¹⁷ See Benade, CSAG, FSI, Georgia, Pace, Sacks, Starr, Wall and Wood.

¹¹⁸ M. Kaplan stated that FINRA has no jurisdiction over NAR firm conduct.

¹¹⁹ See *supra* Item II.B (discussing *Alternatives Considered*).

¹²⁰ See *supra* note 19.

¹⁰⁶ See *supra* note 36. In recognition of the important role of SACs, FINRA supports SACs in a number of ways, including by leveraging its staff and arbitrator and mediator rosters to participate in law school events, such as judging in competitions, speaking in seminars, and conducting mock arbitrations and mediations.

¹⁰⁷ See *supra* Item II.A.1. (discussing *Background*). Notably, a FINRA arbitrator and securities dispute resolution expert has stated that FINRA has "explored amending their rules to ban" compensated NARs "from representing parties as a means to prevent exploitation of investors, not as a means to decrease access to justice." See Jill Gross, *Arbitration Archetypes for Enhancing Access to Justice*, 88 Fordham L. Rev., 2319, 2333, n.78 (2020).

¹⁰⁸ See A. Lincoln, Byrd, CSAG, Flack, Pate and Steinmetz.

¹⁰⁹ See A. Lincoln, Byrd, Flack, Hambricht, Pate and Wilson; see also Stott.

¹¹⁰ OIE engages investors through in-person outreach and the development and dissemination of articles, alerts and tools. The Foundation, a subsidiary of FINRA with a separate governance structure, aims to build financial capability through

conduct additional study on compensated NARs. Cornell commented that FINRA should differentiate the impact of compensated NARs on arbitration versus mediation and provide comparable data on the conduct of attorneys, compensated NARs and SACs in the DRS forum. Sacks similarly suggested that FINRA provide comparable data on the performance of attorneys and compensated NARs in representing their clients in the DRS forum. CSAG stated that FINRA should send questionnaires to customers that have used the services of compensated NARs to seek their input and the results of any settlements. Pace recommended that FINRA's Foundation fund further research into whether customers fare better when represented by a compensated NAR than when representing themselves.

As previously noted, FINRA has identified several allegations of misconduct by compensated NARs and harm to parties from compensated NARs' unauthorized practice of law. FINRA does not believe that it would be practical to draw conclusions from the relative performance of compensated NARs and attorneys at this time. Potential differences in the characteristics of customer claims and the confidentiality of settlements makes direct comparisons difficult, as does the low number of compensated NARs currently practicing in the DRS forum.

(E) Other Comments

In response to the *Notice*, some commenters recommended that instead of focusing on compensated NARs, FINRA should focus on preventing or remediating abuses by brokerage firms and associated persons.¹²¹ Five commenters recommended that FINRA focus on the issue of unpaid customer arbitration awards by requiring brokers to carry insurance or by creating a restitution fund.¹²² Neuman and Stein criticized the DRS forum for becoming too expensive and complicated for customers.

Although these comments are beyond the scope of the proposed rulemaking, FINRA notes that it has amended its Membership Application Program rules to help further address the issue of unpaid arbitration awards.¹²³ FINRA

has also expanded a customer's options to withdraw an arbitration claim if a member or an associated person becomes inactive before a claim is filed or during a pending arbitration.¹²⁴ In addition, FINRA has adopted rules to address brokers with a significant history of misconduct and the broker-dealers that employ them.¹²⁵ FINRA has also adopted new rules to address firms with a significant history of misconduct.¹²⁶ In addition, to provide further transparency regarding unpaid awards:

- FINRA issued a Discussion Paper that identifies possible measures that could be taken to either enhance the resources to pay such awards or provide greater incentives to pay such awards.¹²⁷
- FINRA makes data on unpaid customer arbitration awards for the past five years available on its website.¹²⁸

the effective date of September 14, 2020 for the amendments discussed in File No. SR-FINRA-2019-030).

¹²⁴ In addition, the amendments allow customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees in these situations. See Securities Exchange Act Release No. 88254 (February 20, 2020), 85 FR 11157 (February 26, 2020) (Order Approving File No. SR-FINRA-2019-027); *Regulatory Notice* 20-11 (April 2020) (announcing the effective date of June 29, 2020 for the amendments discussed in File No. SR-FINRA-2019-027).

¹²⁵ See Securities Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (Order Approving File No. SR-FINRA-2020-011, as Modified by Amendment No. 1); *Regulatory Notice* 21-09 (March 2021) (announcing the effective dates of April 15, 2021, May 1, 2021, June 1, 2021 and September 1, 2021 for the respective amendments approved in File No. SR-FINRA-2020-011); see also Securities Exchange Act Release No. 92710 (August 19, 2021), 86 FR 47527 (August 25, 2021) (Order Approving File No. SR-FINRA-2021-011); Securities Exchange Act Release No. 92793 (August 27, 2021), 86 FR 49394 (September 2, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2021-020).

¹²⁶ See Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2); see also Securities Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR-FINRA-2020-041, as Modified by Amendment Nos. 1 and 2) (Correction); *Regulatory Notice* 21-34 (September 2021) (announcing the effective date of January 1, 2022 for the amendments approved in File No. SR-FINRA-2020-041); Securities Exchange Act Release No. 95048 (June 6, 2022), 87 FR 35582 (June 10, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2022-014); Securities Exchange Act Release No. 96798 (February 3, 2023), 88 FR 8494 (February 9, 2023) (Order Approving File No. SR-FINRA-2022-015); *Regulatory Notice* 23-07 (May 2023) (announcing the effective date of June 1, 2023 for the amendments approved in SR-FINRA-2022-015).

¹²⁷ See Discussion Paper, FINRA Perspectives on Customer Recovery, https://www.finra.org/sites/default/files/finra_perspectives_on_customer_recovery.pdf.

¹²⁸ See Statistics on Unpaid Customer Awards in FINRA Arbitration, <https://www.finra.org/>

• FINRA also makes available in one place on its website a list of firms and individuals responsible for unpaid customer arbitration awards.¹²⁹

Thus, FINRA continues to focus on this important issue.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2023-013 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-FINRA-2023-013. This file number should be included on the subject line if email is used. To help the

arbitration-and-mediation/statistics-unpaid-customer-awards-finra-arbitration.

¹²⁹ See Member Firms and Associated Persons with Unpaid Customer Arbitration Awards, <https://www.finra.org/arbitration-and-mediation/members-firms-and-associated-persons-unpaid-customer-arbitration-awards>. The list includes the names of firms and individuals whose FINRA registration has been terminated, suspended, canceled or revoked, or who have been expelled from FINRA. These firms and individuals are no longer FINRA members or associated with a FINRA member, but they may be operating in another area of the financial services industry where FINRA registration is not required. The list also shows those firms and individuals with unpaid arbitration awards, but where bankruptcy is a defense to non-payment. These firms and individuals may still be active in the brokerage industry due to the bankruptcy defense to non-payment.

¹²¹ See CSAG, Stein and Stout.

¹²² See Byrd, Kabat, Neuman, Pate and Wilson.

¹²³ The amendments help prevent a member firm with substantial arbitration claims from avoiding payment of potential awards or settlements by shifting its assets to another firm and closing down. See Securities Exchange Act Release No. 88482 (March 26, 2020), 85 FR 18299 (April 1, 2020) (Order Approving File No. SR-FINRA-2019-030); *Regulatory Notice* 20-15 (May 2020) (announcing

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2023-013 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023-22612 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98690; File No. SR-MIAX-2023-30]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Fee Schedule To Modify Certain Connectivity Fees and Ports Fees

October 5, 2023.

On August 8, 2023, Miami International Securities Exchange, LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4

thereunder,² a proposed rule change to amend certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on August 25, 2023.⁴ On September 29, 2023, pursuant to section 19(b)(3)(C) of the Act,⁵ the Commission: (1) temporarily suspended the proposed rule change; and (2) instituted proceedings under section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On October 2, 2023, the Exchange withdrew the proposed rule change (SR-MIAX-2023-30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-22504 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98701; File No. SR-MEMX-2023-27]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

October 6, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 29, 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.

¹ 17 CFR 240.19b-4.

² 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

³ See Securities Exchange Act Release No. 98173 (August 21, 2023), 88 FR 58378.

⁴ 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 98657, 88 FR 68827 (October 4, 2023).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange's fee schedule applicable to Members⁴ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to add clarifying language to the MEMX Equities Liquidity Provision Tiers. The Exchange notes that certain criteria of Liquidity Provision Tier 4⁵ (namely, criteria (2)),⁶ will expire no later than

⁴ See Exchange Rule 1.5(p).

⁵ The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

⁶ This criteria provides that a Member may qualify for Liquidity Provision Tier 4 by achieving a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. As set forth on the Fee Schedule, "Displayed ADAV" means ADAV with respect to displayed orders. "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV. "TCV" is total consolidated volume

Continued

¹³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

October 31, 2023 and Liquidity Provision Tier 6⁷ will expire no later than November 30, 2023. As described below, the Exchange wishes to add language clarifying the applicability of other language on the Fee Schedule to such Tiers in light of their expiration. The Exchange does not propose to change the rebates offered to Members under Liquidity Provision Tier 4 or Liquidity Provision Tier 6, nor does the Exchange propose to change the criteria under such tiers. Rather, the Exchange wishes to make clear which months Members are eligible for such tiers.

The Liquidity Provision Tiers section of the Fee Schedule contains the following language in the first footnote (denoted by “*”) : “Members that qualify for Tier 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5, or 6 rebate during the following month.” The second footnote (denoted by “**”) of the Liquidity Provision Tiers section of the Fee Schedule provides that Criteria 2 of Liquidity Provision Tier 4 will expire no later than October 31, 2023. The third footnote (denoted by “***”) of the Liquidity Provision Tiers section of the Fee Schedule provides that Liquidity Provision Tier 6 will expire no later than November 30, 2023. The Exchange now proposes to add clarifying language to the second and third footnote of the Liquidity Provision Tiers section, in order to make it more clear to Members that the months in which they are eligible to qualify for either (i) Liquidity Provision Tier 4 rebates based upon Criteria (2) of such tier, or (ii) Liquidity Provision Tier 6 rebates.

Clarify Liquidity Provision Tier 4 Criteria (2)

Currently, the second footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023”. The Exchange wishes to clarify that, since Criteria (2) of Liquidity Provision 4 will expire on October 31, 2023, a Member’s activity during the month of October will not qualify such Member for the Liquidity Provision 4 rebate in the following month if the Member qualifies

for the tier based on Criteria (2). Thus, a Member qualifying based on Criteria (2) will not qualify for the Liquidity Provision 4 rebate in November based on October activity, because Criteria (2) expires as of October 31. The Exchange now proposes to amend the second footnote of the Liquidity Provision Tiers section to add the following sentence: “Due to the expiration of Criteria (2), Members that qualify for Tier 4 based on activity meeting Criteria (2) in October 2023 will not receive the Liquidity Provision Tier 4 rebate during the following month.” The Exchange wishes to make clear that, while a Member whose October activity meets Tier 4 via Criteria (2) would be eligible to receive Tier 4 rebates in October, such Member is not eligible to qualify for the Tier 4 rebate in the following month (November 2023) based on October activity. As noted above, the Exchange does not propose to change the Tier 4 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

Clarify Liquidity Provision Tier 6

Currently, the third footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Liquidity Provision Tier 6 will expire no later than November 30, 2023.” The Exchange wishes to clarify that, since Liquidity Provision 6 will expire on November 30, 2023, a Member’s activity during the month of November will not qualify such Member for the Liquidity Provision 6 rebate in the following month. Thus, a Member’s activity in November will not qualify the Member for the Liquidity Provision 6 rebate in December based on November activity, because Criteria (2) expires as of November 30. The Exchange now proposes to amend the third footnote to add the following sentence: “Due to the expiration of Tier 6, Members that qualify for Tier 6 based on activity in November 2023, will not receive the Liquidity Provision Tier 6 rebate during the following month.” The Exchange wishes to make clear that, while a Member who qualifies for Tier 6 rebates based upon November activity would be eligible to receive Tier 6 rebates in November 2023, such Member would not qualify for Tier 6 rebates in the following month (December 2023) based on November activity. As noted above, the Exchange does not propose to change the Tier 6 rebate, nor does the

Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes the proposed clarifying language to the second and third footnotes in the Liquidity Provision Tiers section of the Fee Schedule is reasonable because it is designed to avoid confusion in reading the Fee Schedule. The Liquidity Provision Tiers continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow to the Exchange. The Exchange believes that the proposed clarifying language will provide Members with an added layer of certainty with respect to the expiring Tiers, namely Liquidity Provision Tier 4 Criteria (2) and Liquidity Provision Tier 6.

The Exchange also believes the proposed change is equitable and not unfairly discriminatory because it will apply equally to all Members and

⁷ calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See also the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>).

⁸ The pricing for Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 6” with a Fee Code of “B6”, “D6” or “J6”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4) and (5).

because the opportunity to qualify for Liquidity Provision Tiers is open to all members on an equal basis. Upon the expiration of Liquidity Provision Tier 4 Criteria (2) for activity on the Exchange after October 31, 2023, no Member will be able to qualify for Liquidity Provision Tier 4 based on Criteria (2). Similarly, upon the expiration of Liquidity Provision Tier 6 for activity on the Exchange after November 30, 2023, no Member will be able to qualify for Liquidity Provision Tier 6.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹⁰ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as described above, the proposed change is intended to provide clear and easy-to-understand language in its Fee Schedule related to the expiring Tiers, as described above. The Exchange believes that providing clarifying language enables Members to make better decisions about where to route their orders and would enable the Exchange to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

The Exchange does not believe the proposal would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to clarifying the applicability of certain expiring Tiers, as described above. Additionally, the Exchange believes the proposal would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

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)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² 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 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-2023-27 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-2023-27. 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-2023-27 and should be submitted on or before November 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023-22610 Filed 10-12-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18061 and #18062; HAWAII Disaster Number HI-00073]

Presidential Declaration Amendment of a Major Disaster for the State of Hawaii

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Hawaii (FEMA-4724-DR), dated 08/10/2023.

Incident: Wildfires.

Incident Period: 08/08/2023 and continuing.

DATES: Issued on 10/02/2023.

Physical Loan Application Deadline Date: 11/09/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 17 CFR 200.30-3(a)(12).

Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Hawaii, dated 08/10/2023, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/09/2023.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-22686 Filed 10-12-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

SBA Investment Capital Advisory Committee Meeting

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The U.S. Small Business Administration (SBA) will hold the inaugural meeting of the SBA Investment Capital Advisory Committee on Wednesday, October 25, 2023. Members will convene as an independent source of advice and recommendations to SBA on matters relating to institutional investment market trends, innovation, and policy impacting small businesses' ability to access patient investment capital. The meeting will be in person for members and streamed live to the public.

DATES: Wednesday October 25, 2023, from 9 a.m. to 3 p.m. Eastern Time (ET).

ADDRESSES: The Investment Capital Advisory Committee will meet at the SBA Headquarters Building located at 409 3rd Street SW, Washington, DC 20416 and the meeting will be live streamed for the public. Register at <https://bit.ly/ICAC-Oct23>.

FOR FURTHER INFORMATION CONTACT: Jennifer Shieh, Designated Federal Officer, Office of Investment and Innovation, SBA, 409 3rd Street SW, Washington, DC 20416, (202) 539-1448 or ICAC@sba.gov. The meeting will be live streamed to the public, and anyone wishing to submit questions to the SBA Investment Capital Advisory Committee can do so by submitting them via email to ICAC@sba.gov. Individuals who require an alternative aid or service to communicate effectively with SBA

should email the point of contact listed above and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the inaugural meeting of the SBA Investment Capital Advisory Committee (the "ICAC"). The ICAC is tasked with providing advice, insights, and recommendations to SBA on matters broadly related to facilitating greater access and availability of patient investment capital for small business; promoting greater awareness of SBA Investment and Innovation division programs and services; cultivating greater public-private engagement, cooperation, and collaboration; developing and/or evolving SBA programs and services to address long-term capital access gaps faced by small businesses and the investment managers that seek to support them. The final agenda for the meeting will be posted on the ICAC website at <https://www.sba.gov/about-sba/organization/sba-initiatives/investment-capital-advisory-committee> prior to the meeting. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Public Comment

Any member of the public may submit pertinent questions and comments concerning ICAC affairs at any time before or after the meeting, and participate in the livestreamed meeting of the SBA Investment Capital Advisory Committee on October 25. Comments may be submitted to Jennifer Shieh at ICAC@sba.gov. Those wishing to participate live are encouraged to register by or before October 23, 2023, using the registration link provided above. Advance registration for is strongly encouraged.

Dated: October 6, 2023.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2023-22640 Filed 10-12-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18236 and #18237; ALASKA Disaster Number AK-00061]

Administrative Declaration of a Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alaska dated 10/06/2023.

Incident: Glacier Outburst Flooding.
Incident Period: 08/04/2023 through 08/06/2023.

DATES: Issued on 10/06/2023.

Physical Loan Application Deadline Date: 12/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/08/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: City and Borough of Juneau.

Contiguous Counties:

Alaska: Chatham REAA, Haines Borough, Petersburg Borough.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18236 6 and for economic injury is 18237 0.

The State which received an EIDL Declaration # is Alaska.

(Catalog of Federal Domestic Assistance
Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023–22644 Filed 10–12–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2023–0040]

Agency Information Collection Activities: Proposed Requests

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes extensions and revisions of OMB-approved information collections, new information collections, and an information collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: OIRA_Submission@omb.eop.gov. Submit your comments online referencing Docket ID Number [SSA–2023–0040].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3252 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through <https://www.reginfo.gov/public/do/PRAMain>, referencing Docket ID Number [SSA–2023–0040].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 12, 2023. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Appointed Representative Availability Portal for SSA Hearings—20 CFR 404.929, 404.933, 404.1740, 416.1429, 416.1433, 416.1540, 418.1350, 422.203–0960–NEW. As part of the appeal process, claimants can request a hearing with an Administrative Law Judge. As per sections 20 CFR 404.1740(b)(3)(iii) and 416.1540(b)(3)(iii) of the Code of Federal Regulations (Code), representatives, when asked, have an affirmative duty to provide potential availability for hearings. When the SSA schedules hearings, it usually considers the availability of appointed representatives. Historically, representatives provide their hearing availability to schedulers via telephone or email, using a process for gathering and considering representative availability that is not standardized and varies greatly amongst the regional centralized scheduling units (RCSUs).

In the Spring of 2023, SSA launched a new web-based portal called the Enhanced Representative Availability Process (ERAP) to provide representatives with a uniform, standardized, and streamlined representative availability collection process. The new web-based Representative Availability Portal (Portal) marks the next step in modernizing SSA's scheduling practices for hearings. We expect use of the Portal will result in receiving consistent structured data from appointed representatives, which will allow for a more streamlined and effective hearing

scheduling process. The Portal also meets a longstanding customer-experience request by the representative community, one of SSA's key stakeholders in the process.

This collection asks respondents to submit their availability for hearings through the Portal on a rolling, monthly basis. The respondent can be the representative or a delegated official from the appointed representative's firm or Designated Scheduling Group (DSG). The respondents will request availability five months in advance of the hearing. Respondents who chose not to use the Portal will continue to be able to submit their availability via email. Once a submission period closes, SSA will schedule the hearings. SSA will schedule hearings even if a respondent has not submitted the representative's availability.

SSA plans to roll the Portal out to all appointed representatives registered with the Registration, Appointment, and Services for Representatives (RASR) application who regularly conduct business with SSA through RASR. Respondents will need to have a mySocial Security account to use the Portal and be registered into the Portal by SSA systems. Respondents who wish to use the Portal, but who are not registered with RASR, or who do not have a Representative ID, must provide SSA systems with the necessary data, including name and SSN, to complete the Portal registration process. Portal response options will include DSG group, hearing region, availability during the period of submission, and respondent-preferred case maximums, and will allow SSA to obtain the information we require to schedule hearings for attendees.

Respondents are authorized representatives and delegated officials from appointed representative firms or DSG.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
ERAP Portal	4,000	12	48,000	20	16,000	*\$29.76	**\$476,160

* We based this figure on average U.S. worker's hourly wages; State and local government worker's salaries; and attorney representative payee wages as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_stru.htm).

** 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.*

2. Medicaid Use Report—20 CFR 416.268–0960–0267. Section 1619(b) of

the Social Security Act (Act) and 20 CFR 416.268 of the Code require SSA to

determine eligibility for: (1) special Supplemental Security Income (SSI)

payments and (2) special SSI eligibility status for a person who works despite a disabling condition. Section 20 CFR 416.268 of the Code also provides that to qualify for special SSI eligibility status, an individual must establish that termination of eligibility for benefits under Title XIX of the Act would seriously inhibit their ability to continue employment. The collected information is used to determine if an individual is entitled to special Title XVI SSI payments and, consequently, to Medicaid or Medi-Cal.

In most cases, if an SSI beneficiary is blind or disabled, regardless of age, and

they have Medicaid before beginning to work again, they can retain their Medicaid benefits while continuing to work as long as their disabling condition still exists. During a personal or telephone Redetermination interview with the SSI recipient, an SSA employee asks the following questions:

- Have you used any medical care or services in the past 12 months that were paid for by Medicaid (or Medi-Cal, etc.)?
- Do you expect to receive any medical care or services in the next 12 months that will be paid for by Medicaid (or Medi-Cal, etc.)?

• Without Medicaid (Medi-Cal, etc.), would you be unable to pay your medical bills if you become ill or injured in the next 12 months?

Generally, a response of “yes” to one of those three questions will lead to SSA determining that an SSI recipient whose payments have stopped based on earnings, is entitled to special SSI payments and, consequently, to Medicaid benefits under section 1619 (b) of the Act. The respondents are SSI recipients for whom SSA has stopped payments based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field offices and teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
20 CFR 416.268 SSI Claims System	99,000	1	3	4,950	*\$12.81	** 21	***\$507,276

*We based this figure on average SSI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>).

**We based this figure on the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.

***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. *There is no actual charge to respondents to complete the application.*

3. Appeal of Determination for Extra Help with Medicare Prescription Drug Costs—0960–0695. Public Law 108–173, also known as the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), amended Title XVIII of the Act to establish a subsidy program to help certain individuals with limited income and resources pay for Medicare Part D prescription drug coverage. This subsidy program is commonly referred to as Extra Help.

Individuals seeking Extra Help may apply via the SSA–1020 paper form or i1020 online application (OMB No. 0960–0696). If SSA determines that the claimant is not eligible for Extra Help, SSA will mail a notice to the claimant indicating the claim is denied. Extra Help denial notices include appeal rights and explain how to request an appeal.

Individuals learn about the appeal process for Extra Help via determination notices, 800# representatives, as well as SSA and CMS websites. Individuals voluntarily initiate the Extra Help appeal process by printing the form from SSA's online website and sending the completed form to SSA, contacting SSA's 800 Number to request an appeal, or going into the field office to request the appeal. If the individual chooses to call the 800# or go into the field office, an SSA technician enters the individual's request into the MAPS system. The request is then electronically sent to the Subsidy Determination Unit, who then schedules an appointment for the appeal and sends an appointment notice to the individual. Individuals who appeal SSA's decision regarding eligibility or continuing eligibility for Medicare Part

D Extra Help must complete Form SSA–1021. The respondent may mail the completed form to either the local field office or to the Wilkes-Barre Direct Operations Center. The respondent may also complete the form with assistance from an SSA technician via an in-person interview at the Field Office or over the telephone. All claims are entered into Medicare Application Processing System (MAPS), which automatically adjudicates claims based on the data input by SSA technicians. Respondents are Medicare beneficiaries, or proper applicants acting on behalf of a Medicare beneficiary, who do not agree with the outcome of an SSA Extra Help eligibility determination and want to file an appeal.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office (minutes)**	Total annual opportunity cost (dollars)***
SSA–1021—(Paper version)	1,859	1	10	310	*\$29.76	.....	***\$9,226
SSA–1021—(Internet version: MAPS)	5,291	1	10	882	* 29.76	** 24	*** 89,220
Totals	7,150	.....	.....	1,192	.....	.....	*** 98,446

*We based this figure on average U.S. worker's hourly wages; State and local government worker's salaries; and attorney representative payee wages as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_stru.htm).

**We based this figure on the average FY 2023 wait times for field offices, based on SSA's current management information data.

***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.*

Dated: October 10, 2023.

Naomi R. Sipple,

Reports Clearance Officer, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2023–22655 Filed 10–12–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12218]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: “Bellini and Giorgione: In the House of Taddeo Contarini” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition “Bellini and Giorgione: In the House of Taddeo Contarini” at The Frick Collection, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–22609 Filed 10–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12219]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Botticelli Drawings” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Botticelli Drawings” at the Fine Arts Museums of San Francisco, Legion of Honor, San Francisco, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–22499 Filed 10–12–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12222]

President’s Advisory Council on African Diaspora Engagement

AGENCY: Department of State.

ACTION: Notice of public inaugural plenary session meeting and swearing-in ceremony of the President’s Advisory

Council on African Diaspora Engagement.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.*, and 41 CFR 102–3.65, the Department of State hereby provides notice of the inaugural plenary session meeting and swearing-in ceremony of the President’s Advisory Council on African Diaspora Engagement (“the Advisory Council”).

DATES: The Advisory Council will host a public inaugural plenary session and swearing-in ceremony on Monday, October 30, 2023.

FOR FURTHER INFORMATION CONTACT:

Deniece Laurent-Mantey at email; Laurent-ManteyDO@state.gov.

SUPPLEMENTARY INFORMATION: The inaugural meeting for the Advisory Council will take place at the White House and will be broadcast live on the internet. Individuals requesting a link to the livestream should RSVP to Ms. Laurent-Mantey at the email address above, not later than October 23, 2023, for instructions on how to access the meeting. Persons needing reasonable accommodation should make that request when they RSVP. Requests made after October 23 will be considered but might not be possible to fulfill.

The primary mission of the Advisory Council is to provide counsel to the President on enhancing the connections between the United States Government and the African Diaspora within the United States, aligning with the objectives outlined in the U.S. Strategy Toward Sub-Saharan Africa.

The activities of the Advisory Council encompass strategies to advance equity and opportunity for African Diaspora communities, ways to support the United Nations’ Permanent Forum on People of African Descent, programs and initiatives to strengthen cultural, social, political, and economic ties between African communities, the global African Diaspora, and the United States, and programs and initiatives to increase participation of members of the African Diaspora in the United States with regard to trade, investment, economic growth, and development programs relating to Africa. Established in accordance with Executive Order 14089, the Advisory Council operates under the administrative authority of the Secretary of State and under the Federal Advisory Committee Act.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that this advisory

committee meeting must be held on October 30, due to the schedules of senior officials whose attendance is required.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2023-22684 Filed 10-12-23; 8:45 am]

BILLING CODE 4710-26-P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: Household Goods Movers' Disclosure Requirements

ACTION: Notice and request for comments.

AGENCY: Surface Transportation Board.
SUMMARY: As required by the Paperwork Reduction Act of 1995, the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the information collection (here, third-party disclosures), as described below.
DATES: Comments on this information collection should be submitted by November 13, 2023.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, Household Goods Movers' Disclosure Requirements." Written comments for the proposed information collection should be submitted via www.reginfo.gov/public/do/PRAMain. This information collection can be accessed by selecting "Currently under Review—Open for Public Comments" or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at oira_submission@omb.eop.gov; by fax at (202) 395-1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, or to PRA@stb.gov. When submitting comments, please refer to "Paperwork Reduction Act Comments, Surface Transportation Board: Household Goods Movers' Disclosure Requirements." For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and

Compliance, at (202) 245-0284 or michael.higgins@stb.gov. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 52238 (August 7, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning: (1) the accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Household Goods Movers' Disclosure Requirements.

OMB Control Number: 2140-0027.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Household goods movers (HHG Movers) that desire to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods.

Number of Respondents: 5,273 (approximate number of active household goods carriers in the United States according to the Federal Motor Carrier Safety Administration (FMCSA)). See 2022 Pocket Guide to Large Truck and Bus Statistics (December 2022) section 1-7 Household Goods Carriers and Brokers Operating in the United States, 2017-2021.

Frequency: On occasion.

Total Burden Hours: 101 hours. Household goods movers provide prospective clients with a prescribed form estimating the charges for the anticipated move and providing various warnings and disclosures, including a disclosure of the availability of two levels of recovery for loss and damage incurred during the move. The Board's request for approval of the initial estimate form contained a cost analysis indicating that inclusion of the loss-and-damage information was a one-time, start-up cost, and that an estimated 15 of the thousands of HHG Movers were

large firms that print their own forms and that had already produced modified forms to meet the new requirement. The original request for approval also indicated that only a relatively small number of new entrants would have to create the required notice forms each year. Using 2022 Pocket Guide to Large Truck and Bus Statistics (section 1-7) to determine the latest three-year increase in the number of HHG Movers, Board staff estimates that there are approximately 202 of these new carriers that have entered the business annually over the last three reported years. Each of these new entrants would require approximately one hour to review the released rate decision and to cut and paste the warnings/disclosures into a general electronic form, but only a portion of that time (about half) would be allotted to the Board's released rate disclosure requirement. Therefore, the Board estimates that the annual hourly burden for this collection is 101 hours per year for the industry (202 responses annually $\times \frac{1}{2} \times 1$ hour = 101 burden hours).

Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified. HHG Movers may provide these forms to shippers electronically.

Needs and Uses: In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, § 4215, Public Law 109-59, 119 Stat. 1144, 1760 (2005), Congress directed the Board to review consumer protection regulations concerning the loss or damage to property that occurs during interstate household goods moves. In Docket No. RR 999, the Board required household goods motor carriers and freight forwarders wishing to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods to provide their customers with clear written information concerning the two available cargo-liability options (a full replacement-value protection option and a lower, released-rate protection option). HHG Movers are required to provide this information on the standard written estimate form that the FMCSA requires HHG Movers to provide to their household goods moving customers. See 49 CFR 375.213 and 375.401(g). As provided on the form, this information allows for early notice to household goods moving customers regarding the two liability options, as well as adequate time and information to help consumers decide which option to choose. In doing so, this collection enables the Board to meet its statutory duty.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 6, 2023.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2023-22564 Filed 10-12-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collection: System Diagram Maps

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of system diagram maps, described below.

DATES: Comments on this information collection should be submitted by November 13, 2023.

ADDRESSES: Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board, System Diagram Maps." Written comments for the proposed information collection should be submitted via www.reginfo.gov/public/do/PRAMain. This information collection can be accessed by selecting "Currently under Review—Open for Public Comments" or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: via email at oira_submission@omb.eop.gov; by fax at (202) 395-1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct all comments to Chris Oehrle, PRA Officer, Surface

Transportation Board, 395 E Street, SW, Washington, DC 20423-0001, or to PRA@stb.gov. When submitting comments, please refer to "Paperwork Reduction Act Comments, System Diagram Maps." For further information regarding this collection, contact Pedro Ramirez at (202) 245-0333 or pedro.ramirez@stb.gov. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board previously published a notice about this collection in the **Federal Register** (88 FR 16514 (March 17, 2023)). That notice allowed for a 60-day public review and comment period. No comments were received.

Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Description of Collection

Title: System Diagram Maps (or, in the case of Class III carriers, the alternative narrative description of rail system).

OMB Control Number: 2140-0003.

Form Number: None.

Type of Review: Extension without change.

Respondents: Common carrier freight railroads that are either new or reporting changes in the status of one or more of their rail lines.

Number of Respondents: 1.

Estimated Time per Response: 5 hours.

Frequency of Response: On occasion.

Total Annual Burden Hours: 5 hours.

Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified. The information may be submitted electronically.

Needs and Uses: Under 49 CFR 1152.10-1152.13, railroads subject to the Board's jurisdiction must keep current system diagram maps on file, or alternatively, in the case of a Class III carrier, must submit the same information in narrative form. The information sought in this collection identifies all lines in a particular

railroad's system, categorized to indicate the likelihood that service on a particular line will be abandoned and/or whether service on a line is currently provided under the financial assistance provisions of 49 U.S.C. 10904. Carriers are obligated to amend these maps as the need to change the category of any particular line arises.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 6, 2023.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2023-22559 Filed 10-12-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36723 (Sub-No. 2)]

OmniTRAX Holdings Combined, Inc., and HGS Railway Holdings, Inc.—Continuance in Control Exemption—Savannah Industrial Logistics, LLC

OmniTRAX Holdings Combined, Inc. (OmniTRAX), and HGS Railway Holdings, Inc. (HGS) (collectively, Omni-HGS), both noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Savannah Industrial Logistics, LLC (SIL), a noncarrier currently controlled by OmniTRAX, once SIL is authorized to commence common carrier operations.

This notice of exemption is related to a concurrently filed petition for exemption in *Savannah Industrial Transportation, LLC—Construction Exemption—in Effingham County, Ga.*, Docket No. FD 36723. In that proceeding, SIL seeks an after-the-fact exemption under 49 U.S.C. 10502(a), from the prior approval requirements of 49 U.S.C. 10901(a), for the construction of a rail line (the Track) located in an industrial park sited near Rincon, in

Effingham County, Georgia.¹ The Track extends from a connection with Norfolk Southern Railway Company (NSR) near NSR milepost 16.6 to a connection with CSX Transportation, Inc. (CSXT), near CSXT milepost S484.0, a distance of approximately 11,404 feet.

Omni-HGS states that it will control SIL upon SIL's becoming a Class III rail carrier. According to Omni-HGS, OmniTRAX and HGS are under joint managerial and operational control.² Omni-HGS states that OmniTRAX currently controls 22 Class III railroads, HGS currently controls two Class III railroads, and OmniTRAX and HGS control one Class III railroad together.³ The properties of the rail carriers controlled by OmniTRAX and HGS are located in the following states: Alabama, California, Colorado, Florida, Georgia, Illinois, Kansas, Maryland, Nebraska, New Jersey, Ohio, Oklahoma, Texas, Virginia, Washington, and West Virginia. Omni-HGS certifies that the proposed transaction does not involve an interchange commitment.

Omni-HGS states that: (1) the line over which SIL seeks authority to operate does not connect with the lines of any of the existing rail carriers controlled by OmniTRAX or by HGS, (2) the proposed transaction is not part of a series of anticipated transactions that would connect the line with any other railroads in the OmniTRAX or HGS corporate families; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed

transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is October 28, 2023, the effective date of the exemption (30 days after the verified notice was filed). The verified notice states that the parties do not intend to consummate the transaction until such time as SIL consummates the transaction that is the subject of its petition for exemption in Docket No. FD 36723.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 20, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36723 (Sub-No. 2), must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Omni-HGS' representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Omni-HGS, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: October 10, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2023-22683 Filed 10-12-23; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2023-1833; Summary Notice No.-2023-36]

Petition for Exemption; Summary of Petition Received; Hyllo Inc.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 2, 2023.

ADDRESSES: Send comments identified by docket number FAA-2023-1833 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for

¹ According to the verified notice, SIL is currently controlled by OmniTRAX. (Notice 2.) Should SIL's petition for after-the-fact construction authority be granted in Docket No. FD 36723, OmniTRAX and HGS seek to control SIL jointly. (*Id.* at 5.)

² *See OmniTRAX Holdings Combined, Inc.—Control Exemption—The Winchester & W. R.R.*, FD 36338 (STB served Aug. 22, 2019).

³ Specifically, OmniTRAX currently controls: Alabama & Tennessee River Railway, LLC; Brownsville & Rio Grande International Railway, LLC; Central Texas & Colorado River Railway, LLC; Chicago Rail Link, L.L.C.; Cleveland & Cuyahoga Railway, LLC; Fulton County Railway, LLC; Georgia & Florida Railway, LLC; Georgia Woodlands Railroad, L.L.C.; Great Western Railway of Colorado, L.L.C.; Illinois Railway, LLC; Kettle Falls International Railway, LLC; Manufacturers' Junction Railway, L.L.C.; Nebraska, Kansas and Colorado Railway, LLC; Newburgh & South Shore Railroad, LLC; Northern Ohio & Western Railway, L.L.C.; Omni River Ridge, LLC d/b/a River Ridge Railroad; Panhandle Northern Railroad, L.L.C.; Peru Industrial Railroad, LLC; Sand Springs Railway Company; Stockton Terminal and Eastern Railroad; Winchester and Western Railroad Company; and Savannah Industrial Transportation, LLC. HGS currently controls HGS-ATN, LLC, and HGS-FCR, LLC. Further, according to Omni-HGS, it recently filed for control of OmniTRAX SBVR, LLC d/b/a South Branch Valley Railroad, noting that its control authority becomes effective on October 11, 2023. *See OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—OmniTRAX SBVR, LLC*, FD 36716 (STB served Sept. 27, 2023).

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, 202–683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 6, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2023–1833.

Petitioner: Hyllo Inc.

Section(s) of 14 CFR Affected:

§§ 61.3(a)(1)(i), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b), 137.19(c), 137.19(d), 137.19(e)(2)(ii), 137.19(e)(2)(iii), 137.19(e)(2)(v), 137.31, 137.33, 137.41(c), and 137.42.

Description of Relief Sought: Hyllo Inc., seeks an exemption from 14 CFR to operate multiple unmanned aircraft systems (UAS) under one operator, weighing over 55 pounds (lbs.), closer than 500 feet of vehicles, vessels, and structures, during night, and without a visual observer (VO), within visual line of site (VLOS) of the pilot in command (PIC), for agricultural aircraft operations.

[FR Doc. 2023–22636 Filed 10–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and

TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is March 11, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: Patrick.Lee@txdot.gov. TxDOT's normal business hours are 8 a.m.–5 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of

1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. Loop 9, Segment A from US 67 to IH 35E in Dallas and Ellis Counties, Texas. The project will construct a six-lane new location frontage road system between US 67 and IH 35E. The frontage roads will consist of three 12-foot lanes, an 8-foot inside shoulder, and an 8-foot outside shoulder. The project right-of-way will include a median that will accommodate the future construction of

an ultimate access-controlled mainlane facility. The project is approximately 9.4 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (EIS), the Record of Decision (ROD) issued on September 22, 2023, and other documents in the TxDOT project file. The EIS, ROD, and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

2. US 380 from Coit Road to FM 1827 in Collin County, Texas. The project will provide a new location, eight-lane, controlled access freeway with two-lane, one-way frontage roads on each side from Coit Road and existing US 380 to the eastern terminus at existing US 380 and FM 1827. Depending on the location, the typical freeway section will consist of four 12-foot-wide travel lanes in each direction with 10- to 17-foot-wide inside and outside shoulders and two-lane (each 12 feet wide), one-way frontage roads on either side of the mainlanes. Shared-use paths built along the outside of the frontage roads will provide bicycle and pedestrian accommodations. The project is approximately 15.6 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Impact Statement (EIS), the Record of Decision (ROD) issued on September 27, 2023, and other documents in the TxDOT project file. The EIS, ROD, and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320-4480.

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2023-22000 Filed 10-12-23; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2022 and 2023 Competitive Funding Opportunity: Accelerating Advanced Digital Construction Management Systems Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to competitively apply for \$5,093,000 under the Fiscal Year (FY) 2022 and 2023 Public Transportation Innovation Program to serve as the Program Lead for the Accelerating Advanced Digital Construction Management Systems (“ADCMS”) program.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* “APPLY” function by 11:59 p.m. Eastern time on February 12, 2024.

FOR FURTHER INFORMATION CONTACT: ADCMS Program Team, FTA Office of Research, Demonstration, and Innovation, by email at ADCMS@dot.gov or by phone at (202) 366-2182.

Prospective applicants should initiate the process by registering on the *Grants.gov* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA’s website at <https://www.transit.dot.gov/howtoapply> and in the “FIND” module of *Grants.gov*. The *Grants.gov* funding opportunity ID is FTA-2023-012-TRI-ADCMS. Mail and fax submissions will not be accepted.

SUPPLEMENTARY INFORMATION:

Table of Contents

- A. Program Description
- B. Federal Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information
- F. Federal Award Administration Information
- G. Federal Awarding Agency Contacts
- H. Other Information

A. Program Description

1. Background

FTA’s Public Transportation Innovation Program (49 U.S.C. 5312) supports research and demonstrations to develop and deploy ideas, practices, and approaches that improve public transportation. This Notice (Federal Assistance Listing 20.526) will establish a program to plan, deploy, evaluate, and promote ADCMS technologies under 49 U.S.C. 5312(b)(4).

Construction is often the costliest and potentially most disruptive phase of any public transportation infrastructure project. Effective and efficient management of all elements and life cycle phases of infrastructure construction is key to on-time and on-budget project delivery. Project teams must know how and why specific changes or improvements are being made, ideally in real-time, and be aware of variations in methods of construction,

delays, and stakeholder inputs. Public transportation infrastructure projects could have delays, cost overruns, avoidable revisions and change orders, worker injuries, or substandard build quality without effective and efficient infrastructure construction management strategies.

The Infrastructure Investment and Jobs Act, Public Law 117–58 (also called the Bipartisan Infrastructure Law (BIL)), prioritizes the modernization of public transportation systems and acknowledges that the successful implementation of the ADCMS program relies on creating a new digital solution for the infrastructure construction industry. BIL codified 49 U.S.C. 5312(b)(4), which requires FTA to accelerate the implementation and deployment of ADCMS in the public transportation industry. ADCMS is broadly defined as empowering more timely and productive information sharing among stakeholders through reduced reliance on outdated pen-and-paper methods. ADCMS potentially makes modern digital technology available to infrastructure construction employees and enables them to perform tasks faster, more safely, smartly, and accurately, and with reduced oversight and supervision.

Section 5312(b)(4) lists nine goals for the accelerated implementation and deployment of ADCMS technologies in the public transportation industry. They are:

1. Accelerated adoption of advanced digital systems applied throughout the lifecycle of transportation infrastructure (including through the planning, design and engineering, construction, operations, and maintenance phases) that maximize interoperability with other systems, products, tools, or applications; boost productivity; manage complexity; reduce project delays and cost overruns; enhance safety and quality; and reduce total costs for the entire lifecycle of transportation infrastructure assets.

2. More timely and productive information sharing among stakeholders through reduced reliance on paper to manage construction processes and deliverables such as blueprints, design drawings, procurement and supply-chain orders, equipment logs, daily progress reports, and punch lists.

3. Deployment of digital management systems that enable and leverage the use of digital technologies on construction sites by contractors, such as state-of-the-art automated and connected machinery and optimized routing software that allows construction workers to perform tasks faster, more safely, more

accurately, and with minimal supervision.

4. The development and deployment of best practices for use in digital construction management.

5. Increased technology adoption and deployment by States, local governmental authorities, and designated recipients that enable project sponsors to integrate the adoption of digital management systems and technologies in contracts and to weigh the cost of digitization and technology in setting project budgets.

6. Technology training and workforce development to build the capabilities of project managers and sponsors that enable States, local governmental authorities, or designated recipients to better manage projects using advanced construction management technologies and to properly measure and reward technology adoption across projects.

7. Development of guidance to assist States, local governmental authorities, and designated recipients in updating regulations to allow project sponsors and contractors to report data relating to the project in digital formats and to fully capture the efficiencies and benefits of advanced digital construction management systems and related technologies.

8. Reduction in the environmental footprint of construction projects using advanced digital construction management systems resulting from eliminating congestion through more efficient projects.

9. Enhanced worker and pedestrian safety resulting from increased transparency.

2. Program Goals and Objectives

FTA is soliciting proposals for a Program Lead to carry out demonstrations of ADCMS software on transit construction projects and report on the results and experiences, with the purpose of assisting other transit agencies considering adopting ADCMS on their construction projects.

FTA expects this ADCMS demonstration program to consist of the following basic program elements, which are described in additional detail below: (1) overall program management and coordination; (2) demonstration of ADCMS on public transportation construction projects; (3) an evaluation of the demonstration projects centered on the nine program goals in 49 U.S.C. 5312(b)(4); and (4) development of “lessons learned” documents of project findings and an implementation guide intended to assist public transportation agencies accelerate the deployment of ADCMS programs.

The Program Lead is encouraged to assemble and lead appropriate partnerships to deliver all components of the ADCMS program as described in this Notice.

i. Management and Coordination

The Program Lead will be responsible for overall program management, coordination, and adherence to established project timelines in accordance with available funding. This includes all aspects of resource management, compliance, and reporting, including oversight of sub-recipients, if any. Eligible activities include data collection, feasibility study and analysis, economic analysis, stakeholder engagement, and outreach, obtaining necessary equipment and services, acquiring or developing software and hardware interfaces to implement the project demonstrations, performance measurement and evaluation, planning, engineering, development of technical or financing plans, public engagement, and participant recruitment, capital and operating expenses, technology applications, or similar necessary components to design, select, and carry out demonstrations.

The Program Lead is expected to work closely and have frequent contact with the transit agency owners of the demonstration construction projects to monitor the collection and analysis of data to ensure the validity and consistency of findings, in accordance with the goals and requirements of this Notice, and with input of the Research Stakeholder Committee, as described in Section A.2.iv., Structured Demonstration and National Research, below.

ii. Demonstration Projects

The Program Lead must provide for at least two transit agencies to demonstrate at least two different ADCMS solutions, and the construction projects used for demonstrations must be FTA-funded projects. Accordingly, the Program Lead must have the capability to support the implementation of more than one ADCMS-integrated software solution. The Program Lead must allow a public transportation agency sponsoring a demonstration to choose its own ADCMS software, and cannot be a provider of, or have a financial interest in, a proprietary ADCMS software solution.

In proposing construction projects for demonstrations, the Program Lead should consider, among other factors, the nature and type of construction management processes being proposed for ADCMS demonstrations, each transit

agency’s ability to implement ADCMS, the ADCMS products to be demonstrated, and each transit agency’s ability to manage project data. FTA expects demonstrations to have a duration not to exceed four years from project start date. The Project Lead shall propose demonstration projects to ensure that the customized ADCMS strategies and targeted investments are having a measurable impact at the demonstration sites.

Demonstration activities should include the full lifecycle for planning, implementing, integrating, testing, and final deployment of the solution. For example, (1) gathering and confirming business requirements from the recipients selected for the demonstration, (2) configuring the ADCMS software noted in the application for the respective partner, (3) testing and integrating the software solution with any internal systems already deployed that relate to digital construction management, (4) final deployment, and (5) lessons learned in the process.

Demonstrations will include the collection of data and experiences from participants in the demonstration projects and unique “storytelling” of individual participants in the various demonstrations that will form the basis of the Project Lead’s evaluation of the demonstrations and preparation of “lessons learned” materials for dissemination.

Proposals must include a research program “off-ramp plan” to financially support and sustain the ADCMS program for the demonstration recipients at the conclusion of the demonstration and research period. Competitive proposals will also have a deployment timeline and critical milestones with associated roles and responsibilities for demonstration transit agencies.

iii. Demonstration Project Evaluation

A Demonstration Project Evaluation report is required to assess the research project’s process, outcomes, and impact. This report should provide an unbiased assessment of the project’s strengths, weaknesses, and lessons learned.

iv. Development of Lessons Learned

The Program Lead will facilitate the interaction between the demonstration project transit agencies by bringing demonstration partners together periodically to gather qualitative research and provide feedback on their respective findings regarding the demonstration’s implementation and impact.

The Program Lead will develop a structured research framework for the demonstrations. The Program Lead will establish and regularly meet with a Research Stakeholder Committee consisting of representatives from federal agencies involved in research and development initiatives related to the project's domain, experts from relevant industries from non-profit and/or private sector organizations that have a vested interest in the research area; representatives from academia that can contribute their knowledge, research expertise, and academic perspectives to guide the project and ensure its alignment with current scientific understanding; and end users or practitioners from organizations such as public transportation agencies or relevant professionals who will be the direct beneficiaries or users of project outcomes. The Research Stakeholder Committee will review the demonstration framework and methodology, data collection plan, and preliminary and final findings and offer feedback to ensure the demonstration satisfies the nine goals of the ADCMS program in the most valid and impactful ways. The successful applicant will collaborate with FTA on the membership composition of the committee. FTA will also be a member of the committee. The Program Lead will aid the selected demonstration sites in establishing and maintaining the collection of project data and tools, striving for consistency across demonstrations to the greatest extent possible. The Program Lead will also compile and synthesize data and lessons learned from the demonstrations. Project deliverables should include data collection instruments, including surveys, interview guides, observation protocols, or experimental protocols used to collect primary data; copies of oral and/or visual presentations summarizing the project objectives, methodology, findings, and recommendations; copies of all raw and/or processed data collected during the demonstrations that can be used to facilitate replication, further analysis, or meta-analyses; and, a comprehensive demonstration project evaluation report, summarizing the evaluation methodology, findings, and recommendations. The evaluation report should be tailored to different stakeholders' needs and should be easily accessible and understandable. Additionally, opportunities for presenting the findings and engaging stakeholders in discussions should be provided in the report to ensure that the

evaluation results are utilized for decision-making and improvement.

Research and demonstration conducted under this Notice will advance the strategic goals of the U.S. Department of Transportation, as outlined in its FY 2022–2026 Strategic Plan, and the Department's Innovation Principles, which can be found at <https://www.transportation.gov/priorities/transformation/us-dot-innovation-principles>.

B. Federal Award Information

This Notice makes available \$5,093,000 to award one competitively selected Program Lead. Funding is available under FTA's Public Transportation Innovation Program (49 U.S.C. 5312). FTA may, at its discretion, provide additional funding for multi-year selections made under this Notice from FTA's Public Transportation Innovation Program (49 U.S.C. 5312), subject to the availability of appropriated funds.

An applicant whose proposal is selected for funding as the Program Lead will receive a cooperative agreement with FTA. FTA will have substantial involvement in the administration of the cooperative agreement. FTA's role includes the right to participate in decisions to redirect and reprioritize project activities, goals, and deliverables. FTA expects to provide the Program Lead with substantive input and direction at each stage of the project. Applicants are encouraged to assemble and secure partnerships necessary to conduct the Program in accordance with the requirements outlined in this Notice.

Only proposals from eligible recipients for eligible activities will be considered for funding.

Pre-award authority is subject to FTA approval and is only available for costs incurred after the announcement of the project selection on FTA's website.

Projects under this Notice are for research efforts and, as such, FTA Circular 6100.1E, "Research, Technical Assistance and Training Program Guidance" (available at <https://www.fta.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program>), will apply in administering the program.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for the Program Lead under this Notice include the following:

- Departments, agencies, and instrumentalities of local, state, and

federal government, including Federal laboratories

- Institutions of higher education, including research universities, particularly those with Minority Serving Institution status
- Non-profit organizations
- For-profit organizations
- Technical and community colleges

Eligibility is limited to United States entities. Applicants must demonstrate experience conducting comprehensive research demonstrations, including those focused on data- and technology-oriented research and application in the infrastructure construction industry, and related areas.

To be considered eligible, an applicant must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this new program.

2. Cost Sharing or Matching

Per 49 U.S.C. 5312(g), the eligible Federal share will not exceed 80 percent of net project cost. Applicants for Program Lead must provide a minimum 20 percent non-federal cost share. Applicants may also apply with a larger non-federal cost share. The non-federal share of the net project cost may be provided in cash or in kind, and the applicant must document in its application the source of the non-federal match. Eligible sources of non-federal match are detailed in FTA Circular 6100.1E.

3. Conflicts of Interest

It is FTA's intent that the ADCMS program benefits public transportation agencies irrespective of their choice of ADCMS software. Therefore, the Program Lead and its principal staff engaged in this project cannot be a provider of, or have a financial interest in, a proprietary ADCMS software solution or vendor. Each applicant must include a statement to this effect in its application.

D. Application and Submission Information

1. Address To Request Application

Applications must be made using the Standard Form 424 (SF-424), which can be downloaded from *Grants.gov*.

2. Content and Form of Application Submission

a. Proposal Submission

General information for submitting applications along with specific instructions for the forms and attachments required for submission can be found at *Grants.gov*. A complete

proposal submission must consist of: (1) The SF-424 “Application for Federal Assistance;” (2) the Supplemental Form; and (3) a narrative proposal document in Microsoft Word, PDF, or a compatible file format that addresses the required elements contained in this Notice. The narrative proposal should be in the format outlined in the “Proposal Preparation and Content” section. A narrative proposal submission may contain additional supporting documentation as attachments. Once completed, the Supplemental Form, narrative proposal, and any supporting documents must be placed in the “Attachments” section of the SF-424 in *Grants.gov* to successfully complete the application process. The applicant must respond to all sections of the SF-424 Application for Federal Assistance and the Supplemental Form. The information in the application will be used to determine applicant and project eligibility for the program and to evaluate the proposal against the selection criteria described in this Notice. Applicants should carefully review the criteria noted in Section E and ensure their proposal addresses the factors listed.

Failure to submit the information as requested can delay review or disqualify the application.

1. Proposal Preparation and Content

Applicants must submit one electronic file for Proposals in a Microsoft Word, PDF, or compatible file format, double-spaced using Times New Roman, 12-point font. The proposal must contain the following components and adhere to the specified maximum lengths:

1. *Cover Sheet* (not to exceed 1 page): The cover sheet must include the entity submitting the proposal, principal's name, title, and contact information (e.g., address, office and mobile phone, and email). The cover sheet must also include name and contact information for the entity's point of contact for all cooperative agreement administrative activities (if different from principal).

2. *Abstract* (not to exceed 2 pages): The Abstract must include background, purpose, methodology, intended outputs, outcomes, impacts, and plan for accomplishing the goals and objectives as outlined in this Notice.

3. *Table of Contents* (not to exceed 1 page): The Table of Contents shall list each section of the proposal (including Appendices) by title and page number.

4. *Project Budget* (not to exceed 5 pages): Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget

should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: non-Federal, ADCMS, and other Federal, with specific amounts from each funding source. The proposed project budget must account for multiple years and outline the total cost of all services and products, including salaries and fringe benefits, supplies, travel, equipment, and proposed contractual arrangements (e.g., subcontracts, consultant services) and how these estimated costs are connected to the project scope.

5. *Project Work Plan* (not to exceed ten pages total): The proposed project work plan must include the following information:

a. *Methodology*—Provide a methodology for addressing the goals and objectives described above under Section A of this Notice; identify the transit agencies and construction projects proposed as demonstrations and the ADCMS products proposed to be demonstrated, and how the applicant will integrate ADCMS into the construction projects.

b. *Statement of Work*—Provide proposed work tasks for the project and how the proposed work tasks will be accomplished. Include the tasks for proposed activities, resources, milestones, and a timeline.

i. *Staffing Plan*—Describe the approach for managing the project team, including the distribution of responsibilities among project partners, and what activities each project team member will perform.

ii. *Coordination with FTA*—Identify the plan for coordinating the project team's activities and deliverables with the FTA's Research office, as needed and relevant.

iii. *Research and Data Collection*—Identify activities and the plan for electronic collection, maintenance, storage, and dissemination of data for use by the project team, stakeholders, FTA, and other customers.

iv. *Communication Plan*—Provide a plan for communications of project results. The plan should identify innovative communication strategies including, but not limited to the following: webinars, in-person presentations at industry events, social media (e.g., Facebook, Twitter, YouTube), text alerts, email, website publication, and toll-free telephone numbers.

v. *Performance Measures*—Identify multiple performance measures that FTA should use to assess the Program's overall effectiveness in accordance with

the nine stated goals of the ADCMS program.

vi. *Deliverables*—Provide a proposed list of proposed deliverables (e.g., guides, plans, reports, services, etc.). Include quarterly reports, financial forms, guidance documents, and final reports to be submitted to FTA.

6. *Staff Qualifications* (not to exceed 5 pages total):

a. *Organizational Capacity*—Provide a narrative that briefly describes the structure of the proposer, including its history and experience in performing complex research activities. Include a narrative of the proposer's understanding of the activities in this solicitation and its responsibility for the demonstrations, data collection, and results dissemination called for in this Notice. Include the proposer's organization chart. The applicant must affirm that neither it nor the individual members of its principal staff (see d., below) has a financial interest or affiliation with the vendors whose ADCMS solutions it proposes to demonstrate.

b. *Project Team Structure*—Provide a narrative that briefly describes the structure and makeup of the project team. Eligible applicants are encouraged to identify in their proposal one or more project partners with a substantial interest and involvement in the project activities or objectives. If an application that involves such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership after the award will require FTA's written approval, must be consistent with the scope of the approved project, and may require a competitive procurement process. Include the names of all partner organizations, and the legal relationship, if any, between the applicant and each proposed partner. Include the names and functional titles of each project team member. Proposers must also provide documentation of the project team, such as a memorandum of agreement or letter of intent signed by all parties that describes the parties' roles, responsibilities, commitment to the proposed project, and how the applicant will ensure they will have enough time to devote to the project. Include an organizational chart for the entire project team.

c. *Technical Capacity of Project Team*—Provide a detailed description of the technical capacity of the project team members and what activities each team member will perform. Include

project staff qualifications, education, knowledge, and results of prior experience related to the topic called for in this notice. Additionally, applicants should discuss the successful completion of similar or relevant projects.

d. **Biographical Summary**—In addition to the Staff Qualifications narrative (5 page maximum), include a biographical summary for each staff member proposed to take a principal role or perform significant work on the project.

7. Proposals shall adhere to the specified maximum page lengths. Supplemental materials such as letters of support can be included with the proposal in an appendices section that is beyond the page limit above. Supplemental materials will not be evaluated independently.

The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

Applications submitted in response to this NOFO become the property of FTA and may be subject to Freedom of Information Act requests. Please segregate and clearly mark any portions of the application containing confidential or privileged trade secrets or commercial or financial information.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in SAM before applying; (2) provide a valid unique entity identifier in its application; and (3) continue to always maintain an active SAM registration with current information during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has yet to fully comply with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d).

SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, to complete all steps. For additional information on obtaining a

unique entity identifier, please visit <https://www.sam.gov>.

4. Submission Dates and Times

Project proposals must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern time on February 12, 2024. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Mail, fax, and email submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either *Grants.gov* or FTA systems to reject the submission. *Grants.gov* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will be considered only if lateness was due to extraordinary circumstances not under the applicant's control. *Grants.gov* scheduled maintenance and outage times are announced in advance on the *Grants.gov* website.

Deadlines will not be extended due to scheduled website maintenance.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *Grants.gov* with confirmation of successful transmission to *Grants.gov*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated, and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the registration process on the *Grants.gov* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in SAM is renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *Grants.gov* by the AOR to make submissions.

5. Funding Restrictions

Refer to Section C.3., Eligible Projects, for information on allowable activities. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost

Principles (2 CFR part 200) and FTA Circular 5010.1E.

Funds available under this Notice cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA issuing pre-award authority for selected projects.

E. Application Review Information

1. Evaluation Criteria

Projects will be evaluated solely on the materials provided in the Proposal document. FTA will evaluate proposals based on the following criteria:

a. Organizational Capacity and Key Personnel Experience

Applicants should note the structure of the lead organization, including its history and experience in performing complex research and software configuration and deployment activities. Applicants should include a narrative of the applicant's understanding of the activities called for in this funding opportunity and their responsibility for coordinating demonstration activities. Applicants should describe the structure and makeup of the project team to clearly demonstrate the applicant's technical abilities to meet the requirements called for in this funding opportunity.

Applicants should note key project team personnel who will be involved in the project and how the applicant will ensure they have enough time to devote to the project. Additionally, applicants should discuss successful completion of similar or relevant real-world projects—case studies, journal articles, references, etc.

Applicants or proposed partners must demonstrate technical capabilities to:

- Effectively manage a national research program
- Implement data-driven decision-making in the iteration of program management
- Manage Federal funding and eligible expenses
- Engage with public agencies, authorities, research institutions, private organizations, and potentially community-based organizations
- Implement agile software development (*i.e.*, deliver small pieces of working software quickly to improve customer satisfaction and continuously evaluate and implement customer requirements in response to change)
- Leverage best practices within the public transportation and construction infrastructure industries
- Apply insights from the National Academy of Sciences and other credible research organizations

b. Proposer and Proposal Team Technical Expertise

Applicants should clearly detail the technical capacity of the lead organization and what activities each team member will perform. In addition to their qualifications in conducting nationally significant research and software configuration and deployment, applicants should demonstrate project team knowledge in public transportation, infrastructure construction, digital construction technologies, and stakeholder coordination and engagement, including engaging stakeholders in a targeted manner with proven and impactful methods.

c. Applied Research and Other Related Experience

Applicants should provide evidence of applied research experience and other related experience (*e.g.*, past program management utilizing federal funding, collaboration with research institutions, or program design and implementation), including research focused on digital construction in the public transportation or other relevant industry. The proposal should detail the applicant's ability to identify and address transportation infrastructure issues called for in this Notice to support the program's measurement goals.

d. Proposed Partnerships

Applicants should provide a narrative that discusses a creative and durable collaboration model to implement a project successfully. The narrative must include a strong framework that fosters partnerships.

e. Project Approach and Work Plan

Applicants will be evaluated on the proposed methodology and overall project approach pursuant to the inclusion of a multi-year work plan that demonstrates the Program Lead's understanding of all activities, responsibilities, and costs required to establish and implement the prescribed work. In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project work plan, including all necessary project milestones and the overall project timeline, as well as ensure the project team's viability in subsequent years.

f. Technical, Legal, and Financial Capacity

Applicants must demonstrate the financial and organizational capacity and managerial experience to oversee and implement this project successfully.

FTA may review relevant assessments and public records to determine whether any outstanding legal, technical, or financial issues with the applicant would affect the outcome of the proposed project.

For applications that include named project partners, FTA will also consider the proposed partners' technical, legal, and financial capacity.

6. Review and Selection Process

An FTA technical evaluation committee will evaluate proposals based on the published evaluation criteria. Members of the technical evaluation committee may request additional information from applicants if necessary. After considering the review of the technical evaluation committee, the FTA Administrator will determine the final selection for program funding.

When selecting the Program Lead, FTA will consider the applicant's ability and its proposed plan to recruit and select demonstration sites to address key priorities of the Administration. Consistent with the President's January 20, 2021, Executive Order 13990 which aims to promote clean energy, conservation, and environmental justice; emphasizes scientific integrity and evidence-based decision-making; and aligns with goals to mitigate climate change and prioritize environmental sustainability, the selecting official will consider applications that may promote these key priorities as part of the application review.

7. Integrity and Performance Review

Prior to making an award, FTA is required to review and consider any information about the applicant in FAPIIS, the designated integrity and performance system accessible through SAM. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's and proposed partners' integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.206).

F. Federal Award Administration Information

1. Federal Award Notices

FTA will notify the successful applicant and may announce the

selection on its website, <https://www.transit.dot.gov>. Following notification, the successful applicant will be required to submit their application through the FTA Transit Award Management System (TrAMS).

2. Administrative and National Policy Requirements

a. Pre-Award Authority

At the time the project selection is announced, FTA may extend pre-award authority for the successful applicant. There is no blanket pre-award authority for the project before announcement. FTA will issue specific guidance to the selected recipient regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected, and even then, Federal requirements must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionments, Allocations, and Program Information Notice (88 FR 23117).

b. Cooperative Agreement Requirements

The successful applicant will apply for a cooperative agreement through TrAMS and adhere to the customary FTA grant requirements of 49 U.S.C. 5312, Public Transportation Innovation, including those of FTA C 6100.1E, where applicable. FTA will award and manage a cooperative agreement through TrAMS. Discretionary grants and cooperative agreements greater than \$500,000 will go through the Congressional notification and release process. Assistance regarding these requirements is available from FTA.

c. Made in America

All capital procurements must meet FTA's Buy America requirements (49 U.S.C. 5323(j) and 49 CFR part 661) and the Build America, Buy America Act's domestic preference requirements for infrastructure projects (§ 70901–§ 70927 of the Infrastructure Investment and Jobs Act, Pub. L. 117–58), which together require that all iron, steel, manufactured goods and construction materials be produced in the United States and set minimum domestic content and final assembly requirements for rolling stock.

d. Data Management Plan

FTA seeks to improve public transportation for America's communities by sharing digital data or source code collected or developed through its research with the public. This allows research organizations, public transportation agencies, State

DOTs, and other stakeholders to learn from and expand upon the insights developed from FTA-funded research.

An award made pursuant to this Notice will be subject to the latest version of FTA's Master Agreement (available at <https://www.transit.dot.gov/funding/granteeresources/sample-fta-agreements/fta-grant-agreements>), including Section 17 Patent Rights and Section 18 Rights in Data and Copyrights. All work conducted under this award must follow the Department data policies outlined in the DOT Public Access Plan at: <https://ntl.bts.gov/public-access/how-comply>. Recipients are required to include these obligations in any sub-awards or other related funding agreements.

Public Data Access requirements include developing a Data Management Plan (DMP) and submitting the DMP for FTA review. A DMP is a document that describes how recipients plan to handle digital datasets, software, or code generated over the course of a research project pursuant to federal and Departmental requirements. A DMP must be provided as a condition of receiving FTA funds under the Section 5312 Research Program and should adequately identify: (1) The data to be collected, (2) how the data will further the goals of this effort, (3) how the data will be made accessible, and (4) how the data will be stored. DMPs can be updated over time if the scope of the project or the type of data that will be collected changes. FTA staff is available to assist recipients with complying with public data access requirements.

FTA expects recipients to remove confidential business information (CBI) and Personally Identifiable Information (PII) before providing public access to project data. Recipients must ensure the appropriate data are accessible to FTA or the public for a minimum of five years after the award's performance period expires.

Recipients must make available to the Department copies of all work developed in performance of a project funded under this Notice, including but not limited to software and data. Data rights shall be in accordance with 2 CFR 200.315, Intangible Property.

e. Disadvantaged Business Enterprises

Recipients receiving planning, capital, or operating assistance that will award prime contracts exceeding \$250,000 in FTA funds in a Federal fiscal year must comply with Department of Transportation Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). Applicants should expect to include any funds awarded,

excluding those used for vehicle procurements, in setting their overall DBE goal.

f. Standard Assurances

If an applicant receives an award, the applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA award. The applicant acknowledges that it will be under a continuing obligation to comply with the terms and conditions of the agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the most recent FTA Certifications and Assurances before receiving an award if it does not have current certifications on file.

g. External Communications

The successful applicant must communicate with the FTA project manager prior to engaging in any external communications regarding the Program. This includes any work developing news or magazine stories with media organizations, including print, video, online, or otherwise. Additionally, the FTA project manager must be notified if project information, including results and metrics, will be shared during a webinar or other presentation open to the public, produced either by the recipient itself or another organization. The successful applicant must consult with the FTA project manager at the beginning of their agreement to discuss and plan any external communications about their project.

h. Software Provisions

Any standards, guidance, tools, or software developed as a part of this solicitation will be subject to provisions of FTA's Master Agreement and evaluated for the potential to be shared for FTA purposes.

i. Critical Infrastructure Security and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this Notice must demonstrate,

prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department of Transportation and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21—“Critical Infrastructure Security and Resilience and the National Security Presidential Improving Cybersecurity for Critical Infrastructure Control Systems.”

3. Reporting and Payment

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in TrAMS quarterly. Documentation is required for payment. Additional reporting may be required specific to the program prescribed in this Notice, and the recipient may be expected to participate in events or peer networks related to the goals and objectives of the program. The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Sub Award Reporting System (<https://www.FSRS.gov>) for all sub-awards and sub-contracts issued for \$30,000 or more, as well as addressing executive compensation for both award recipients and sub-award organizations. The selected recipient will be required to disburse via Delphi and E-invoicing.

The successful applicant should include any goals, targets, and indicators referenced in its application in the Executive Summary of the TrAMS application.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals.

If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed \$10,000,000 for any period during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

4. Termination for Failure To Make Progress on an Award

After providing written notice to the recipient of a project selected for funding, FTA may withdraw its support for the selected project (if a cooperative agreement has not yet been awarded) or suspend or terminate all or any part of the federal assistance for the award if the recipient has failed to make reasonable progress implementing the project. FTA may withdraw its support for a project or terminate an award agreement if:

1. A recipient has not completed its application for funding in TrAMS within 60 days of the date FTA announces project selection.
2. A recipient has not begun its demonstration project within one year after funding was awarded in TrAMS.
3. A recipient has not delivered a project evaluation to FTA within one year of completing its demonstration project.
4. FTA may also withdraw support from a project or terminate an award agreement if the proposed activities are no longer needed or if the recipient has violated the terms of FTA's Annual Agreement.

G. Federal Awarding Agency Contacts

For further information concerning this Notice, please contact the ADCMS Program Team, FTA Office of Research, Demonstration, and Innovation, by email at ADCMS@dot.gov. A TDD is available for individuals who are deaf or hard of hearing at 800-877-8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at: <https://www.transit.dot.gov/research-innovation/ADCMS>.

To ensure applicants receive accurate eligibility information, applicants are encouraged to contact FTA directly, rather than through intermediaries or third parties, with questions. FTA staff may also conduct briefings on the competitive grants selection and award process upon request.

For issues with [Grants.gov](https://www.grants.gov), please contact [Grants.gov](https://www.grants.gov) by phone at 1-800-518-4726 or by email at support@grants.gov.

H. Other Information

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Nuria I. Fernandez,
Administrator.

[FR Doc. 2023-22521 Filed 10-12-23; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT-NHTSA-2023-0037]

Emergency Medical Services Education Agenda 2050: Request for Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice of Request for Information (RFI).

SUMMARY: This notice announces a RFI. The NHTSA Office of Emergency Medical Services (EMS) is seeking comments from all sources (public, private, government, academic, professional, public interest groups, and other interested parties) on the planned re-envisioning of the 2000 *EMS Education Agenda for the Future: A Systems Approach*. The purpose of this document is to solicit comments on *EMS Education Agenda 2050*, and request responses to specific questions provided in this document. This is neither a request for proposals nor an invitation for bids.

DATES: It is requested that comments on this announcement be submitted by October 31, 2023.

FOR FURTHER INFORMATION CONTACT:

Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation is available by phone at (202) 868-3275 or by email at Clary.Mole@dot.gov.

SUPPLEMENTARY INFORMATION: In 2012, the National EMS Advisory Council (NEMSAC) convened a national roundtable meeting on the *EMS Education Agenda for the Future: A Systems Approach*. In a 2014 report on these proceedings, NEMSAC advised that stakeholders at the State and local level had just begun to experience the full impact of the evolution toward a national integrated system of education for EMS personnel. While stakeholders were reticent to move forward with a new education agenda, they did provide feedback about themes that should be considered in the future publication. From the feedback collected at the meeting, NEMSAC developed recommendations to be used in the eventual re-envision of the agenda for EMS. These recommendations are summarized below:

- Educational content should retain the flexibility accorded by the National EMS Education standards, but programs should use nationally recognized evidence-based guidelines to drive local curriculum development.

- The National EMS Information System data, evidence-based research, and practice analyses should be sourced in developing evidence-based guidelines and curriculum.

- Mobile Integrated Healthcare has received considerable attention from the EMS Community. This and other alternative community-based healthcare delivery models (of the future) should evoke an expanded foundational knowledge and critical thinking capabilities that will poise future EMS practitioners to be able to evolve with the changing healthcare system or rapidly adjust to emerging healthcare crises.

- EMS educators should begin a career in academia with expertise in adult learning, educational theory, curriculum development, and competency evaluation but also possess experiential knowledge in evidence-based care.

In the 10 years since NEMSAC's roundtable meeting, the national EMS education system continued to evolve—especially during the COVID-19 pandemic. In late 2021, the Federal Interagency Committee on EMS (FICEMS) began sponsoring listening sessions to inform a consensus-driven, national report entitled, *FICEMS: EMS and 911 COVID-19 Response White Paper*. This publication cited challenges and solutions collected during stakeholder listening sessions for the EMS education system. Among the challenges, EMS education stakeholders cited scarcity (in some cases deficits) in resources for education, rigidity of curriculum delivery modalities, the increased employer demands on students, and inconsistent or delayed responses to the needs of the national EMS education system as major contributors that led to the breakdown in the EMS workforce pipeline.

Prior to the COVID-19 pandemic, NHTSA published *EMS Agenda 2050: A People-centered Vision for the Future of EMS (Agenda 2050)*. This collaborative project set a vision for a people-centered EMS systems that serves every individual in every community across the Nation. Later this year, NHTSA and its partners will begin a new project to develop EMS Education Agenda 2050. This project will not replace but build upon the achievements of the 2000 *EMS Education Agenda for the Future: A Systems Approach* to lead a national conversation around the future vision for EMS Education and EMS as a profession.

I. Background

NHTSA, in partnership with Health Resources and Services Administration,

published *EMS Education Agenda for the Future: A Systems Approach (Education Agenda)* in 2000. This document was founded on the broad national EMS education system concepts introduced in the *EMS Agenda for the Future* (1996). The *Education Agenda* described a consensus vision of an EMS education system with a high degree of structure, coordination, and interdependence. It proposed a less prescriptive system that offered educators flexibility in creating a student-centered learning environment and a process for accommodating future advancements in technology and medicine. The proposed system maximized efficiency, consistency in instructional quality, and entry level graduate competency by prescribing a high degree of structure, coordination, and interdependence. To achieve this vision, the education system of the future centered on five integrated primary components:

- National EMS Core Content
- National EMS Scope of Practice Model
- National EMS Education Standards
- National EMS Education Program Accreditation
- National EMS Certification

After the *Education Agenda* was published, stakeholders began implementing their respective integrated system components. Almost 25 years later, the national EMS education system has successfully evolved into one that exemplifies both consistency and flexibility. System interdependencies have helped to avoid duplication of effort in curriculum and education program development, evaluating the minimum competencies of graduates, certification and licensing processes, and facilitation of practitioner reciprocity.

In 2020, the EMS education system interdependencies modernized by the *Education Agenda* were tested. Challenges presented by the COVID-19 pandemic forced a variety of adaptations. Traditional education programs reported a lag in students' capabilities of achieving the programmatic competencies requirements for graduation. The lag was attributed to a variety of causes including a focus on pandemic response activities over training and education, employer demands on working students, and the rigidity of in-person, classroom-based education delivery models. After the majority of programs adjusted to the challenges, lags in graduation were cured, and students achieved programmatic competencies at rates similar to those pre-pandemic.

The response to the pandemic did not impact education programs only. The impact to EMS agency daily operations was felt as well. During the COVID pandemic, agencies experienced increases in EMS activation and response rates which created additional stressors for student EMS practitioners already working in a high stress job environment but also enrolled in an EMS education program. These stressors were a major contributor to a migration of practitioners away from the EMS workforce. Agencies and organizational stakeholders asserted that it could be education program graduation requirements causing breakdown in the workforce pipeline; however, there were no observed decreases in graduation or certification testing rates. These observations prompt two questions: If graduation and certification testing rates have remained unchanged, why have agencies reported recruitment and retention issues? If graduates are not entering the EMS workforce, where are they finding jobs?

With agencies experiencing increased demand and a deficiency in qualified EMS practitioners to respond to it, service delivery models had to evolve. To bridge the gap in community-based care resources, community paramedicine and mobile integrated healthcare (CP-MIH) service delivery models increased in prevalence, and improvised training programs were used to close new job-specific competency gaps among existing EMS practitioners and individuals in training.

Other themes brought to the forefront during the pandemic include addressing healthcare disparities; the use of EMS data as a tool for surveillance and nationwide quality of care improvements; and a greater value to having an EMS workforce that is not only equitable, inclusive, and accessible, but as diverse as the community it serves. These themes, evolving service delivery models, and the subsequent evolution of competencies needed by practitioners suggest that it is time for NHTSA to gather our partners to begin a new conversation about the future of EMS Education and EMS as a profession in the United States.

II. Questions Regarding EMS Education Agenda 2050

Responses to the following questions are requested to help plan the revision of the *Education Agenda*. Please be as specific as possible and as appropriate please provide references.

1. What are the most critical issues facing EMS education system that should be addressed in the revision of

the *EMS Education Agenda*? Please provide specific examples.

2. What progress has been made in implementing the *EMS Education Agenda* since 2000?

3. How have you used *EMS Education Agenda*? Please provide specific examples.

4. As an EMS Stakeholder, how might a revised *EMS Education Agenda* be most useful to you?

5. What significant changes have occurred in the EMS education system at the national, Federal, State, and local levels since 2000?

6. What significant changes will impact the EMS education system in the next 25 years?

7. How might the revised *EMS Education Agenda* contribute to enhanced EMS for children?

8. How might the revised *EMS Education Agenda* support and/or promote data-driven and evidence-based improvements in EMS education systems and EMS practitioner practice?

9. How could the revised *EMS Education Agenda* enhance collaboration among EMS systems, health care providers and facilities, public safety answering points, public health, public safety, emergency management, insurers, and others?

10. How could the revised *EMS Education Agenda* be used to promote community sustainability and resilience?

11. How could the revised *EMS Education Agenda* contribute to improved coordination for disaster response, recovery, preparedness, and mitigation?

12. How could the revised *EMS Education Agenda* enhance the exchange of evidence-based practices between national, Federal (and military), State, and local levels?

13. How could the revised *EMS Education Agenda* support the seamless and unimpeded transfer of military EMS personnel to roles as civilian EMS providers?

14. How could the revised *EMS Education Agenda* support interstate credentialing of EMS personnel?

15. How could the revised *EMS Education Agenda* support improved patient outcomes in rural and frontier communities?

16. How could the revised *EMS Education Agenda* lead to improved EMS systems in tribal communities?

17. How could the revised *EMS Education Agenda* promote a culture of safety among EMS personnel, agencies, and organizations?

18. Are there additional EMS attributes that should be included in the revised *EMS Education Agenda*? If so,

please provide an explanation for why these additional EMS attributes should be included.

19. Are there EMS attributes in the *2000 EMS Education Agenda* that should be eliminated from the revised edition? If so, please provide an explanation for why these EMS attributes should be eliminated.

20. What are your suggestions for the process that should be used in revising the *EMS Education Agenda*?

21. What specific agencies/ organizations/entities are essential to involve, in a revision of the *EMS Education Agenda*?

22. Do you have any additional comments regarding the revision of the *EMS Education Agenda*?

(Authority: 23 U.S.C. 403(b)(1)(A)(iv); 49 CFR 1.95; 501.8)

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2023-22625 Filed 10-12-23; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 29, 2023, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, requested public comment for 60 days on a proposal to extend for three years, without revision, the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC

101), which is currently an approved collection of information for each agency. The comment period for the June notice expired on August 28, 2023. No comments were received, and the agencies will proceed with the extension, without revision, of the FFIEC 101. In addition, the agencies are giving notice that they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before November 13, 2023.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- **Email:** prainfo@occ.treas.gov.
- **Mail:** Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0239, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- **Fax:** (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-0239" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the

"Information Collection Review" tab and click on "Information Collection Review" from the drop-down menu. From the "Currently under Review" drop-down menu, select "Department of Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-0239" or "Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101)." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

Board: You may submit comments, which should refer to "FFIEC 101," by any of the following methods:

- **Agency website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Email:** regs.comments@federalreserve.gov. Include "FFIEC 101" in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to "FFIEC 101," by any of the following methods:

- **Agency website:** <https://www.fdic.gov/resources/regulations/federal-register-publications>. Follow the instructions for submitting comments on the FDIC's website.

- **Email:** comments@FDIC.gov. Include "FFIEC 101" in the subject line of the message.

- **Mail:** Manuel E. Cabeza, Counsel, Attn: Comments, Room MB-3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

• **Public Inspection:** All comments received, including any personal information provided, will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395-6974; or by email to oira_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For further information about the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the FFIEC 101 reporting forms and instructions can be obtained at the FFIEC's website (https://www.ffiec.gov/ffiec_report_forms.htm).

OCC: Kevin Korzeniewski, Counsel, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452-3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898-3767, mcabeza@fdic.gov, Legal Division, Federal Deposit Insurance Corporation.

SUPPLEMENTARY INFORMATION: On June 29, 2023, the agencies requested public

comment on a proposal to extend for three years, without revision, the FFIEC 101.¹ The comment period expired on August 28, 2023, and no comments were received.

The agencies will proceed with the extension without revision of the FFIEC 101, as proposed, and are sending the collections to OMB for review.

Report Title: Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Control No.: 1557-0239.

Estimated Number of Respondents: 10 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file for banks and federal savings associations.

Estimated Total Annual Burden: 26,960 burden hours to file.

Board:

OMB Control No.: 7100-0319.

Estimated Number of Respondents: 4 state member banks; 5 bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 9 other bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter to file for state member banks; 3 burden hours per quarter to file for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only; 677 burden hours per quarter to file for other bank holding companies and savings and loan holding companies; and 3 burden hours per quarter to file for intermediate holding companies.

Estimated Total Annual Burden: 2,696 burden hours for state member banks to file; 48 burden hours for bank holding companies and savings and loan holding companies that complete Supplementary Leverage Ratio (SLR) Tables 1 and 2 only to file; 24,372 burden hours for other bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC:

OMB Control No.: 3064-0159.

Estimated Number of Respondents: 1 insured state nonmember bank and state savings association.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 2,696 burden hours to file.

General Description of Report

Each advanced approaches institution² is required to report quarterly regulatory capital data on the FFIEC 101. Each top-tier advanced approaches institution and Category III institution³ is required to report supplementary leverage ratio information on the FFIEC 101. The FFIEC 101 information collections are mandatory for advanced approaches and top-tier Category III banking organizations under the following authorities: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (federal and state savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting entity's applicable capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework⁴ and the supplementary leverage ratio,⁵ as applicable; to evaluate the impact of the Advanced Capital Adequacy Framework and the supplementary leverage ratio, as applicable, on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches institutions and top-tier Category III banking organizations in understanding expectations relating to the system development necessary for implementation and validation of the capital rule and the supplementary leverage ratio, as applicable. Submitted data that are released publicly will also provide other interested parties with additional information about advanced approaches institutions' and top-tier

² 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

³ 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

⁴ 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC).

⁵ 12 CFR 3.10(c) (OCC); 12 CFR 217.10(c) (Board); 12 CFR 324.10(c) (FDIC).

¹ 88 FR 42131 (June 29, 2023).

Category III institutions' regulatory capital.

Request for Comment

The agencies invite comment on the following related topics to these collections of information:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the

validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among

the agencies. All comments will become a matter of public record.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board, Board of Governors of the Federal Reserve System.

Dated at Washington, DC, on September 9, 2023.

James P. Sheesley,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2023–22513 Filed 10–12–23; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P



FEDERAL REGISTER

Vol. 88

Friday,

No. 197

October 13, 2023

Part II

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, and 274

Registration for Index-Linked Annuities; Amendments to Form N-4 for
Index-Linked and Variable Annuities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release No. 33–11250; 34–98624; IC–35028; File No. S7–16–23]

RIN 3235–AN30

Registration for Index-Linked Annuities; Amendments to Form N–4 for Index-Linked and Variable Annuities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is proposing rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities (“RILAs”). Specifically, the Commission is proposing to amend the form currently used by most variable annuity separate accounts, Form N–4, to require issuers of RILAs to register offerings on that form as well. To facilitate this amendment, the Commission is also proposing to amend certain filing rules and make other related amendments. These changes would, if adopted, implement the requirements relating to RILAs contained in Division AA, Title I of the Consolidated Appropriations Act, 2023. Further, the Commission is proposing other amendments to Form N–4 that would apply to all issuers that would use that form under the proposal. The Commission is also proposing to apply to RILA advertisements and sales literature a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws. The Commission is proposing a technical

amendment to Form N–6 to correct an error from a prior Commission rulemaking. Finally, the Commission requests comment as to whether to require the registration of market-value adjustments associated with certain annuities on Form N–4 as well.

DATES: Comments should be submitted on or before November 28, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/2023/09/rila>); or
- Send an email to rule-comments@sec.gov. Please include File Number S7–16–23 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–16–23. 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 of submission. The Commission will post all comments on the Commission’s website (<https://www.sec.gov/rules/2023/09/rila>). Comments are also 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. Operating conditions may limit access to the Commission’s public reference room. 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. Retail investors seeking to comment on their experiences with annuities generally and RILAs in particular may want to submit a short Feedback Flyer, available at Appendix D.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission’s website (<https://www.sec.gov/rules/2023/09/rila>).

FOR FURTHER INFORMATION CONTACT:

Christian Corkery, Michael Khalil, Rachael Hoffman, James Maclean, Amy Miller, or Laura Harper Powell, Senior Counsels; Bradley Gude, Branch Chief; Amanda Hollander Wagner, Senior Special Counsel; or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, at (202) 551–6792; Elisabeth Bentzinger or Min Oh, Senior Counsels; Michael Kosoff, Senior Special Counsel, Disclosure Review and Accounting Office, at (202) 551–6921, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the following rules and forms:

Commission reference	CFR citation (17 CFR)
Securities Act of 1933 (“Securities Act”): ¹	
Rule 156	§ 230.156
Rule 172	§ 230.172
Rule 405	§ 230.405
Rule 415	§ 230.415
Rule 424	§ 230.424
Rule 456	§ 230.456
Rule 457	§ 230.457
Rule 485	§ 230.485
Rule 497	§ 230.497
Rule 498A	§ 230.498A
Regulation S–T:	
Rule 313 of Regulation S–T	§ 232.313
Rule 405 of Regulation S–T	§ 232.405
Forms:	
Form N–4	§ 239.17b and 274.11c
Form N–6	§ 239.17c and 274.11d

¹ 15 U.S.C. 77a et seq.

Commission reference	CFR citation (17 CFR)
Form 24F–2	§ 239.66 and § 274.24

Table of Contents

- I. Introduction and Background
 - A. Typical RILA Features
 - B. Current Registration Process
 - C. Evidence of Investor Views and Areas of Potential Confusion
 - D. Overview of Proposal
- II. Discussion
 - A. Use of Form N–4
 - B. Contents of Form N–4
 - 1. Front and Back Cover Pages (Item 1)
 - 2. Key Information Table (Item 3)
 - 3. Principal Disclosure Regarding RILAs (Items 2, 6, and 17)
 - 4. Principal Risks of Investing in the Contract (Item 5)
 - 5. Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures (Items 4, 7, and 22)
 - 6. Information About Contracts With Index-Linked Options (Item 31A)
 - 7. Other Amendments and Provisions
 - 8. Remaining Form N–4 Items
 - 9. Inline XBRL
 - C. Option To Use a Summary Prospectus
 - D. Accounting (Items 16 and 26)
 - E. Filing and Prospectus Delivery Rules
 - 1. Fee Payment Method and Amendments to Form 24F–2
 - 2. Post-Effective Amendments and Prospectus Supplements
 - 3. Prospectus Delivery
 - F. Materially Misleading Statements in RILA Sales Literature
 - G. Existing Commission Letters
 - H. Registered Market-Value Adjustment Annuities
 - I. Technical Amendment to Form N–6
 - J. Compliance Period
 - K. General Request for Comment From Retail Investors
- III. Economic Analysis
 - A. Introduction
 - B. Baseline
 - 1. Affected Parties
 - 2. Current Regulatory Requirements
 - 3. Market Practice
 - C. Benefits and Costs
 - 1. Benefits
 - 2. Costs
 - D. Effects on Efficiency, Competition, and Capital Formation
 - E. Reasonable Alternatives
 - 1. Creating an Entirely New Registration Form for RILAs
 - 2. Alternatives to Specific Form N–4 Amendments
 - 3. Require the Use of Form N–4 for Registered MVAs
 - 4. Limiting Scope of Structured Data Requirements
 - F. Request for Comment
- IV. Paperwork Reduction Act
 - A. Rule 498A
 - B. Form N–4
 - C. Form 24F–2
 - D. Investment Company Interactive Data
 - E. Request for Comment
- V. Regulatory Flexibility Certification

VI. Consideration of Impact on the Economy Statutory Authority

I. Introduction and Background

An annuity contract (“annuity” or “contract”) is a type of insurance product in which an investor makes a lump-sum payment or a series of payments in return for future payments from the insurance company to meet retirement and other long-term financial goals. A RILA is one of several types of annuity contracts offered by insurance companies. An investor in a RILA allocates purchase payments to one or more investment options under which the investor’s returns (both gains and losses) are based at least in part on the performance of an index or other benchmark (collectively, “indexes”), over a set period of time (“crediting period”).² In some cases, insurance companies offer RILAs on a standalone basis with various index-linked investment options (“index-linked options”) for investors to choose from. In other cases, insurance companies offer “combination” annuity contracts that provide index-linked options together with other investment options, such as mutual funds (“portfolio companies”) offered as investment options under a variable annuity (“variable options”).³ An investor

² Insurance companies frequently refer to crediting periods as “investment terms” or sometimes simply “terms.” See, e.g., Investor Testing Report on Registered Index Linked Annuities, Office of Investor Advocate Division (“OIAD Report”) at Section 2, RILAs: Structure of Contracts and Investment Options, Investment Terms. As noted in OIAD’s report, investor testing suggested that investors consistently struggled with this terminology, and a number of participants seemed to equate “investment term” or “term” with the length of the insurance contract rather than the length of the investment product options within the RILA contract, leading them to misunderstand the operation of the RILA. *Id.* at Section 5, Qualitative Testing, Results from Round 1. In an effort to mitigate that confusion, we have opted to use the term crediting period in this release and in the proposed amendments to Form N–4. The most common crediting periods are one, three, and six years. See *id.* at Section 3, Overview of the RILA Market and Simulated Performance over Historical Periods, RILA Indexes, Investment Terms, and Insurance Features, Figure 2.

³ Variable annuity contracts and variable life insurance contracts (together, “variable contracts”) combine both investment and insurance features. Investors generally allocate their purchase payments to a range of investment options, typically mutual funds which are separately registered and have their own prospectuses. The investor’s account value changes depending on the performance of the investment options selected. Variable annuities allow investors to receive periodic payments for either a definite period (e.g.,

purchasing a combination contract, for example, may have the ability to allocate purchase payments under the contract to index-linked options; variable options that pass on the returns of mutual funds selected by the investor; and/or fixed account options for which the insurance company promises to pay a fixed and stated minimum rate of interest. The market for RILAs has grown significantly in recent years, with annual RILA sales of \$41.1 billion in 2022 alone, more than tripling since 2017.⁴ We understand that RILAs are predominantly sold by broker-dealers, although investment advisers may also provide advice on RILAs, and insurance companies also may offer RILAs directly.

RILAs are securities for purposes of the Securities Act of 1933 (“Securities Act”).⁵ Unlike variable annuity contracts for which the Commission has adopted a specific registration form tailored to those products, insurance companies currently register offerings of RILAs on Securities Act registration

20 years), or for an indefinite period (e.g., the life of the investor). See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (“VASP Adopting Release”) at nn.4–5 and n.8 and accompanying text.

⁴ See LIMRA, “LIMRA: Record Annuity Sales in 2022 Expected to Continue Into First Quarter 2023,” news release, Mar. 8, 2023 (reporting 2022 RILA sales of \$41.1 billion), <https://www.limra.com/en/newsroom/news-releases/2023/limra-record-annuity-sales-in-2022-expected-to-continue-into-first-quarter-2023/>; and LIMRA, “LIMRA Secure Retirement Institute: Total Annuity Sales Continued to Decline in 2017,” news release, Feb. 21, 2018 (reporting 2017 sales of structured annuity products, i.e., RILAs, of \$9.2 billion), <https://www.limra.com/en/newsroom/news-releases/2018/limra-secure-retirement-institute-total-annuity-sales-continued-to-decline-in-2017/>.

⁵ Depending on the context, “RILA” is also used in this release to collectively refer to both standalone RILAs and the index-linked options available in a combination contract. When referring to the entity registering the RILA, we use the term “RILA issuer” or “insurance company.” Index annuities that meet the requirements of section 989f of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203) or section 3(a)(8) of the Securities Act are treated as exempt securities for purposes of the Securities Act, but RILAs do not fall within this exemption due, in large part, to the shifting of a significant level of investment risk from the RILA issuer to the investor. RILAs and index-linked option, as used in this release, refer only to those index annuities that are securities for the purposes of the Securities Act. See, e.g., sections 101(a)(5) and (6) of Division AA, Title I of the Consolidated Appropriations Act, 2023.

Forms S–1 or S–3.⁶ In 2022, Congress enacted Division AA, Title I of the Consolidated Appropriations Act, 2023 (“RILA Act”), directing the Commission to adopt a new registration form for RILAs within 18 months of enactment.⁷ The RILA Act requires the Commission to design the form to ensure that a purchaser using the form receives the information necessary to make knowledgeable decisions, taking into account (1) the availability of information; (2) the knowledge and sophistication of that class of purchasers; (3) the complexity of the RILA; and (4) any other factor the Commission determines appropriate. The RILA Act also requires the Commission to engage in investor testing as part of its rulemaking process and to incorporate the results of the testing in the design of the form, with the goal of ensuring that key information is conveyed in terms that a purchaser is able to understand. If the Commission fails to adopt the form within 18 months of enactment, the RILA Act provides that RILA issuers can begin registering RILA offerings on existing Form N–4.

We are proposing to amend Form N–4 to require RILA issuers to register RILA offerings, including associated features of the RILA such as any contract adjustments, on that form and to tailor the form’s requirements accordingly.⁸ We also are proposing to amend other rules related to the securities offering process to allow these issuers to conduct RILA offerings in the same way issuers conduct offerings of variable annuities. Consistent with the RILA Act, these proposed amendments

collectively are designed to provide investors disclosures tailored to RILAs and highlight key information about these complex products, building on the Commission’s layered disclosure framework in place for variable annuities. We are also proposing certain amendments to Form N–4 that would apply to offerings of variable annuities, based on our experience with the form since its last amendment and the investor testing conducted in connection with this rulemaking.⁹ In addition, we are proposing to apply a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws to RILA advertisements and sales literature. Finally, we are proposing a technical amendment to Form N–6 to correct an error from a prior Commission rulemaking.

A. Typical RILA Features

RILAs are complex financial products that are sold to retail investors. The following are some of the most prevalent features that contribute to this complexity, and that might make it challenging for an investor to assess the features, risks, and possible return profile of a RILA. These features also are important ones for financial professionals to consider when recommending that an investor purchase a RILA.

- **Bounded Return Structure.** Under a RILA, the insurance company will credit positive or negative “interest” to the investor’s contract value at the end of each crediting period. The amount credited is based, in part, on the performance of the specified index (e.g., the S&P 500).¹⁰ The amount of any positive interest credited will also depend on whether the contract includes provisions such as a “cap rate” or “participation rate.” A cap rate places an upper limit on an investor’s ability to participate in the index’s upside performance directly (e.g., with a current cap rate of 5%, if the index is up 10% at the end of the crediting period, the investor’s contract value will be credited with only 5% positive interest). A “participation rate” sets an investor’s return to some specified percentage of the index’s return (e.g., an 80% participation rate would result in an investor receiving positive interest of 80 cents on the dollar of gains in the index). The contract generally will include one of these limits on how much the insurance company will credit

the investor if the performance of the index goes up in value by the end of the crediting period (collectively “limits on gains”). Similarly, the contract generally will include terms limiting the investor’s losses to some extent if the performance of the index goes down in value. This might include a “buffer” (which limits the investor’s exposure to losses up to a fixed percentage), or a “floor” (which places a lower limit on the investor’s exposure to loss) (collectively “limits on losses”). For example, with a “buffer” of –5%, if the index is down 2%, that investor will not lose anything, but if the index is down 7% the investor will lose 2% (the difference between the loss and the buffer rate). With a “floor” of –5%, if the index is down 2%, the investor will lose 2%, but if the index is down 7%, the investor will only lose 5%. These limits can be complex and overlapping, and may change at the beginning of each new crediting period, subject to certain minimum guarantees stated in the contract. Over time, the investor’s contract value will increase or decrease, depending on the performance of the index and the particular contract provisions (such as the bounded return structure). Despite the bounded return structure, a RILA is not necessarily a low-risk investment product as the investor could lose a significant amount of money if the index performs poorly.

- **Fees and Expenses.** For many RILAs, the investor pays no direct or explicit ongoing fees and expenses under the RILA, and this is sometimes a feature disclosed in RILA marketing materials. However, the RILA’s bounded return structure requires investors to agree to tradeoffs that come with their own economic costs. In exchange for some protection against losses if the index goes down in value, investors must also agree to contractual provisions limiting the amount of gains they will receive if the index goes up in value. A RILA’s upside limits on gains can reduce an investor’s return in the same way that a direct fee can and can help make the RILA more profitable to the insurance company.

- **Charges and Penalties for Early Withdrawals.** Investors also can lose significant money if they withdraw their money early from an investment option or from the contract. This can arise in several circumstances. First, a RILA typically will specify a period of time during which a “surrender charge” will apply, for example nine years following an investor’s last premium payment. Typically, this charge is greatest in the first year of the surrender period, decreasing each year until the end of the surrender period. An investor who

⁶ The registration forms for variable annuity contracts are Form N–3 (for variable annuity separate accounts structured as management companies) and Form N–4 (for variable annuity separate accounts structured as unit investment trusts). The separate account established by the sponsoring insurance company is the legal entity that registers its securities. Separate accounts are typically registered as investment companies under the Investment Company Act. See section 2(a)(37) of the Investment Company Act. The Commission first adopted the registration form for variable annuities over 30 years ago. See Registration Forms for Insurance Company Separate Accounts that Offer Variable Annuity Contracts, Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145] (June 25, 1985). In this release, we focus only on Form N–4, and not Form N–3, because Form N–4 is the registration form identified in the RILA Act and the form used to register the majority of variable annuity contracts.

⁷ Public Law 117–328; 136 Stat. 4459 (Dec. 29, 2022).

⁸ Under this proposal, the amended Form N–4 will not register the RILA issuers themselves, only the offering of RILA securities. Unlike separate accounts which register variable annuities, RILA issuers are not investment companies, and thus need not register with the Commission as an investment company as separate accounts do.

⁹ See VASP Adopting Release.

¹⁰ Insurance companies typically choose indexes for the RILA contract where any gains in the value of the index do not include dividends paid on the securities that make up the index.

withdraws money during this period will pay a fee, such as 9% of the amount withdrawn. Second, an insurance company may make an adjustment, either to the investor's contract value or to the amount paid to the investor, if amounts are withdrawn from an index-linked option before the end of its crediting period or from the contract before the end of a specified period. For example, when an investor in a RILA chooses a particular index-linked option, the RILA may provide that the index-linked option's crediting period is one year. If amounts are removed from that index-linked option before the end of this one-year crediting period, typically for any reason, the insurance company will apply an "interim value adjustment" or "IVA." The IVA will adjust the contract value based, generally, on a complex formula where the IVA may change daily and can be positive or negative.¹¹ As a result, the investor could lose a significant amount of money, even if the index has a gain at the time of the withdrawal.

Similarly, the insurance company might apply a positive or negative "market value adjustment" or "MVA" (collectively with IVAs, a "contract adjustment") to the contract value if the investor partially or fully withdraws amounts from the contract. Contract adjustments could be made in response to a number of contract transactions, such as a surrender, withdrawal, payment of the death benefit, or the start of annuity payments, and an investor could experience a negative contract adjustment even when the investor takes an otherwise permissible withdrawal, such as under a guaranteed living benefit.¹² These adjustments can also negatively impact other values under the contract, such as the surrender value and death benefit. Moreover, these fees and adjustments are not always mutually exclusive. Indeed, under the terms of certain RILA

contracts, an investor could experience a decrease in contract value from a negative interim value adjustment *and* a negative market value adjustment, depending on the timing of the withdrawal, and *also* pay a surrender charge. An investor may also be subject to income taxes and face a Federal income tax penalty if the investor withdraws money before a certain age.¹³

- **Changes by Insurer.** Crediting periods for an index-linked option in a RILA contract generally range from one to six years. The insurance company may change or remove key features of index-linked options, such as the cap rates, floors, or even change the index. These changes may often be made at the insurance company's discretion and renewal provisions can and do change over time. Also, RILA contracts typically state that an investor will be automatically renewed at the end of a crediting period into the same or substantially similar index-linked option, often with a new limit on gains. If the same index-linked option is unavailable, the terms of the contract generally provide that the insurance company may place the investor into a more conservative investment option as a default, such as a fixed account or an index-linked option with a 0% floor.

- **Taxes.** Special tax rules generally apply to RILAs and other annuities, with both tax advantages and potential adverse tax impacts in certain circumstances. For example, assets within a RILA generally grow tax-deferred. As discussed above, however, investors may face a Federal income tax penalty if money is withdrawn before the investor reaches a certain age.¹⁴

Providing investors with key information is particularly important in the context of RILAs, since their features are typically complex and their risks may not be apparent or easily understood by prospective investors absent clear disclosure. Form N-4's existing disclosure requirements regarding features of annuities would complement the proposed RILA-specific

disclosures, such that the amended Form N-4 would provide investors with key information both about the annuity contract and the associated registered index-linked or variable investment options.

B. Current Registration Process

The current requirements for issuers offering RILAs and variable annuities differ in many respects, both in terms of the disclosure issuers must provide, and with respect to the registration process. We highlight here some of these key differences.

On required disclosure, because the Commission currently does not have a specific registration form for RILAs, insurance companies register the offerings of RILAs on Forms S-1 or S-3.¹⁵ Although specific disclosure requirements apply for certain securities such as capital stock or debt, the forms' disclosure requirements are not specifically tailored to particular kinds of securities given the wide range of securities offerings that can be registered on the forms.¹⁶ Forms S-1 and S-3 thus do not include specific line-item requirements addressing disclosures about RILAs and their complex features, such as how limits on gains operate or the application of contract adjustments. These forms also require issuers to disclose information about the offering itself as well as extensive information about the registrant issuing the securities that may be less material to a RILA investor than information about the contract's features. Required information about the registrant includes, for example, management's discussion and analysis of financial condition and results of operations ("MD&A"), which requires a narrative discussion of the registrant's financial statements, and disclosure about executive compensation. Domestic registrants also must include financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP").¹⁷

¹¹ Common methods of calculating this adjustment include prorating the crediting method based on the number of days that have elapsed since the start of the crediting period, employing a market-based formula designed to approximate the present value of the index and/or employing interest-rate-based MVAs to offset certain insurer losses and costs, or some combination of these two. See Clifford E. Kirsch, *Variable Annuities and Other Insurance Investment Products* (Third Edition 2022) at 29–8, available at https://plus.pli.edu/Details/Details?start=0&rows=50&fq=%7e2B%7etitle%7e3A282B22%7e240085%7e2229%7e&fq=%7e2B%7eid%7e3A282B22%7e240085-CH29%7e2229%7e&sort=s_date&desc&origin=title.

¹² *Id.* at 29–13. Under these benefits, RILA investors are permitted to take a certain amount of guaranteed withdrawals from their contract each year without reducing the value of guaranteed withdrawals for future years. These can be a standard feature or an optional rider chosen by an investor. *Id.* at 29–12.

¹³ See Updated Investor Bulletin: Indexed Annuities, SEC's Office of Investor Education and Advocacy, July 31, 2020, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_indexedannuities. Staff reports and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

¹⁴ For these and other reasons, insurance companies generally advertise RILAs as a long-term investment. This is similar to the treatment of variable annuities. See VASP Adopting Release at n.14 and accompanying text.

¹⁵ See, e.g., General Instruction I of Form S-1 ("This Form shall be used for the registration under the Securities Act of 1933 ('Securities Act'); of securities of all registrants for which no other form is authorized or prescribed").

¹⁶ See Item 9 of Forms S-1 and S-3 and 17 CFR 229.202 (providing specific disclosure requirements for certain securities such as capital stock, debt, warrants or rights, and directing issuers of other types of securities to include a brief description that is comparable to that required for the specified kinds of securities).

¹⁷ See 17 CFR 210.4–01(a)(1) (stating that financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate unless the Commission has otherwise provided). See also *infra* footnote 20.

Most variable annuities, in contrast, are registered on Form N-4.¹⁸ This form is designed for variable annuities and has disclosure requirements tailored to these investments. Providing investors with key information in a reader-friendly format is particularly important in the context of variable annuity contracts because their structure is complex. Accordingly, Form N-4's disclosure requirements are designed to provide investors with key information relating to a variable contract's provisions, benefits, and risks in a concise and reader-friendly presentation, along with targeted information about the insurance company and the offering. Form N-4's disclosure requirements thus focus more on the specific features of variable annuities than on the issuing insurance company. This presentation is designed to highlight the most important information for an investor in a variable annuity, so that the only matters included in the prospectus are those for which there is a substantial likelihood that a reasonable investor would consider them important in deciding whether to invest.¹⁹ This focus on the provisions of the variable contract itself, rather than certain details about the operation of the insurance company, reflects that a variable annuity contract is not a direct investment in the capital stock or debt of the insurance company, but rather a contract with the insurance company under which the investor's exposure to the insurance company generally is limited to the company's ability to honor any guarantees associated with the contract. In addition, rule 498A together with Form N-4 implements a layered disclosure approach for variable annuities by

permitting insurance companies and others to use a summary prospectus framework for variable annuities while making the more-detailed statutory prospectus, as well as the contract's statement of additional information ("SAI"), available online. Form N-4 also provides a limited exception for insurance companies to file financial statements prepared in accordance with statutory accounting principles ("SAP"), referred to as "statutory requirements" in the form instructions, rather than GAAP. Specifically, insurance companies, which act as the depositors of variable annuity separate accounts registered on Form N-4, may use SAP financials solely when the insurance company does not otherwise prepare GAAP financial statements or GAAP financial information for use by a parent in the parent's Securities Exchange Act of 1934 ("Exchange Act") reports or the parent's registration statements filed under the Securities Act.²⁰

With respect to the registration process, insurance companies registering an offering of RILA securities are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement.²¹ This means that they pay

²⁰ See, e.g., Instruction 1 to Item 31(b) in Form N-3 and Instruction 1 to Item 26(b) in Form N-4. In addition, although Form S-1 requires GAAP financial statements, exemptions have been granted pursuant to 17 CFR 210.3-13 that permit insurance companies to substitute SAP financials in lieu of GAAP financials when registering RILAs on Form S-1 in circumstances permitted by Form N-4. See, e.g., Letter from Jensen Wayne, Chief Accountant, Division of Investment Management, to Stephen E. Roth, Eversheds Sutherland (US) LLP, regarding Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York (Mar. 17, 2023) (available at <https://www.sec.gov/files/fidelity-guaranty-031723.pdf>) ("F&G Life Letter").

²¹ Section 6(b)(1) of the Securities Act [15 U.S.C. 77f(b)(1)]. Certain "well-known seasoned issuers" or "WKSI" can use a different registration process than what is described here. See generally Securities Offering Reform, Investment Company Act Release No. 26993 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] ("Offering Reform Release"). None of the insurance companies offering RILAs are WKSI, however, and we generally do not anticipate that RILA issuers will meet the conditions to operate as a WKSI. We therefore do not generally discuss the WKSI registration process in this release. Even if a RILA issuer were to qualify as a WKSI, the Securities Act rules that provide a streamlined offering process for WKSI generally would be inapplicable to RILA offerings on Form N-4, as proposed. For example, although a WKSI can file an automatic shelf registration statement, this would not be applicable under the proposal because Form N-4 does not permit a shelf registration statement and an automatic shelf registration statement must be filed on Forms S-3, F-3, or N-2. See rule 405 (definition of "automatic shelf registration statement"). As another example, WKSI are permitted to use the "pay-as-you-go" method of paying securities registration fees, but the registration fees for RILA offerings would be paid annually in arrears under the proposal. See 17 CFR 230.456(b).

registration fees at the time they register the offer and sale of the securities, regardless of when (or if) they sell them. The registration statement for the RILA offering also must include current financial information, including any annual update required by section 10(a)(3) of the Securities Act.²² An insurance company registering a RILA offering on Form S-1 must provide any section 10(a)(3) update to the registration statement by filing a post-effective amendment which must be declared effective, typically by the staff acting pursuant to delegated authority.²³

If the offering is registered on Form S-3, the insurance company's annual report on Form 10-K containing audited financial statements will operate as a post-effective amendment to the registration statement for purposes of section 10(a)(3).²⁴ The insurance company is required to provide a complete set of its financial statements, certain schedules, and executive compensation disclosures in a structured data format using Inline XBRL, but is not otherwise required to provide other information in the registration statement as structured data.²⁵ Insurance companies offering RILAs also are not required to deliver prospectuses to investors because they can rely on the Commission's "access equals delivery" framework in rule 172, although in practice we understand that insurance companies typically deliver prospectuses to accompany or precede other communications.

When an insurance company registers a variable annuity separate account on Form N-4, in contrast, it pays registration fees based on the net issuance of securities, no later than 90 days after each fiscal year end.²⁶ The insurance company can update its registration statement to include updated financial information required by section 10(a)(3) by filing an immediately effective post-effective amendment under rule 485. These

²² Section 10(a)(3) of the Securities Act provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use. 15 U.S.C. 77j.

²³ See Section 8(c) of the Securities Act [15 U.S.C. 77h(c)] and 17 CFR 230.462 ("rule 462").

²⁴ An issuer filing a registration statement on Form S-3 will incorporate by reference information in reports under the Exchange Act filed after the registration statement has become effective, including the issuer's annual report on Form 10-K. Accordingly, certain information required to be included in the prospectus may be included directly in the prospectus or included in an Exchange Act report that is incorporated by reference into the prospectus.

²⁵ See rule 405(b) of Regulation S-T.

²⁶ See 17 CFR 270.24f-2 ("rule 24f-2").

¹⁸ According to Form N-CEN filings received through March 23, 2023, there were 419 variable annuity separate accounts registered as unit investment trusts ("UITs") in 2022.

¹⁹ The Commission has long sought to tailor disclosures for annuity products. See Registration Forms for Insurance Company Separate Accounts, Investment Company Act Release No. 13689 (Dec. 23, 1983) [49 FR 614 (Jan. 5, 1984)] ("Form[] N-4 would permit shorter and simpler prospectuses than are required under current practice, . . . by incorporating many of the reduced disclosure requirements of Form N-1A. Separate account disclosure requirements that experience has shown are unnecessary also would be eliminated, as well as certain disclosure requirements that are holdovers from the requirements applicable to non-separate account unit investment trust."); Registration Form Used By Open-End Management Investment Companies, Investment Company Act Release No. 12927 (Dec. 27, 1982) [48 FR 813 (Jan. 7, 1983)] ("In order to shorten and simplify the prospectus for mutual funds, the Commission has concluded that it is necessary to eliminate certain types of information from the prospectus, so that only matters of fundamental importance to most mutual fund investors will be included in the prospectus").

provisions together are designed to allow insurance companies to efficiently conduct continuous offerings of variable annuities. The insurance company also must structure certain key information in Inline XBRL to enhance the utility of that information to investors and must deliver a prospectus to investors because the “access equals delivery” framework in rule 172 is not available for variable annuities.

C. Evidence of Investor Views and Areas of Potential Confusion

Consistent with the RILA Act, the Commission received feedback on individuals’ comprehension and views on RILA disclosure through investor testing. Specifically, we received feedback through qualitative investor testing interviews, as well as quantitative testing designed to assess whether the design of certain hypothetical RILA disclosure provided to participants affects their comprehension of the disclosed information. Each of these aspects of investor testing was designed by the Commission’s Office of the Investor Advocate (“OIAD”). As described in more detail in section II.B below, this feedback helped us to identify areas of Form N-4 that we propose to amend to help ensure that a RILA purchaser receives key information that the purchaser is able to understand.

OIAD conducted two rounds of qualitative interviews with a mix of investors across demographic characteristics, locations, and levels of financial literacy who either already owned annuities or had expressed interest in investing in an annuity product.²⁷ These interviews aimed to generate hypotheses about certain content areas in RILA disclosure—specifically, disclosure that could appear in select rows of the “Key Information Table” (or “KIT”) in RILA registration statements, as discussed below—that may cause confusion and lead to impediments to investor understanding of key information.²⁸ These interviews concentrated on assessing: (1) potential RILA disclosure, focusing on a hypothetical KIT, for areas of confusion or misunderstanding; and (2) participants’ mental models

regarding the way RILA products function, including potential benefits, drawbacks, and risks of a RILA investment. The interviews also included hypothetical scenarios.²⁹

Feedback from both rounds of qualitative interviews generally showed that the interview participants did not have much, if any, familiarity with RILAs. Furthermore, interviews in both rounds illustrated that many participants struggled to understand the details of the RILA contract presented in sample KIT disclosure.³⁰

With regard to the first round specifically, participants indicated significant confusion about the features and fees associated with RILAs, and often cited certain specific terminology, such as “index option,” “interim value adjustment,” “buffer,” and “investment term,” as confusing to them.³¹ For example, many participants mistakenly conflated “investment term” with the length of the entire insurance contract, leading them incorrectly to conclude that they could avoid any fees or charges if they liquidated their investment at the end of an initial one-year investment period.³² Participants often did not appear to understand that there are multiple aspects of a typical RILA contract that could negatively affect an investor’s contract value or the amounts an investor could withdraw from the contract (e.g., the fact that a withdrawal could be subject to a surrender charge, interim value adjustment, and tax penalty).³³ Some participants expressed that a chart or graph would be useful to help them understand certain information presented about a RILA contract, such as surrender periods or how the contract’s bounded return structure would function.³⁴ Additionally, some participants indicated they would need more specific information—besides the information in the hypothetical KIT

rows shared with them—to evaluate the appropriateness of a RILA.³⁵

While first-round interview participants may not have been able to understand RILA features and economic tradeoffs fully after reviewing sample KIT disclosure, some were able to identify certain potential drawbacks and explain certain aspects of RILA contracts following their review of this sample disclosure. This was demonstrated in participants’ responses to sample scenarios, where the interview facilitator presented facts about a hypothetical investor’s background, and participants were asked to provide their opinions about whether a RILA contract would be an appropriate investment option for those investors and discuss their reasoning. For instance, participants in the first-round interviews could generally identify that a RILA contract could present particular risks for individuals without a long time horizon.³⁶ On the other hand, as noted above, these participants often identified only a single charge or penalty that would apply even in scenarios where, for example, a surrender charge, early withdrawal tax penalty, and interim value adjustment might all apply.³⁷ Some participants were able to identify that a RILA contract could be appropriate for an individual in light of factors such as desire to protect against losses in the stock market, taking into account considerations such as age, investment time horizon, and other sources of liquid funds.³⁸ Some interview participants also demonstrated that they could use the KIT disclosure to discern quickly that they would *not* be interested in purchasing a RILA contract, for example because of liquidity needs or relatively short investment time horizons.³⁹

Commission staff used this feedback to update sample KIT disclosure in between qualitative interview rounds. In particular, in the second round, sample

²⁹ See OIAD Report at Section 5, Qualitative Testing, Methods.

³⁰ Several participants in Round 2 were “significantly more sophisticated than the average investor,” with some having worked in a financial field or had over \$1 million in retirement assets, and these participants also “struggled to correctly apply the concepts discussed in the KIT.” OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

³¹ See OIAD Report at Section 5, Qualitative Testing, Results from Round 1. As noted above, *supra* footnote 2, to alleviate the confusion generated by “investment term,” we use the term “crediting period” in this release and in the proposed amendments to Form N-4.

³² See, e.g., OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

³³ See OIAD at Section 5, Qualitative Testing, Results from Round 1.

³⁴ OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

³⁵ OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

³⁶ OIAD Report at Section 5, Qualitative Testing, Results from Round 1. However, OIAD’s report also notes that in the second round of testing, many participants did not understand that RILAs are intended as a retirement savings vehicle, and that there may be tax penalties for withdrawal prior to age 59½. See *id.*, Results from Round 2. Similarly, only 12.6% of participants in the quantitative testing correctly identified that RILAs are investing vehicles that are intended purely as retirement savings vehicles. *Id.*, Section 6, Quantitative Testing, Results, Summary of Quantitative Testing.

³⁷ OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

³⁸ OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

³⁹ OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

²⁷ OIAD’s qualitative testing consisted of two rounds of in-depth hour-long interviews with twenty participants, using a semi-structured, open-ended format so that participants could express their reactions and beliefs, regardless of whether they are accurate, in order to assess the reasoning of a sampling of investors regarding RILA products, and their reactions to potential RILA disclosures. See OIAD Report at Section 5, Qualitative Testing, Methods.

²⁸ OIAD Report at Section 1, Introduction and Executive Summary.

KITs were modified to include: (1) the phrase “investment term” rather than “term,” (2) a table to show how investment term interacts with contract length, (3) graphics to provide more information about RILA loss limitation features such as floors and buffers, and (4) expanded links to additional information to indicate that more information could be available.⁴⁰ Following these changes, participants demonstrated modestly improved comprehension in certain limited areas. For example, the sample KIT disclosure used in the second-round of qualitative testing emphasized that contract adjustments can substantially reduce the value of an investment if investors withdraw money before the end of an investment term. Participants who viewed this modified disclosure had greater success in identifying the potential financial impact of this feature, with some expressing concern about the potential magnitude of the contract adjustment.⁴¹ Additionally, some second-round participants who viewed the KIT contract adjustment disclosure also asked for more specific information about how the adjustment is calculated, which suggests that layered disclosure might be useful for these concepts.⁴² Even though these participants were unable to define certain terms relevant to contract adjustments (e.g., interim value adjustment), most second-round participants seemed to understand that RILAs are not a short-term investment and should only be used if an investor will not need to make early withdrawals.⁴³

The second round of testing also introduced a table in the sample KIT disclosure that attempted to help illustrate how fees were charged over the surrender period of the contract, the difference between the investment term (*i.e.*, the crediting period) and the contract length, and how the surrender charge and potential contract adjustments could vary over different time frames.⁴⁴ Nonetheless, participants in the second round of testing still had difficulty distinguishing between surrender charges and contract adjustments or understanding that both can apply cumulatively to reduce an

investor’s contract value in cases of early withdrawal.⁴⁵ Most participants in the second round of testing also continued to struggle with the mechanics of “buffers,” despite the inclusion of graphics in the hypothetical KITs designed to illustrate how buffers work.⁴⁶ There were a number of areas where participants wanted information that was not part of the KIT rows being tested, such as the specific index-linked options available under the contract, and some participants with more investing experience wanted information about past returns on the RILA, as well as additional information on fees and charges—particularly regarding caps on gains and other bounded return features—in order to understand the ways in which insurance companies profit from RILAs.⁴⁷

Following the qualitative interviews, OIAD conducted quantitative testing designed to assess comprehension of key concepts about RILAs and the extent to which the organization of disclosures affected participants’ comprehension of the disclosed information.⁴⁸ Approximately 2,500 participants completed OIAD’s quantitative testing study, which was fielded over an eight-day period and targeted groups who were more likely to have some experience with financial products.⁴⁹ Participants received focused portions of a hypothetical KIT to test disclosures. For example, participants were randomly assigned to one of two formats for the sample KIT disclosure, one with a Q&A format and one with a statement-based format.⁵⁰ Overall, the results of OIAD’s quantitative testing suggest that most investors experience challenges in understanding RILAs.⁵¹ This round of testing reviewed overall comprehension of participants as well as whether participants were able to assess four sub-scores: (1) appropriateness of RILAs for investors based on their characteristics, (2) how a RILA works, (3) how the charges and penalties associated with RILAs affect liquidity, and (4) the insurance protections offered

by RILAs.⁵² Across all participants, the average percentage of questions scored correct was 58%, which, while higher than the expected score for people randomly guessing (50%), was lower relative to what might be considered a well-informed purchaser of a RILA product.⁵³ However, the results of the sub-scores varied, specifically 57% for appropriateness, 49% for how a RILA works, 57% for insurance, and 62% for liquidity.⁵⁴ Comprehension varied depending on the particular concept tested. For example, 80.7% of participants were able to correctly identify that RILA investors cannot access their money whenever they need it at no cost, suggesting that the tested disclosures were sufficient to put participants on notice to the potential for contract adjustments and surrender charges.⁵⁵ Conversely, only 12.6% of participants correctly identified that RILAs are intended purely as retirement savings vehicles, rather than a product appropriate for other, shorter-term investing goals (e.g., education and home purchasing), suggesting continued investor confusion on this topic.⁵⁶ Additionally, participants in the quantitative testing were classified into three groups based on their experience with investing. Not surprisingly, increased investment experience correlated with greater overall comprehension, with non-investors (those with no existing investments) averaging slightly less than 50% correct, 11.7 percentage points lower than the average for the group with the most investment experience.⁵⁷ The Q&A KIT format demonstrated a statistically significant, albeit quantitatively small, improvement over the non-Q&A KIT format, particularly with regard to the non-investor group, who saw a 5.7 percentage points increase in comprehension in connection with the Q&A format with regard to overall comprehension.⁵⁸

Overall, investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosures. However, with the few

⁵² OIAD Report at Section 6, Quantitative Testing, Comprehension Measures.

⁵³ OIAD Report at Section 6, Quantitative Testing, Results.

⁵⁴ OIAD Report at Section 6, Quantitative Testing, Results, Table 6.

⁵⁵ OIAD Report at Section 6, Quantitative Testing, Results.

⁵⁶ OIAD Report at Section 6, Quantitative Testing, Results.

⁵⁷ See OIAD Report at Section 6, Quantitative Testing, Results, Subgroup Analysis, Investor Status.

⁵⁸ See OIAD Report at Section 6, Quantitative Testing, Results, Subgroup Analysis, Investor Status.

⁴⁰ See OIAD Report at Section 5, Qualitative Testing, Results from Round 1, and Appendix C.

⁴¹ See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴² See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴³ See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴⁴ See OIAD Report at Section 5, Qualitative Testing, Results from Round 1, and Results from Round 2.

⁴⁵ See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴⁶ See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴⁷ See OIAD Report at Section 5, Qualitative Testing, Results from Round 2.

⁴⁸ OIAD Report at Section 6, Quantitative Testing.

⁴⁹ OIAD Report at Section 6, Quantitative Testing, Methods.

⁵⁰ OIAD Report at Section 6, Quantitative Testing, Study Design and Overview.

⁵¹ OIAD Report at Section 6, Quantitative Testing, Summary of Quantitative Testing.

exceptions noted above, variations in disclosures did not result in significant improvements in investor comprehension in the investor testing. Accordingly, while OIAD's investor testing has been successful in identifying specific areas of investor confusion regarding RILAs, those results were largely inconclusive in terms of determining specific disclosures that are relatively more successful in addressing the identified confusion.

We have incorporated those results in our design of the proposed Form N-4 amendments, endeavoring to give particular attention to areas of identified investor confusion while leveraging existing disclosure requirements. Because investor testing did not, for the most part, provide persuasive evidence of superior disclosures, we are proposing to largely utilize the existing Form N-4 disclosures which have been developed over time, and with which staff, investors, and RILA issuers are already familiar. Building upon these existing disclosures has additional benefits, because combination contracts offering both variable and index-linked options will be required to comply with Form N-4, making it more efficient to build on the form's requirements for both types of investment options. We seek comment throughout this release on specific areas for improvement that can aid investor comprehension. Further, we are requesting specific input from the retail investor community, through a short Feedback Flyer, relating to their experiences with annuities generally and RILAs specifically.⁵⁹

Further, in addition to investor testing focused specifically on sample RILA disclosure, our proposal—and the current disclosure requirements in Form N-4 that we are building upon—also draw on the Commission's past investor testing efforts, outreach, and other empirical research concerning investors' preferences. This includes, for example, information about summary content and layered disclosure approaches.⁶⁰ The Commission has historically received feedback showing that investors generally prefer concise, layered disclosure.⁶¹ Investors participating in

certain past quantitative and qualitative investor testing initiatives on the Commission's behalf have also expressed preferences for, wherever possible, the use of a summary containing key information about an investment product or service written in clear, concise, and understandable language and presented in an accessible format.⁶² Each of these sources of evidence of investor preferences, understanding, and behaviors in response to disclosures specific to RILAs and other investment products more generally has provided important context and support for our proposal's approach to RILA disclosure.

D. Overview of Proposal

We are proposing to modernize and enhance the registration and disclosure framework for RILAs by adapting the existing registration and disclosure framework that is familiar to investors and issuers for variable annuity separate accounts to accommodate RILAs.

- *Use of Form N-4.* We are proposing to amend Form N-4 so that issuers seeking to register the offering of RILAs must use that form. To accommodate this, we are also proposing amendments to that form that specifically address the features and risks of RILAs. For example, we are proposing amendments to the form's "Key Information Table" that highlight key features of RILAs that should be disclosed so that investors may determine whether a RILA is an appropriate investment for them. In particular, the KIT highlights key features of a RILA contract that may be substantially different from the features of investment products investors may be more familiar with, and that investor

information they currently receive. Multiple comment letters reflected a preference for shorter summary disclosures, with additional information available online or upon request. *See, e.g.,* Comment Letter of C. Scott (July 26, 2018) (expressing preference for shorter summary disclosures, and suggesting disclosures "trim the fat and replace the text-heavy disclosures with something that is clear, succinct, and transparent"); Comment Letter of Helena Krus (July 29, 2018) (noting a preference to receive shorter summary disclosures, with additional information available online or upon request, and suggesting that the option should be available for all documents over 5 pages).

⁶² *See supra* footnote 61; *see also, e.g.,* SEC Staff, Study Regarding Financial Literacy Among Investors (Aug. 2012). The key information that investors found useful and relevant before purchasing an investment product includes information on fees and expenses, investment performance, principal risks, and investment objectives. With respect to the presentation of disclosure, the study indicates that investors preferred disclosures being "written in clear, concise, understandable language, using bullet points, tables, charts, and/or graphs." Materials relating to this study, including the staff's report, are available at <http://www.investor.gov/publications-research-studies/sec-research>.

testing suggests may not be readily apparent to investors. Further, because the insurance company would register the offering of a RILA on Form N-4 under the proposal, it would be subject to the requirements in the form related to financial statements, including the form instruction that currently permits variable annuity issuers to file insurance company SAP financial statements in certain circumstances.

- *Form N-4 Amendments for All Issuers.* In addition to adding RILAs to Form N-4, we are also proposing amendments to the form that would be applicable to offerings of variable annuities. These proposed amendments are informed by the staff's historical experience in administering the form and respond to observations from investor testing relevant to variable annuity offerings. For example, one takeaway from investor testing was that the complicated jargon of RILA contracts was a consistent impediment to investor comprehension of KIT disclosures.⁶³ To address this confusion, we are proposing to switch the order of the Key Information Table and Overview of the Contract items to introduce investors earlier to the terminology and concepts underlying annuity contracts, in the hopes that this context will improve investor comprehension of KIT disclosures. Because variable annuities are also complicated investment products, we are proposing to switch the order for these products as well, so that variable annuity investors also have the benefit of this additional context.

- *Summary Prospectus.* Consistent with the inclusion of RILAs on Form N-4, we are proposing to permit RILA issuers to make use of the summary prospectus framework available to variable annuity registrants on Form N-4.

- *Updates to the Filing Rules.* To accommodate RILA registrations on Form N-4, we are proposing to require RILA issuers to pay fees in arrears on Form 24F-2 and we are proposing amendments to address RILAs in the rules that variable annuities use to file post-effective amendments and to update prospectuses.

- *Materially Misleading Statements in Sales Literature.* The proposed amendments would require RILA issuers to comply with rule 156, which provides guidance as to when sales literature is materially misleading under the Federal securities laws.

Our proposal, if adopted, would implement the RILA Act's mandate.

⁶³ *See* OIAD Report at Section 6, Quantitative Testing, Summary of Quantitative Testing.

⁵⁹ *See infra* section II.K; Appendix D.

⁶⁰ *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33286 (Oct. 30, 2018) [83 FR 61730 (Nov. 30, 2018)] (VSP Proposing Release) at paragraphs accompanying nn.38–43.

⁶¹ *See, e.g.,* Request for Comment on Fund Retail Investor Experience and Disclosure, Investment Company Act Release No. 33113 (June 5, 2018) [83 FR 26891] (June 11, 2018) ("Investor Experience RFC"). Feedback in comment letters generally showed that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of

II. Discussion

A. Use of Form N-4

We propose to require insurance companies to use Form N-4 to register the offering of RILAs, as well as amendments to the form to require disclosures specific for these securities.⁶⁴ As discussed above, the registration forms currently used by RILA issuers do not include line-item disclosure requirements addressing the unique aspects of RILAs, like limits on gains or the application of contract adjustments. They also require information about the issuer, such as MD&A, that may be less important to annuity investors, given that they are not making a direct investment in the insurance company, and that the Commission has not determined to require for variable annuities. Conversely, most variable annuity issuers already use Form N-4 to register their securities and the form is designed to provide investors with product-specific information about annuity contracts.⁶⁵ Requiring insurance companies to register RILA offerings on Form N-4 therefore leverages the form's existing insurance-product specific disclosure requirements, including disclosure requirements that help effectuate the relatively new summary prospectus layered disclosure framework the Commission adopted in 2020 for variable contracts. With the RILA-specific disclosures we are proposing to add to Form N-4, we intend that the form will provide investors with the information necessary to make informed decisions about RILAs.

Including RILAs on Form N-4 also could provide further benefits to investors by facilitating not only investor comparison among RILAs, but also the comparison of index-linked options to variable options in the same annuity contract. For example, investors would be able to review summary information of all the available investment options of an annuity contract—index-linked options, variable options, and fixed options—and compare these options in one place in

the prospectus appendix required by Form N-4.⁶⁶ Currently, we understand that approximately 44% of the RILAs offered in the marketplace are offered as index-linked options through combination products.⁶⁷ Registering the offerings of RILAs on Form N-4, rather than a new or different form, also would be more efficient for insurance companies and Commission staff. In this regard, insurance companies would benefit from using a single form, with tailored disclosure requirements, to register the offerings of both RILAs and combination contracts with index-linked options. In addition, many of the insurance companies issuing RILAs also issue variable annuity contracts and therefore are familiar with the requirements of Form N-4. Using Form N-4 for RILAs also would be efficient for our staff because the disclosure requirements for variable contracts and RILAs would be consolidated in one place. Further, because Congress has authorized RILA issuers to use Form N-4 if the Commission fails to adopt a registration form for RILAs within 18 months of the RILA Act's enactment, we believe that requiring insurance companies to use the form is consistent with congressional intent.

Requiring insurance companies to register RILA offerings on Form N-4 under the proposal would result in changes to RILA disclosure, in that they would have to comply with the current Form N-4 disclosure requirements in addition to the proposed new RILA-specific disclosure requirements. While Form N-4 contains some of the issuer- and offering-specific disclosures required by Forms S-1 and S-3, it does not contain them all. Specifically, Form N-4 does not include many of the disclosures relating to the mechanics of the offering (e.g., use of proceeds, dilution, etc.); offering participants other than the issuer, such as selling securities holders; and certain details of the issuer (e.g., descriptions of property, executive compensation, etc.). These disclosures may be more useful to an investor considering an investment in the capital stock or debt securities of the insurance company rather than an investment in a RILA issued by the insurance company. Unlike an investor in the insurance company itself, a RILA investor's direct investment exposure to the insurance company is limited to the insurance company's claims-paying ability, which also is supported by State insurance regulations and supervision

designed to ensure that insurance companies are able to satisfy their obligations under their insurance contracts. Requiring insurance companies to register RILA offerings on Form N-4 would leverage that form's annuity-focused requirements to ensure that investors receive those disclosures that would be the most important in the RILA context.

To accommodate the offering of RILAs on Form N-4 and to provide a consistent framework for all offerings registered on the form, we are proposing, as discussed in more detail below, changes to certain rules and requirements such that RILA issuers would be subject to the same process requirements as variable annuities.⁶⁸ For example, similar to the current offering processes for issuers of variable annuities, insurance companies registering RILA offerings would be permitted to use a streamlined summary prospectus and required to pay fees to register their securities annually rather than at the time of filing a registration statement.⁶⁹ These changes would provide efficiencies for insurance companies and Commission staff in establishing consistent requirements for offerings registered on Form N-4. It would, however, result in some trade-offs for RILA issuers. For example, insurance companies currently registering RILA offerings on Form S-3 would lose the ability to update their registration statement by incorporating by reference their annual report but would be able to update their registration statement annually with an immediately effective amendment. On balance, and as discussed in more detail throughout this release, requiring insurance companies registering RILA offerings to follow the offering processes proposed in this release should result in efficiencies for insurance companies and our staff. We anticipate that requiring RILA offerings to be registered on Form N-4 will also benefit investors by leveraging the form's annuity-specific disclosure requirements and extending the variable annuity summary prospectus to RILAs. Having a common registration form also should make it easier for investors deciding between an investment in a RILA or a variable annuity to compare the offerings.

We request comment on the proposed requirement to register RILA offerings on Form N-4.

1. As proposed, should we require RILA issuers to use Form N-4? Is another existing registration form more

⁶⁴ See proposed General Instruction B.1 of Form N-4. Form N-4, as we propose to amend it, would provide that Form N-4 is "to be used by insurance companies to register index-linked annuity contracts under the Securities Act of 1933." Insurance companies therefore would not be permitted to register RILA offerings on Forms S-1 or S-3, as they do today.

⁶⁵ Variable annuities register on Form N-3 if they are issued by separate accounts that are organized as management investment companies. However, most variable annuities are issued by separate accounts that are organized as unit investment trusts and therefore use Form N-4. See *supra* footnote 6.

⁶⁶ See *infra* section II.B.3(c).

⁶⁷ Based on an informal Commission staff review of RILA filings on the EDGAR system as of May 2, 2023.

⁶⁸ See *infra* sections I.C and I.I.E.

⁶⁹ See also *infra* section II.E.3 (discussing proposed changes to rule 172).

appropriate for RILAs? If so, which registration form and why?

2. Given that any existing registration form would require RILA-specific amendments, should the Commission instead develop a new form specifically for RILAs?

3. Is it appropriate to require an annuity that offers different types of investment options (e.g., variable options as well as index-linked options) to address these different types of investment options on the same registration form? Would requiring different registration forms for annuities offering different types of investment options be more or less efficient for insurance companies that offer variable annuities, RILAs, and combination contracts?

4. Is there any information currently required by Forms S-1 or S-3 that we should also require RILA issuers to disclose?

5. Would requiring RILAs to follow the same filing and other process requirements as variable annuities (such as requirements for paying registration fees, and the ability to use a summary prospectus) be efficient for insurance companies because they could use the same processes to pay registration fees and update registration statements for

variable annuities, RILAs, and combination contracts?

6. Do commenters believe that there are any disclosures from Forms S-1 and S-3 we are not including in the proposed Form N-4, particularly the MD&A and executive compensation disclosures, that could be of material relevance to RILA investors? If so, please explain their relevance to RILA investors.

7. Do commenters agree with our estimate that approximately 44% of RILA securities offered in the marketplace are offered as index-linked options through combination products? If not, what percentage do commenters think more accurately reflects RILA securities offered as index-linked options through combination products, and what is the basis for this estimate?

8. Should Form N-4, as amended, be the only form that insurance companies could use to register RILA offerings? Should we permit the continued use of Forms S-1 and S-3 in addition to the amended Form N-4? Would this be appropriate, given that RILA issuers can already use those forms? How would we ensure that investors receive the information necessary to make informed decisions through use of those forms, including the benefit of the proposed

RILA-specific disclosure requirements informed by investor testing?

9. Do commenters expect that any RILA issuers will meet the conditions to operate as a WKSI, and if so, what is the basis for this expectation?

10. Do commenters agree that leveraging Form N-4's annuity specific disclosure requirements and summary prospectus regime would benefit investors? Would registering RILA offerings on Form N-4 make it easier for RILA investors to compare RILA offering with variable annuity offerings? Are there any other potential benefits or disadvantages to investors in registering RILA offerings on Form N-4 as compared to other forms?

B. Contents of Form N-4

As proposed, many items of current Form N-4 would apply to RILAs. We are also proposing updates to Form N-4 to include disclosures specific to RILAs. In certain circumstances, we propose changing the disclosures provided on the form that would apply to both RILAs and variable annuities. The chart in Table 1 below outlines these items and any substantive changes we are proposing.⁷⁰ We discuss these changes in more detail in the sections that follow.

TABLE 1—OVERVIEW OF PROPOSED FORM N-4

Item	Description	Substantive changes	Discussion
Prospectus (Part A)			
1	Front and Back Cover Pages	Adding new legends and other standardized disclosures applicable to all issuers.	Section II.B.1.
2	Overview of the Contract	New RILA-specific disclosures; moving order of appearance up.	Section II.B.3(a).
3	Key Information	New RILA-specific disclosures; changing to a question-and-answer format; moving order of appearance down; change discussion of restrictions on optional benefits to cover all benefits.	Section II.B.2.
4	Fee Table	New contract adjustment disclosure	Section II.B.5.
5	Principal Risks of Investing in the Contract.	Providing more detailed disclosures applicable to all issuers	Section II.B.4.
6	Description of the Insurance Company, Registered Separate Account, and Investment Options.	New RILA-specific disclosures and one new item regarding variable options.	Section II.B.3(a).
7	Charges	New disclosures related to contract adjustments	Section II.B.5.
8	General Description of Contracts.	No substantive change	Section II.B.8(b).
9	Annuity Period	No substantive change	Section II.B.8(b).
10	Benefits Available Under the Contract.	No substantive change	Section II.B.8(b).
11	Purchases and Contract Value.	No substantive change	Section II.B.8(b).
12	Surrenders and Withdrawals ..	No substantive change	Section II.B.8(b).
13	Loans	No substantive change	Section II.B.8(b).
14	Taxes	No substantive change	Section II.B.8(b).
15	Legal Proceedings	No substantive change	Section II.B.8(c).
16	Financial Statements	No substantive change (but see Item 26)	Section II.D.

⁷⁰ Some proposed changes entail a non-substantive change such as a change to a defined term or specifying that the provision would

continue to be applicable only to a registered separate account or variable option. These are not

flagged in the following table but are instead discussed in section II.B.7 *supra*.

TABLE 1—OVERVIEW OF PROPOSED FORM N-4—Continued

Item	Description	Substantive changes	Discussion
17	Investment Options Available Under the Contract.	New RILA-specific disclosures	Section II.B.3(b).
Statement of Additional Information (Part B)			
18	Cover Page and Table of Contents.	No substantive change	Section II.B.8(b).
19	General Information and History.	No substantive change	Section II.B.8(c).
20	Non-Principal Risks of Investing in the Contract.	No substantive change	Section II.B.8(b).
21	Services	No substantive change	Section II.B.8(b).
22	Purchase of Securities Being Offered.	New disclosure of specific contract adjustment information ...	Section II.B.5.
23	Underwriters	No substantive change	Section II.B.8(c).
24	Calculation of Performance Data.	Clarifying only applies to variable options	Section II.B.7.
25	Annuity Payments	No substantive change	Section II.B.8(b).
26	Financial Statements	Providing that RILA issuers can use the relevant instructions and adding requirements relating to changes in and disagreements with accountants for RILAs.	Section II.D.
Other Information (Part C)			
27	Exhibits	Adding power of attorney for all issuers and accountant letters for RILA issuers as exhibits.	Section II.B.7(d).
28	Directors and Officers of the Insurance Company.	No substantive change	Section II.B.8(c).
29	Persons Controlled or Under Common Control with the Insurance Company or the Registrant.	No substantive change	Section II.B.8(c).
30	Indemnification	No substantive change	Section II.B.8(c).
31	Principal Underwriters	No substantive change	Section II.B.8(c).
31A	Information about contracts with Index-Linked Options.	New disclosure of RILA specific information	Section II.B.6.
32	Location of Accounts and Records.	No substantive change	Section II.B.7.
33	Management Services	No substantive change	Section II.B.8(b).
34	Fee Representation and Undertakings.	Adding new RILA undertakings	Section II.B.7(d).

1. Front and Back Cover Pages (Item 1)

We propose to require RILA issuers to include the information Form N-4 currently requires on the front and back cover pages of the prospectus. Currently, issuers are required to

include on the front and back cover pages basic identifying information about the issuer and the contract, information on how to review the document (*e.g.*, what the SAI is and where to find it), as well as certain

legends, for example, one relating to the ability for an investor to cancel the contract within 10 days.⁷¹ The table below outlines these existing disclosures that RILAs would be required to include if applicable.

TABLE 2—EXISTING INFORMATION REQUIRED BY ITEM 1 OF FORM N-4

[With proposed adjustments]

Item No.	Disclosure	Cover
Identifying Information		
Item 1(a)(2)	Insurance company's name	Front.
Item 1(a)(3)	Types of contracts offered (<i>e.g.</i> , group, individual, etc.)	Front.
Item 1(a)(4)	Name and class of contract	Front.
Item 1(a)(9)	Date of prospectus	Front.
Item 1(b)(4)	EDGAR identifier number	Back.

⁷¹ One change specific to this legend would be to indicate whether the insurance company will apply a contract adjustment on any money returned during this period. Contract adjustments are a defining element of a RILA, but can apply in other

circumstances. Nonetheless, given the context of this legend, we believe that it is important for investors to know whether they will be subject to this charge if they elect to have their money returned. *See supra* sections II.B.5 (discussing

contract adjustments generally) and II.F (discussing that it could be materially misleading to advertise that investors can receive their money back during a period of time without indicating that a contract adjustment could apply).

TABLE 2—EXISTING INFORMATION REQUIRED BY ITEM 1 OF FORM N-4—Continued
[With proposed adjustments]

Item No.	Disclosure	Cover
Legends		
Item 1(a)(10)	Statement that the Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense (as required in 17 CFR 230.481(b)(1)).	Front.
Item 1(a)(11)	Statement that additional information about the contract is available on <i>Investor.gov</i> .	Front.
Item 1(a)(12)	A legend that states that if you are a new investor, you may cancel your contract within 10 days of receiving it with some details about the operation of this process.	Front.
Other Information		
Item 1(b)(1)	Statement that the SAI contains additional information, that it is available to investors, and how investors may obtain the SAI or make inquiries about their contracts.	Back.
Item 1(b)(2)	Statement about whether and from where information is incorporated by reference.	Back.

In addition, we are proposing to add several new disclosures to the cover page to accommodate RILAs. The first proposed amendment would require the insurance company to identify the types of investment options offered under the contract and cross-reference the prospectus appendix that provides additional information about each option.⁷² Given the addition of investment options beyond variable options to the form, this would help investors better understand what investment options are available under the contract.

The other proposed amendments to the cover page would require additional new disclosures that highlight RILAs' complexities and certain associated risks. These include RILA's limitation on gains and potential for loss, that they are not short-term investments, and that payments under the contract are subject to the insurance company's financial strength and claims-paying ability. The proposed legends would require issuers to include statements on the front cover disclosing the following:

(1) The contract is a complex investment and involves risks, including the potential loss of principal;

(2) For contracts that include index-linked options, a prominent statement that the insurance company limits the amount the investor can earn, the potential for investment loss could be significantly greater than the potential for investment gain, an investor could lose a significant amount of money if the index declines in value, and a

prominent statement disclosing as a percentage the maximum amount of loss from negative index performance that an investor could experience after taking into account the minimum guaranteed limit on index loss provided under the contract;

(3) The contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash, and withdrawals could result in surrender charges, negative contract adjustments, taxes, and tax penalties as applicable with a prominent statement of the maximum potential loss resulting from a contract adjustment, if applicable; and

(4) The insurance company's obligations under the contract are subject to its financial strength and claims paying ability.⁷³

This cover page disclosure is designed to put an investor on notice of these key considerations to help the investor make informed decisions.

While these proposed additional disclosures are important for investors in RILAs, they are also relevant in many cases to investors in variable annuities. For example, while RILAs are complex investments, variable annuities are complex as well. Variable annuities, like RILAs, also are not short-term investments. As a result, we are proposing to apply the proposed new disclosures to all Form N-4 issuers to ensure that investors in both RILAs and variable annuities receive appropriate disclosures.

We request comment on the requirement of RILAs to include the information in Item 1 of Form N-4 on their registration statement and the inclusion of new legends for all Form N-4 filers, as applicable, on the front cover of the registration statement.

11. Would the new legends be effective in helping investors make informed decisions with regards to RILAs? Do commenters agree that it is appropriate to require the legends for variable annuities? Are the disclosures in the Overview of the Contract, Key Information Table, and elsewhere in the prospectus—as discussed later in this release—sufficient such that these legends are not necessary? Conversely, are legends effective in alerting investors to key concepts for a RILA or variable annuity on the cover page of the prospectus? Are there additional legends that are appropriate in light of the complexity of RILAs and variable annuities? For example, should a legend be required that specifically discloses a contract's upside limitation, such as due to a participation rate or cap rate?

12. Are there any examples or illustrations of how RILAs operate that we should require on the front or back cover pages? Are examples or illustrations more effective communication tools than legends on the cover page of the prospectus? Should examples or illustrations be provided in addition to legends?

13. Is there any other information we should require on the front or back cover pages?

⁷² See proposed Item 1(a)(5) of Form N-4.

⁷³ See proposed Item 1(a) of Form N-4.

2. Key Information Table (Item 3)

RILA issuers, like variable annuities issuers currently, would be required to provide a Key Information Table in their registration statements under the proposal. We also are proposing amendments to the KIT's disclosure requirements to address key RILA features, as well as other amendments that would apply to all Form N-4 issuers.

The KIT provides summary prospectus disclosure, including a brief description of key facts about a variable annuity in a specific sequence and in a standardized presentation.⁷⁴ Specifically, the KIT currently includes a summary of five topic areas: (1) fees and expenses; (2) risks; (3) restrictions; (4) taxes; and (5) conflicts of interest. The KIT functions as an integral part of the layered disclosure approach in Form N-4 by identifying key considerations upfront, with more detail to follow later in the prospectus. The proposed amendments to the KIT, which are informed by investor testing, are intended to build on this framework and highlight important considerations related to RILAs, including certain aspects of RILAs that our investor testing observed are difficult for investors to understand and thus require clear disclosure in order to help investors make informed investment decisions.⁷⁵

Form N-4 currently prescribes format requirements for the KIT to enhance the readability and comparability of the disclosure that also would apply to RILA offerings under the proposal.⁷⁶ Specifically, RILA issuers would be required to disclose the required information in the tabular presentation reflected in the instructions, in the order specified, without any modification or substitution with alternate terminology of the title, headings, and sub-headings for the tabular presentation, unless otherwise provided. Consistent with the form's current requirements, RILA issuers, however, would be permitted to exclude any disclosures (other than the

title, headings, and sub-headings for this tabular presentation) in the KIT that are not applicable, or modify any of the statements required to be included, so long as the modified statement contains comparable information. RILA issuers also would be required to provide cross-references to the location in the statutory prospectus where the subject matter is described in greater detail, either accessed by direct electronic link or through equivalent methods or technologies, as required for variable annuity KIT disclosure. Consistent with current requirements, RILA issuers would include these cross-references adjacent to the relevant disclosure, either within the table row, or presented in an additional table column. As currently is required, all disclosures for the KIT should be short and succinct, consistent with the limitations of a tabular presentation.

We are proposing three modifications that would apply to registration statements both for RILAs and for variable annuities. These changes are designed to provide investors with a better understanding of these products, and are informed in part by the results of investor testing. First, we are proposing to require issuers to present the information in the KIT in a question-and-answer ("Q&A") format.⁷⁷ As a result of this change, the various line items of the KIT would be rephrased as questions (e.g., "Are there charges for early withdrawals?" instead of "Charges for Early Withdrawals"). The instructions would further require that, unless the context otherwise requires, issuers should begin the response with a "Yes" or "No" in bold text when answering a question presented in a given row of the KIT. Consistent with the directional results of the quantitative investor testing, we anticipate that the Q&A format may improve investor comprehension of RILA-specific topics. Because the effect of the Q&A KIT structure on overall comprehension was larger for non-investors than independent investors, this format may particularly improve comprehension for less-experienced investors.⁷⁸ We also expect that

rephrasing the current line items in a Q&A format would more clearly convey the importance of the KIT information to help RILA and variable annuity investors make informed investment decisions.⁷⁹

Second, we propose to change the order in which the KIT (current Item 2) appears relative to the Overview of the Contract (current Item 3) disclosures.⁸⁰ The Overview of the Contract disclosures provide general information about the contract and important context about the information summarized in the KIT. Based on our observations of investor testing, we believe RILA investors may generally benefit from more context to understand

⁷⁹ The Commission's proposed Q&A format is consistent with previous rulemaking experience. See Form CRS Relationship Summary; Amendments to Form ADV, Investor Act Release No. 5247 (June 5, 2019) [84 FR 33492 (June 12, 2019)] (adopting question-and-answer format in response to feedback from surveys and studies and commenters who noted that "the question-and-answer format is a more effective design for consumer disclosures because it focuses on questions to which a consumer wants answers and allows a consumer to skim quickly and understand where to get more information."). The proposed format is also supported by prior surveys and studies to help design effective disclosures to retail investors. See, e.g., Angela A. Hung, et al., RAND Corporation, *Investor Testing of Form CRS Relationship Study* (2018), available at <https://www.sec.gov/about/offices/investorad/investor-testing-form-crs-relationship-summary.pdf>, at p. 23 (reporting that about 60% of respondents favored a question-and-answer format over the sample relationship summary format presented in the survey); Kleimann Communication Group, Inc., *Report on Development and Testing of Model Client Relationship Summary, Presented to AARP and Certified Financial Planner Board of Standards, Inc.* (Dec. 5, 2018), available at <https://www.sec.gov/comments/s7-07-18/s70718-4729850-176771.pdf>, at p. 4 ("Readers ask questions when they read, especially of functional documents. . . . For good design, we want to build upon this tendency by identifying key questions investors should or are likely to ask and featuring them prominently in the text, thus easing the cognitive task for readers. As a result, we used questions in the headings to introduce each section's major topic."); Susan Kleimann, *Making Disclosures Work for Consumers*, Presentation to the SEC's Investor Advisory Committee (June 14, 2018), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-slides-by-susan-kleimann.pdf> (encouraging the use of question-and-answer format, the use of headings to make structure clear, and a strong design grid to organize elements, among other disclosure design principles, to promote readability), cited in VASP Adopting Release at n.112 and accompanying text. See also Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, *A Plain English Handbook* (Aug. 1998) ("You can make complex information more understandable by giving your readers an example using one investor. This technique explains why 'question and answer' formats often succeed when a narrative abstraction fails.").

⁸⁰ The current instructions to Form N-4 require that, notwithstanding 17 CFR 230.421(a), the KIT, Overview, and Fee Table must be disclosed in numerical order. General instruction C.3(a) of Form N-4. The proposal would change this instruction to reflect the change in order.

⁷⁴ See VASP Adopting Release at section II.A.1.c.ii; see also *infra* section II.C.

⁷⁵ See, e.g., OIAD Report at Section 5, Qualitative Testing (following two rounds of in-depth interviews to assess potential RILA KIT disclosure for areas of confusion or misunderstanding, qualitative interviews suggested confusion with RILA terms and concepts relating to, for example, contract adjustments such as interim value adjustments and loss limiting features such as buffers); OIAD Report at Section 6, Quantitative Testing, Results, Subgroup Analysis (noting 5.7 percentage point effect of the Q&A KIT structure on overall comprehension for "non-investors" during quantitative testing).

⁷⁶ See proposed instruction 1 to Item 3 of Form N-4.

⁷⁷ Proposed instruction 1(d) to Item 3 of Form N-4.

⁷⁸ For purposes of investor testing, participants were classified into three groups: those with no investments in stocks, bonds, mutual funds, or other securities (non-investors); those with investments exclusively in retirement savings accounts (retirement only); and those with investments outside of retirement accounts (independent investors). See OIAD Report at Section 6, Quantitative Testing, Subgroup Analysis, Investor Status. The report noted a 5.7 percentage point effect of the Q&A KIT structure on overall comprehension for "non-investors". *Id.*

the KIT disclosures. For example, interview participants generally found certain RILA-specific terminology confusing, such as “index,” “investment term,” “interim value adjustment,” and “buffer.”⁸¹ Further, investor testing indicated that investors had difficulty in understanding the basic features and concepts of RILA contracts.⁸² The proposed Overview of the Contract disclosures would require descriptions and examples to help investors understand these RILA features and provide a basis for better understanding the issues flagged by the KIT disclosures.⁸³ Thus, based on investor testing, we propose to change the location of the KIT so that it appears after (rather than before) the Overview of the Contract section. Placing the Overview of the Contract section first may similarly provide context of the issues flagged in variable annuity KITs.

Third, we propose to delete Form N-4’s general instruction stating that where the discussion of information required by the Overview of the Contract (currently Item 3) or KIT (currently Item 2) also responds to the disclosure requirements in other items of the prospectus, registrants need not include additional disclosure in the prospectus that repeats the information disclosed in the Overview of the Contract or the KIT.⁸⁴ In administering Form N-4, we have observed that this instruction has led to confusion on the part of registrants. For example, while both the KIT and Item 5 require disclosures about principal risks, the KIT expressly contemplates that more detailed information will be repeated later in the prospectus, specifically requiring registrants to provide cross-references to the more detailed prospectus discussion.⁸⁵ Item 5 requires

registrants to summarize the principal risks of the contract in one place, and was not intended to permit an insurance company to omit principal risks from that section if those risks were also disclosed in the KIT.⁸⁶ Moreover, the layered disclosure framework requires a degree of repetition to ensure both that the KIT contains key disclosures and that the detailed sections that follow contain all of the key information about the given topic. We believe this is particularly important for RILAs in light of the challenges our investor testing suggests investors have in understanding these products. This way, investors will see the key risks regardless of whether they review targeted sections of the prospectus.

The proposed overall format of the KIT is depicted below:

TABLE 3—PROPOSED KEY INFORMATION TABLE

Fees and Expenses: - Are There Charges for Early Withdrawals? - Are There Transaction Charges? - Are There Ongoing Fees and Expenses? Risks: - Is There a Risk of Loss From Poor Performance? - Is this a Short-Term Investment? - What are the Risks Associated with the Investment Options? - Is There Any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract? Restrictions: - Are There Restrictions on the Investment Options? - Are there any Restrictions on Contract Benefits? Taxes: - What are the Contract's Tax Implications? Conflicts of Interest: - How are Investment Professionals Compensated? - Should I Exchange My Contract?	

(a) Fees and Expenses

RILA contracts typically have implicit fees, expenses, and charges for early or mid-term withdrawals that can be confusing or surprising to investors, as observed in our investor testing.⁸⁷ We anticipate that investors would benefit from tailored disclosure about certain unique features of a RILA contract’s fee and expense structure as described below to help them make informed decisions.

Early Withdrawal Charges. As RILAs may have surrender charges, we propose to require RILA issuers to provide the

existing KIT surrender charge disclosure in this first line item under the “Fees and Expenses” heading so that RILA investors understand how surrender charges are assessed (e.g., that if they make a withdrawal within a specified period after their last premium payment, they may pay a significant surrender charge that will reduce the value of their investment).⁸⁸ This disclosure must include the maximum surrender charge, the maximum number of years that a surrender charge may be assessed, and an example of the maximum surrender charge an investor

could pay in dollars based on a \$100,000 investment. In a change to the current form requirements, we also are proposing to require that offerings of both variable annuities and RILAs disclose that this loss will be greater if there is a negative contract adjustment, taxes, or tax penalties, to make clear that an investor may lose more than just the surrender charge upon an early withdrawal.

We also are proposing to require specific disclosure on contract adjustments, which can result in investor losses if the investor withdraws

⁸¹ See, e.g., OIAD Report at Section 5, Qualitative Testing, Results from Round 1, Summary of Qualitative Testing, Section 6, Quantitative Testing, Summary of Quantitative Testing.

⁸² See, e.g., OIAD Report at Section 5, Qualitative Testing, Summary of Qualitative Testing, Section 6 and 7 Quantitative Testing, Summary of Quantitative Testing, Section 7, Conclusions, Summary of Findings.

⁸³ See, e.g., proposed Item 2(b)(2) of Form N-4.

⁸⁴ General Instruction C.3.(a) of Form N-4.

⁸⁵ See instruction 1(b) to Item 2 of Form N-4.

⁸⁶ See Item 5 of Form N-4; VASP Adopting Release at text following n.689 (“The principal risks section is designed to provide a consolidated presentation of principal risks which can be cross-referenced by registrants to reduce repetition that

might otherwise occur if the same principal risks are repeated in different sections of the prospectus.”).

⁸⁷ See, e.g., OIAD Report at Section 5, Qualitative Testing, Results from Round 1, Results from Round 2.

⁸⁸ Proposed instruction 2(a) to Item 3 of Form N-4.

money from an index-linked option, or withdraws money from the RILA entirely before the end of a specified period.⁸⁹ Specifically, if the contract includes contract adjustments, the insurance company would be required to include a statement that if all or a portion of account value is removed from an index-linked option or from the contract before the expiration of a specified period, the insurance company will apply a contract adjustment, which may be negative. Similar to the disclosures relating to surrender charges, this statement would include the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment (e.g., “[y]ou could lose up to XX% of your investment due to the contract adjustment”). The insurance company also would be required to provide an example of the maximum negative adjustment that could be applied (in dollars) assuming a \$100,000 investment (e.g., “[i]f you allocate \$100,000 to an investment option with a 3-year crediting period and later withdraw the entire amount before the 3 years have ended, you could lose up to \$90,000 of your investment. This loss will be greater if you also have to pay a surrender charge, taxes, and tax penalties.”). We also propose to require the insurance company to provide a brief narrative description of the contract transactions subject to a contract adjustment (e.g., withdrawals, surrender, annuitization, etc.) as part of the response to this item to make clear to investors the range of transactions that could result in a contract adjustment.

Transaction Charges. The second line item in the “Fees and Expenses” section of the proposed amended KIT, “Are there transaction charges?” would require registrants to disclose that the investor may also be charged for other transactions in addition to surrender charges (and now contract adjustments), along with a brief narrative description of the types of such charges (e.g., front loads, charges for transferring cash value between investment options, etc.).⁹⁰ This line item is designed to

provide a simple narrative description to alert investors that surrender charges and contract adjustments are not the only transaction charges they could pay. We are proposing to require RILA issuers to provide this disclosure.

Ongoing Fees and Expenses. The third line item in the “Fees and Expenses” section, “Are there ongoing fees and expenses?” is designed to alert investors that they also will bear recurring fees on an annual basis. This item currently requires the insurance company to disclose (1) a minimum and maximum annual fee table and (2) a lowest and highest annual cost table, both along with applicable legends.⁹¹ The minimum and maximum annual fee table is designed to consolidate the more detailed information in the Fee Table that appears later in the prospectus, in order to minimize the need for investors to perform complex calculations to understand the fees they will pay.⁹² The lowest and highest annual cost table is designed to provide investors with a high-level cost illustration that will give investors a tool to understand the basic cost framework of the contract.⁹³ We are proposing to require RILA issuers to provide this disclosure.⁹⁴

We also are proposing to require that where a contract imposes limits on gains on the amount an investor can earn on an index-linked option, insurance companies disclose that they impose these limits on gains and that they serve as an implicit ongoing fee.⁹⁵ In other words, as a result of limits on gains imposed under a contract, an investor is sacrificing the potential for investment gains that exceed the cap or other limit on upside performance. Specifically, insurance companies would prominently state that they impose an implicit ongoing fee on index-linked options by limiting, through the use of a cap, participation rate, or some other rate or measure, the

amount an investor can earn on an index-linked option. Further, insurance companies would state that imposing this limit helps the insurance company make a profit on the index-linked option, and that, in return for accepting this limit on index gains, an investor will receive some protection from index losses. This disclosure would be required to precede the minimum and maximum annual fee table. If the contract offers an index-linked option subject to limits on gains but does not impose any explicit ongoing fees or expenses under the contract, and thus there would be no need to include the minimum and maximum annual fee and lowest and highest cost tables, the insurance company would include this disclosure in lieu of such tables.⁹⁶ Where there are no explicit ongoing fees, minimum and maximum annual fee and cost tables showing zero fees could mislead investors because an index-linked option imposing limits on gains has implicit fees inherent in limiting upside index participation.

Lastly in this line item, we propose to revise the last sentence in the required legend in the lowest and highest annual cost table to include the underlined language: “This estimate assumes that you do not take withdrawals from the Contract, which could add surrender charges and negative Contract Adjustments that substantially increase costs.”⁹⁷ This would further alert investors to the cost impact of a contract adjustment if they withdraw money early.

(b) Risks

Risk of Loss. Under the first line item in the amended KIT under the heading “Risks,” “Is there a risk of loss from poor performance?” we would, as required by an existing instruction in the form, require RILA issuers to state that an investor can lose money by investing in the contract. RILAs, like variable annuities, are subject to the risk of investment loss. We also are proposing to amend this instruction to provide that, if an annuity contract offers an index-linked option, the insurance company must disclose, as a percentage, the maximum amount of loss an investor could experience from negative index performance, after taking into account the minimum guaranteed limit on index loss provided under the

⁸⁹ As noted above, contract adjustments include adjustments made when amounts are removed prematurely from an index-linked option, often referred to as interim value adjustments, as well as adjustments made when amounts are removed prematurely from the contract, often referred to as market value adjustments. Thus, a specified period would include index-linked option crediting periods (which again, are typically referred to by insurance companies as “investment terms” or “terms”), as well as any specified period relating to a market value adjustment.

⁹⁰ Proposed instruction 2(b) to Item 3 of Form N-4.

⁹¹ See instruction 2(c) to Item 2 of Form N-4. The minimum and maximum annual fee table requires a tabular description of the fees and expenses that an investor may pay each year, depending on the investment options chosen. This includes minimum and maximum percentages for: base contract fees; portfolio company fees and expenses; and optional benefits available for an additional charge. The lowest and highest annual cost table requires a tabular description of the lowest and highest cost an investor could pay each year, based on current charges and a set of standardized assumptions (e.g., \$100,000 investment and 5% annual appreciation).

⁹² See VASP Adopting Release at section II.A.1.c.ii.(i), n.144 and accompanying text; see also Item 4 of Form N-4.

⁹³ See VASP Adopting Release at section II.A.1.c.ii.(i), n.147 and accompanying text.

⁹⁴ See proposed instruction 2(c) to Item 3 of Form N-4.

⁹⁵ See proposed instruction 2(c)(i)(G) to Item 3 of Form N-4.

⁹⁶ Proposed instruction 2(c)(iii) to Item 3 of Form N-4.

⁹⁷ See proposed Instruction 2(c)(ii)(A) to Item 3 of Form N-4. Currently, this legend only refers to surrender charges, not negative contract adjustments.

contract.⁹⁸ For example, with a guaranteed buffer of -10% , a registrant would disclose that investors could lose up to 90% of their investment in an index-linked option due to poor index performance even with the loss limitation feature. This amendment is designed to make clear to investors investing in an index-linked option that they can still lose money even though index-linked options typically include features designed to limit investment loss.

Short-Term Investment. The second line item under the Risks heading, “Is this a short-term investment?”, currently requires a statement that the contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash along with a brief explanation. This statement and an accompanying brief explanation is equally applicable to RILAs and we therefore would require RILA issuers to make the same disclosure.⁹⁹ We also are proposing to amend this item to require issuers of RILAs and variable annuities to state that (1) amounts withdrawn from the contract may result in surrender charges, taxes, and tax penalties; and (2) if applicable, that amounts removed from an index-linked option or the contract before a specified period may also result in a negative contract adjustment and loss of positive index performance. These disclosures are designed to make clear to investors some of the key reasons *why* these investments are not short-term investments. These disclosures are particularly important for an investor considering a RILA in light of the potential negative consequences if the investor withdraws money early from a particular index-linked option or the contract. We are not limiting these disclosures to contracts with index-linked options, however, because these disclosures may be equally material for a variable annuity. To further illustrate that index-linked options are not short-term investments even though they may have a short crediting period, we also propose new risk disclosure for index-linked options that would require issuers offering such investment options to state that contract value will be reallocated at the end of the crediting period according to the investor’s instructions, and to disclose the default reallocation in the absence of such instructions.

Risks Associated with Investment Options. The third line item under the

Risk heading, “What are the risks associated with the investment options?”, is intended to focus on the general risk of poor investment performance.¹⁰⁰ Currently, the KIT therefore requires the insurance company to state that: (1) an investment in the contract is subject to the risk of poor investment performance and can vary depending on the performance of the investment options available under the contract; (2) each investment option will have unique risks; and (3) the investor should review these investment options before making an investment decision. We are proposing conforming changes to the required statement to refer to index-linked options now that RILAs are included on Form N-4.¹⁰¹

We also are proposing to require the insurance company to provide additional information about any index-linked options offered under the contract to highlight how the insurance company limits the investor’s participation in gains and losses of the index. For the risk of limited upside, the insurance company would be required to (1) state that the cap, participation rate, or some other rate or measure, as applicable, will limit positive index returns (*e.g.*, limited upside), (2) provide an example for each type of limit imposed under the contract (*e.g.*, if the index return is 12% and the cap rate is 4% , the insurance company will credit the investor 4% in interest at the end of the term), and (3) prominently state that this may result in the investor earning less than the index’s return.¹⁰²

For the risk of limited protection in the case of market decline, the insurance company would be required to (1) state that the floor, buffer, or some other rate or measure, as applicable, will limit negative index returns (*e.g.*, limited protection in the case of market decline), (2) provide an example for each type of limit imposed under the contract (*e.g.*, “if the Index return is -25% and the buffer rate is -10% , we will credit -15% (the amount that exceeds the buffer rate) at the end of the crediting period”), and (3) prominently state that even after limiting a negative index return, investors could still lose up to $XX\%$ of their investment.¹⁰³ The disclosure in this row of the KIT is designed to highlight that each investment option, including an index-linked option, will have unique risks.

¹⁰⁰ VASP Adopting Release at the text accompanying n.170.

¹⁰¹ See proposed instruction 3(c) to Item 3 of Form N-4.

¹⁰² See proposed instruction 3(c)(A) to Item 3 of Form N-4.

¹⁰³ See proposed instruction 3(c)(B) to Item 3 of Form N-4.

The proposed disclosure on index-linked options would highlight one of the central economic tradeoffs index-linked options present: that an investor will sacrifice the potential for returns if the index goes up in exchange for some protection from loss if the index goes down.

Insurance Company Risks. The fourth line item under the Risk heading, “Is there any chance the insurance company won’t pay amounts due to me under the contract?”, is meant to alert investors that any obligations, guarantees, or benefits under the contract that may be subject to the claims-paying ability of the insurance company will depend on the financial solvency of the insurance company.¹⁰⁴ Form N-4 therefore currently requires the insurance company to include a statement to this effect in this row of the KIT and either to provide the insurance company’s financial strength ratings or state, if applicable, that they are available upon request. We propose to require a RILA issuer to provide the same statement, with a conforming change to include index-linked options as an obligation of the insurance company.¹⁰⁵

(c) Restrictions

Investments. We propose to require RILA issuers to include the disclosure required by the first line item under the heading “Restrictions,” “Are there limits on the Investment Options?” This current item would be modified to require the insurance company to state whether there are any restrictions that may limit the investment options that an investor may choose, as well as any limitations on the transfer of contract value among investment options.¹⁰⁶ As these limitations can exist for RILAs, we propose to require RILA issuers to make

¹⁰⁴ See VASP Adopting Release at section II.A.1.c.ii.(ii); see also proposed instruction 3(d) to Item 2 of Form N-4 (“State that an investment in the Contract is subject to the risks related to the Insurance Company, including that any obligations (including under any Fixed Options and Index-Linked Options), guarantees, or benefits are subject to the claims-paying ability of the Insurance Company.”).

¹⁰⁵ See proposed instruction 3(d); see also *infra* section II.B.7(b) (discussing changes of Form N-4’s defined terms, including replacing “depositor” with “insurance company,” to facilitate inclusion of RILAs on the form).

¹⁰⁶ See proposed instruction 4(a) to Item 3 of Form N-4. The current item requires the insurance company to state whether there are any restrictions that may limit the investments that an investor may choose, as well as any limitations on the transfer of contract value among portfolio companies. Consistent with the corresponding changes made to defined terms, we would also clarify that this item applies to any investment option, not just the portfolio companies available as investment options under a variable option. See *infra* section II.B.7.

⁹⁸ See proposed instruction 3(a) to Item 3 of Form N-4.

⁹⁹ See proposed instruction 3(b) to Item 3 of Form N-4.

this disclosure so that investors can assess that disclosure in determining whether the RILA is an appropriate investment for them.

Currently, the form also generally requires the insurance company to state that it reserves the right to remove or substitute portfolio companies as investment options, if applicable. Insurance companies typically reserve the right to change the index-linked options that are available under a contract as well as key features of available index-linked options. To alert investors that the available index-linked options and key terms of those index-linked options may change in the future we are proposing to require the insurance company to state any reservation of its rights under the contract, including, if applicable, the right to (1) add or remove index-linked options, (2) change the features of an index-linked option from one crediting period to the next, including the changes to the index and the current limits on gains and limits on index losses (subject to contractual minimum guarantees), and (3) substitute the index of an index-linked option during its crediting period. We are also proposing to require that insurance companies disclose any right to stop accepting additional purchase payments, which may be significant to investors given the impact this reservation can have on investors' ability to accumulate contract value for retirement, grow the death benefit, and increase optional benefit values.

Contract Benefits. The second line item under "Restrictions," "Are there any restrictions on contract benefits?" requires a statement about whether there are any restrictions or limitations relating to benefits offered under the contract, and/or whether a benefit may be modified or terminated by the insurance company. It also requires a statement that withdrawals that exceed limits specified by the terms of a contract benefit may affect the availability of the benefit by reducing the benefit by an amount greater than the value withdrawn and/or could terminate the benefit. We are proposing that this item be broadened to include disclosure on restrictions or limitations relating to any benefit under the contract, not just optional benefits (as currently required). While a benefit under the contract might be characterized as standard, it could have restrictions that should be disclosed in the KIT because of the benefit's importance to the investor's rights under the contract, such as a proportionate withdrawal calculation

under a standard death benefit.¹⁰⁷ We propose to require RILA issuers to include this disclosure, as such disclosure is equally applicable to RILAs as it is to variable annuities.

(d) Taxes

We also propose to require RILA issuers to include the line item under the heading "Taxes," "What are the Contract's tax implications?"¹⁰⁸ This line item is designed to alert investors to the tax implications of variable contracts and, as we propose to amend this item, of RILAs. It currently requires a statement that an investor should consult with a tax professional to determine the tax implications of an investment in, and purchase payments received under, the contract. The insurance company must also state that there is no additional tax benefit to the investor if the contract is purchased through a tax-qualified plan or individual retirement account ("IRA"), and that withdrawals will be subject to ordinary income tax and may be subject to tax penalties. We propose to subject RILAs to this requirement because the same tax considerations apply.

(e) Conflicts of Interest

Investment Professional Compensation. We propose to require RILA issuers to include the first line item under the heading "Conflicts of Interest," "How are investment professionals compensated?"¹⁰⁹ This current line item for variable contracts is designed to alert investors to the existence of compensation arrangements for investment professionals and the potential conflicts of interest arising from these arrangements.¹¹⁰ It requires issuers to disclose that an investment professional may be paid for selling the contract to investors. An issuer must describe the basis upon which such compensation is typically paid (e.g., commissions, revenue sharing, compensation from affiliates and third parties). An issuer providing the required disclosure also must state that investment professionals may have a financial incentive to offer or recommend the contract over another investment. The same compensation

¹⁰⁷ See proposed instruction 4(b) to Item 3 of Form N-4. Similarly, we are proposing a change to the discussion in the overview of the contract item about contract features that would broaden that discussion to cover both optional and standard contract benefits. See proposed Item 2(c) of Form N-4.

¹⁰⁸ See proposed instruction 5 to Item 3 of Form N-4.

¹⁰⁹ See proposed instruction 6(a) to Item 3 of Form N-4.

¹¹⁰ See VASP Adopting Release at section II.A.1.c.ii.(v).

arrangements and potential conflicts are relevant for RILAs, and we therefore are proposing to require an insurance company registering a RILA to provide the same disclosure.

Exchanges. We propose to require RILA issuers to include the second line item under the heading "Conflicts of Interest," "Should I exchange my Contract?" with conforming changes.¹¹¹ This current line item for variable contracts is designed to alert investors to potential conflicts of interest that may arise from contract sales that stem from exchanges.¹¹² It requires issuers to state that some investment professionals may have a financial incentive to offer a new contract in place of the one owned by the investor. An issuer must further state that investors should only exchange their contract if they determine, after comparing the features, fees, and risks of both contracts, that it is preferable to purchase the new contract rather than continue to own the existing contract. These same considerations apply to an investor considering an exchange involving a RILA. In a change that would apply to variable annuities and RILAs, and to put investors on notice that there may also be costs or charges associated with terminating an existing contract, we are also proposing that issuers disclose in this legend that investors should consider any fees or penalties to terminate the existing contract in considering whether to exchange a contract.

(f) Requests for Comment on Key Information Table

We request comment generally on the proposed amendments to the KIT, and specifically on the following issues.

14. Should we require all issuers to provide the "Overview of the Contract" disclosure before the KIT, as proposed? Would this provide relevant context for an investor to help understand the KIT disclosure or, conversely, would it detract from the KIT's efficacy in conveying key information about the contract up front in a consistent format? Are there other reasons to precede the KIT disclosure with the current "Overview of the Contract" disclosure? Alternatively, should we allow issuers to maintain the current order of disclosure and include new rows in the KIT to provide contract overview disclosure to investors? Would this be a more effective way to provide context for investor to understand the KIT, or

¹¹¹ See proposed instruction 6(b) to Item 3 of Form N-4; see also *infra* section II.B.7.

¹¹² See VASP Adopting Release at section II.A.1.c.ii.(v).

would it lead to disclosure that is too lengthy for the KIT format and potentially duplicate disclosure in the Overview of the Contract section of the prospectus? Alternatively, should we require the Overview of the Contract to precede the KIT only in prospectuses offering annuity contracts with index-linked options, rather than for all issuers?

15. Should we add disclosure to the KIT regarding whether index-linked options offered under the contract are based on a price return index (*i.e.*, an index that only reflects price movements of the security) or a total return index (*i.e.*, one that includes additionally factors like dividends), so that, where appropriate, investors understand whether or not they can expect their account value to increase as a result of dividends?

16. Should we add any additional headings and sub-headings to the KIT, for example, a new heading “Contract Overview,” with related line items or sub-headings “What is the purpose of the contract?,” “What is the time period for measuring growth (or loss) on my contract value?,” and/or “Who may the contract be appropriate for?”? Would this information be helpful to an investor in providing context for the KIT disclosure or, conversely, would these requirements lead to lengthy disclosure that makes the KIT less investor friendly?

17. Would rephrasing the topics of the KIT line items in a question format and requiring the descriptions in the right-hand column of the KIT to be presented in an answer format, as proposed, be helpful for investors making an initial purchase of an annuity contract? Should we make the Q&A format mandatory for all issuers that use Form N-4? Or should we instead require that issuers state the line items in the left-hand column as brief descriptions of the topics to be detailed in the right-hand column of the KIT, as is currently required? Should any of the required line items or sub-headings be worded in a different way, or using different terminology, than the proposal would require?

18. Should we allow issuers to change the wording of the line item questions in circumstances where the changes would not impede investor comprehension and clear, consistent disclosure? Could this undermine standardized disclosures and investors’ ability to make comparisons of certain disclosure topics among RILA and variable annuity prospectuses, or would issuers’ ability to customize the disclosure lead to more informed

investor decisions about that particular RILA?

19. Should we require issuers to add a new column in the KIT labeled “Location in the Prospectus” or similar caption, and place it next to the relevant disclosure presented in the table to provide hyperlinked cross-references directly to the location in the statutory prospectus where the investor can find more detailed information about the subject matter or should we, as proposed, continue to permit issuers to provide cross-references either within the table row or presented as an additional column? Are there any particular sub-headings or captions that would help investors identify where to find information?

20. Should we mandate particular examples or illustrations in the KIT? For example, should we require a chart of historical index performance with the guaranteed minimum cap overlaid? Should we require a table showing examples of the dollar amounts of losses and gains, without fees, an investor would face in a variable annuity as compared to RILAs with various floors, buffers, and caps over a four-year period assuming various index movements?¹¹³ Are there other useful examples or illustrations currently provided by RILAs that help to illustrate their structure effectively to investors that we should include in the KIT? For example, should we require a graphic in the KIT to illustrate surrender charges and contract adjustments during different time periods of the contract? If so, what should the requirements for these graphics or illustrations be? Should we require illustrations in the KIT showing how caps, floors, and/or buffers could affect an investor’s returns across different market scenarios? If so, what should these scenarios be? As another example, we request comment below on requiring insurance companies to disclose the difference between a hypothetical \$100,000 investment in an index-linked option and the value, or the cost to assemble, the economic components underlying the index-linked option.¹¹⁴ Should that disclosure be required in the KIT?

21. We have proposed that insurance companies include disclosures in the KIT regarding any limits on gains the RILA imposes, including an illustrative example demonstrating the operation of those limits. Would this disclosure be improved by requiring that the example conform to any specific parameters? Would other examples be helpful? For

example, should we require that the example use the most common limit on gains offered under the RILA for the previous year? Should we require that the example disclose the amount of gains an investor would have given up due to the limit over the prior ten years, based on the index’s performance during that time and assuming the limit on gains discussed in the example applied during each of those ten years? Should we require that the example use only round numbers?

22. Should we allow or require issuers to provide cross-references to charts or other graphics designed to facilitate investor understanding of RILAs, including, *e.g.*, educational resources designed by the Commission staff? Should we require issuers to provide these hyperlinked cross-references in the current right-hand column of the KIT directly after the relevant sentence of disclosure? Would the KIT be more succinct and easier to read if the hyperlinked cross-references were placed on the cover page of the prospectus instead of the KIT? Would requiring the registrant to state “More information can be found at:” before or after these cross-references help investors easily find the information they may need to make an informed investment decision? Should we require cross-references to other prospectus sections to include a specific page number in the prospectus where an investor could find the information?

23. Besides hyperlinks, are there other technological tools that would help an investor find information that is cross-referenced in the KIT or on the cover page of the prospectus, such as QR codes or other technological tools?

24. Is the level of detail of the disclosure that we propose in each line item of the KIT appropriate? Does it strike the right balance between providing enough information to alert an investor to the most salient facts (including ongoing implicit fees, expenses, risks, and conflicts) of the RILA contract, but not too much, or too detailed information? If not, how should we modify the table and/or the instructions? Are there other key features of RILA contracts that RILA issuers should disclose in the KIT to help investors make an informed investment decision?

25. RILAs are frequently marketed as a way to protect against investment losses through loss-limiting features such as buffers and floors. Should we require RILA issuers to provide more detailed disclosures about how these loss-limiting features have affected RILA investors historically? For example, would investors be better positioned to

¹¹³ See N.Y. Comp. Codes R. & Regs. tit. 11, App. 28.8 (2023).

¹¹⁴ See Section II.B.3.b.

make informed decisions if we were to require RILA issuers to disclose: (a) the total number of investor crediting periods (across all investors and index-linked options) that utilized a loss-limiting feature for a certain historical period (*e.g.*, the past five years); (b) the percentage of those investor crediting periods where an investor's contract value benefited from a loss-limiting feature (because the feature eliminated or reduced a negative credit resulting from the performance of the index-linked option); and (c) the percentage of those investor crediting periods where an investor's contract value was not impacted by a loss-limiting feature. Should a RILA issuer have experience with a certain minimum number of crediting periods in order to be subject to this disclosure? What should a RILA issuer disclose if their experience with loss-limiting features does not meet the minimum threshold? Where in the prospectus would be the appropriate location for this information? For example, if we require this disclosure, do commenters feel it would be best positioned as part of the KIT, in Item 6 (in the Limits on Index Losses section), or in the Contract Overview? Are there other disclosures that commenters would recommend in the alternative as a way to increase investor knowledge about the utility of loss-limiting features and their ability to positively affect investors' contract values? Whether or not we require more detailed disclosures about the historical effects of loss-limiting features, should we require similar disclosure about the historical effects of limits on gains (*i.e.*, upper limits on an investor's ability to participate in an index-linked option's upside performance)? Should we require disclosure comparing the economic effects of the limits on gains to the limits on losses? For example, should we require disclosure of the number of periods in which each limit would have actually limited an investor's losses or capped an investor's gains? Should we require disclosure of the dollar value of losses an investor would be protected against compared to gains an investor would give up over a prescribed period of time, such as the past 10 years?

26. Are there any particular legends that should be included in the KIT, *e.g.*, "We will not return your money at the end of the crediting period unless you tell us to," "The contract adjustment applies in addition to any surrender charge," "You may earn less than the index's return," and/or "You may lose up to [X]% of your investment if you withdraw your money before the end of

a crediting period. This loss can be greater if there is a surrender charge, taxes, and/or tax penalties"? If so, what legends and why?

27. Is the process of what happens at the end of the crediting period adequately highlighted in the proposed KIT? Should insurance companies be required to provide more specific details, either in the KIT or elsewhere in the prospectus, about how investors can choose an investment option at the end of the crediting period and the limitations on those choices?

28. Would the disclosure that a RILA issuer would provide in response to the proposed "Fees and Expenses" line items convey the appropriate amount of information to investors and concisely alert investors to the most important fees, charges, penalties, and expenses associated with the RILA contract?

29. Should the proposed "Fees and Expenses" line item, "Are there charges for early withdrawals?," include disclosure both about the surrender charges and contract adjustments, as proposed? Would this disclosure sufficiently alert investors to the typical contract adjustment of a contract and its impact in reducing contract value (in addition to any surrender charge) if the investor withdraws money before the expiration of a specified period? Alternatively, should we sub-divide this line item into two line items, with the one focused on surrender charges and the other titled (for example) "Are there penalties for mid-term withdrawals?," focused on contract adjustments? Would this help an investor to understand both concepts better? Or would sub-dividing the line item cause confusion, for example by making it seem as if a surrender charge and a contract adjustment could not apply simultaneously? If so, should we require an explicit disclosure that they could apply simultaneously?

30. Would the Minimum and Maximum Annual Fee and Lowest and Highest Cost tables assist investors in understanding the costs of their investment and help them compare the costs of different investment options and optional benefits in the RILA context? Should we modify the proposed disclosure or require other additional information to accompany the tables?

31. Would the proposed disclosure that an issuer would provide about contracts that do not impose ongoing fees and expenses adequately convey the implicit ongoing fees of contracts with index-linked options that have features that limit positive index return? If not, should we modify the proposed

disclosure or require additional information from issuers?

32. Would the disclosure that a RILA issuer would provide in response to the proposed "Risks" line items adequately convey an overview of the risks of investing in a contract with an index-linked option? Are there other risks of investing in these contracts that we should require a registrant to disclose in the proposed KIT? For example, should we require RILA issuers to state that an investor can lose money by investing in these contracts including a loss of principal? Alternatively, should we require all issuers to state this, not just RILA issuers?

33. Would the disclosure that a RILA issuer would provide in response to the proposed "Restrictions" line items convey the appropriate amount of information about certain restrictions that various contract options may entail, in light of the goals of the proposed KIT and the unique nature of a RILA? Should an issuer be required to disclose information about restrictions in the KIT other than those associated with the contract's investment options and benefits? If so, what? Instead, should we provide flexibility by permitting issuers to disclose other restrictions at their discretion? Do commenters agree that our proposal to require disclosure about restrictions on contract benefits generally (as opposed to the current requirement which is limited to optional benefits) is appropriate?

34. Is the disclosure that a RILA issuer (along with other issuers that use Form N-4) would be required to provide in response to the proposed "Taxes" line item appropriate, in light of the goals of the proposed KIT? Given that some investors in these products may not have the means or ability to consult a tax professional, should we require additional disclosures in addition to the required statement that investors should consult a tax professional? For example, should a RILA issuer be required to consider which tax consequences are most likely to be faced by retail investors and to provide general information regarding those consequences? For example, should an issuer be required to emphasize more prominently that withdrawals will be subject to ordinary income tax, and not the capital gains rates? Should the line item require disclosure of the specific tax penalties and requirements that investors in annuity contracts may incur (*e.g.*, penalties for withdrawal before age 59½, or that purchases through a tax-qualified plan may be subject to required minimum distribution each year beginning at age 70½)?

35. Are the disclosures that a RILA issuer (along with other issuers that use Form N-4) would be required to provide in response to the proposed "Conflicts of Interest" line items appropriate, in light of the goals of the proposed KIT? Would these disclosures adequately apprise investors of the potential conflicts that arise when their investment professional is compensated for recommending an investment into a new, or an exchange from, an existing RILA contract or variable annuity contract? Should we revise these proposed disclosure requirements, and if so, how?

36. Do the instructions associated with each of the proposed line items clearly explain what an issuer would be required to disclose? In keeping with the structured format of a tabular presentation, we sought to promote concise disclosure by largely directing issuers to state, rather than to explain, certain information in response to the required line items. Should the instructions prescribe specific language or should issuers have flexibility in drafting their responses? Are there any particular instructions that we should include or modify in any way, for clarity or for any other reason?

37. Should we require particular terms in the KIT (e.g., those that are defined in a related glossary or list of definitions that the insurance company chooses to include) to be formatted in a way that will emphasize them, or indicate that they are defined elsewhere in the prospectus, for example by using bold and/or italic font?

38. Should we apply the structural changes we are proposing to the KIT in other variable insurance contract registration forms, that is, Forms N-3 and N-6? The principles we outlined above regarding the potential efficacy of these changes could be just as applicable in the context of those forms as in the context of Form N-4. For example, should we apply the proposed requirements for Forms N-3 and N-6 issuers to present all disclosures in the KIT in a Q&A format and to begin each response with a "yes" or "no" in bold text when answering a question presented in a given row of the KIT, unless the context otherwise requires? Similarly, should we require in those forms that issuers include in their required legends on contract exchanges that investors consider any fees or penalties to terminate the existing contract before exchanging their contracts?

3. Principal Disclosure Regarding RILAs (Items 2, 6, and 17)

We are proposing amendments to Form N-4 to provide investors with the principal disclosures regarding RILAs and the index-linked options available under the contract in three items of the form. First, investors would receive a concise description of the basic information about any index-linked option available under the contract as well as any contract adjustments in Item 2 (Overview of the Contract), which, as discussed above, would appear before the KIT.¹¹⁵ Second, investors would be provided with detailed information about the index-linked options available under the contract in Item 6 (Description of the Insurance Company, Registered Separate Account, and Investment Options). Lastly, investors would be provided with a summary information table, with legends highlighting risks, that outlines the available index-linked options in Item 17 (Investment Options Available Under the Contract). These amendments build on the existing disclosure requirements in each item to help ensure that investors have key information about the annuity contract and available investment options, regardless of whether the contract is a variable annuity, a RILA, or combination contract offering both variable and index-linked options.

(a) Overview of the Contract (Item 2)

We are proposing to amend Item 2 (Overview of the Contract) to include information about RILAs generally and require the insurance company to provide an overview of certain key elements of any index-linked options offered under the contract and to highlight any contract adjustments. This item is designed to describe certain basic and introductory information about the contract and its benefits.¹¹⁶ It currently requires a concise description of the contract. This description must include information about (1) the contract's purpose (e.g., to help the investor accumulate assets through an investment portfolio), (2) the phases of the contract (the accumulation (savings) and annuity (income) phases) including a discussion of the investment options available under the contract, and (3) the primary features of the contract (such as death benefits).

¹¹⁵ Because we propose to require the KIT to appear before the Overview of the Contract, current Item 3 (Overview of the Contract) would be renumbered as Item 2.

¹¹⁶ See VASP Adopting Release at text accompanying n.207.

We would require insurance companies to provide this existing disclosure when registering RILA offerings, adjusted to account for the specifics of RILAs, because it is equally relevant for these types of annuity contracts. In particular, in addition to the general information about the contract already required by Form N-4, the following information would be required with respect to any index-linked option offered under the contract:

- A statement that the insurance company will credit positive or negative interest at the end of a crediting period to amounts allocated to an index-linked option based, in part, on the performance of the index;
- A statement that an investor could lose a significant amount of money if the index declines in value and prominent disclosure of the maximum amount of loss (as a percentage) an investor could experience from negative index performance, after taking into account the minimum guaranteed limit on index loss provided under the contract; and
- An explanation that the insurance company limits the negative or positive index returns used in calculating interest credited to an index-linked option at the end of its crediting period, accompanied by a brief description of the manner in which such returns may be limited, along with an example and disclosure of the minimum limit on index losses guaranteed for the life of the contract for any index-linked option.¹¹⁷

We also are proposing to require the insurance company to state, if applicable, that an investor could lose a significant amount of money due to the contract adjustment if amounts are removed from an index-linked option or from the contract prior to the end of a specified period.¹¹⁸ The issuer would also provide a brief description of the transactions subject to a contract adjustment. We would require a prominent statement, as a percentage, of the maximum amount of loss an investor could experience from a negative contract adjustment and that this loss could be greater due to surrender charges and tax consequences.

These disclosures, together, are designed to highlight upfront some of the key elements of a RILA. The required disclosure about any index-linked option offered under the contract would highlight for investors the key

¹¹⁷ See proposed Item 2(b)(2)(i) through (iv) of Form N-4.

¹¹⁸ See proposed Item 2(d) of Form N-4.

features of these investment options in general: that returns are based in part on an index, that investors could still lose a significant amount of money under the contract, and that there are limits on both positive and negative index performance. The required disclosure on contract adjustments would highlight a separate but important consideration for an investor considering investing in a RILA: that in addition to any losses from poor index performance, the investor also can lose a significant amount of money if the investor takes money out of an index-linked option or the contract early. These disclosures collectively also would provide context for the KIT, which immediately follows this item under the proposal, as well as context for more detailed disclosures that would appear elsewhere in the prospectus.

In addition to these items that are specific to RILAs, we also are proposing to expand the current requirements for disclosures regarding optional benefits in Form N-4. Currently, when summarizing a contract's primary features, the form requires a discussion of any optional benefits.¹¹⁹ A benefit under the contract, such as a non-optional guaranteed living benefit, might be characterized as a standard (*i.e.*, not optional) benefit but nonetheless be a key feature of the contract that should be highlighted for investors in the overview section of the prospectus. We are therefore proposing to require that the discussion of benefits cover all of the primary contract benefits, not just optional benefits.¹²⁰ This requirement would apply to all contracts registered on the form.

We request comment on the proposed summary disclosures contained in Item 2.

39. Is the proposed information on index-linked options and contract adjustments appropriate? Is there other or different information we should require? For example, we are proposing to require RILA issuers to include examples of how limits on gains and downside protection operate but do not mandate a form of presentation. Should we require these examples be provided in a graphical presentation, or require only a narrative example? Should we require the examples be converted into a dollar amount? Would investors understand the examples more readily if we did this? As another example, should we require RILA issuers to briefly summarize the index crediting

methodologies available under the contract?

40. Should we require the proposed disclosures for index-linked options and contract adjustments in Item 2, including the existing disclosure to be provided in the context of a RILA? Is this information necessary for investors to understand the other disclosures in the prospectus?

41. Should we, as proposed, broaden the current discussion of the primary contract features to include a discussion of contract benefits generally, not just optional benefits (the current focus of the disclosure requirement)?

(b) Description of Insurance Company, Registered Separate Account, and Investment Options (Item 6)

We propose to amend Item 6 of Form N-4 to modify certain existing disclosure requirements and to expand the item to include new disclosures for RILAs. Proposed Item 6(d), discussed further below, would set forth most of the substantive new disclosure requirements for contracts that include index-linked options. We would also include new disclosures for any fixed options provided as part of the contract. The information that would be required by the proposed amendments is designed to convey key aspects of each index-linked option offered under the contract to investors.

As an initial matter, the proposed amendments to Item 6 would largely retain the existing requirement to provide a concise discussion about the insurance company, registered separate account, and variable options, subject to certain modifications in nomenclature to implement definitional changes and minor restructuring to accommodate the addition of RILAs to the form.¹²¹ Specifically, these changes would incorporate the proposed changes to certain defined terms and revise existing disclosures to clarify the entities that should be associated with certain disclosures (*e.g.*, because the insurance company would be obligated to pay all amounts promised to investors under the contracts subject to its financial strength and claims-paying ability, we would require disclosure about this topic to be framed in terms of the insurance company, not the registered separate account, as the requirement is currently worded).¹²²

¹²¹ See proposed Item 6(a) through (c) of Form N-4.

¹²² We also propose to add an instruction requiring the insurance company to indicate whether it is relying upon the exemption provided by 17 CFR 240.12h-7 ("rule 12h-7"), consistent with the requirements of that rule. See proposed Instruction to Item 6(a) of Form N-4; see also rule

We are proposing to require one new disclosure item for contracts that offer variable options, which would be similar to a proposed disclosure for index-linked options, discussed below. Specifically, the prospectus for such contracts would be required to include a statement indicating that "contract value allocated to a Variable Option will vary based on the investment experience of the corresponding Portfolio Company in which the Variable Option invests," and "there is a risk of loss of the entire amount invested."¹²³ The risk of loss inherent in a variable annuity is currently disclosed in the form's "Key Information Table," and we are proposing to mandate this disclosure in Item 6 as well to warn that an investor can lose the entire amount invested in a variable option. In addition to informing investors about investment risks in a variable option generally, where an annuity contract offers both variable and index-linked options, this disclosure also would help to explain the different nature of the investment risks posed by each kind of investment option. In that case the prospectus would disclose the maximum loss associated with the index-linked options while also disclosing that, for the variable options, the investor could lose the entire amount invested.

Description of Index-Linked Options

We are proposing to require the insurance company to disclose information about the key features of the index-linked options currently offered under the contract.¹²⁴ These proposed disclosures are designed to complement other proposed disclosures in the prospectus about index-linked options generally by providing investors specific information about each index-linked option's features and risks, akin to the information that is currently available to investors about variable options in the prospectuses for the mutual funds underlying those options. Specifically, the insurance company would be required to describe the index-linked options currently offered under the contract as well as information about how interest is calculated and credited for each index-linked option, specifically: (1) limits on index losses; (2) limits on index gains; (3) crediting period; (4) crediting methodology and

12h-7(f) (requiring issuers of securities subject to insurance regulation that rely on the exemption from the duty to file section 13(a) reports with respect to securities registered under the Securities Act to provide a statement indicating that fact in the relevant prospectus).

¹²³ See proposed Item 6(c)(1) of Form N-4.

¹²⁴ See proposed Item 6(d) of Form N-4.

¹¹⁹ See current Item 3(c) of Form N-4.

¹²⁰ See proposed Item 2(c) of Form N-4; see also *supra* footnote 107 and accompanying text.

examples; (5) relevant indexes; (6) maturity; and (7) other material features of the index-linked option. These disclosures are intended in part to address points that investors found to be confusing in investor testing.¹²⁵ Further, some investors in the qualitative interviews indicated that they would prefer more information about these points relative to the KIT disclosures.¹²⁶

Description of the Index-Linked Options Currently Offered

Under the proposed amendments, RILA issuers would be required to describe the index-linked options currently offered under the contract, including statements indicating that the insurance company will credit positive or negative interest at the end of a crediting period to amounts allocated to an index-linked option based, in part, on the performance of the index.¹²⁷ To dispel potential investor confusion relating to the reference to an index, we are proposing to require RILA issuers to state that an investment in an index-linked option is not an investment in the index or in any index fund.

Other cautionary statements regarding the index-linked options offered would include that the potential for investment loss could be significantly greater than the potential for investment gain, and that an investor could lose a significant amount of money if the index declines in value. To illustrate the potential scope of such a loss, RILA issuers would have to prominently state (as a percentage) the maximum amount of loss an investor could experience from negative index performance over a crediting period, after taking into account the minimum guaranteed limit on index loss provided under the contract. Because index-linked options are often marketed as a way to limit investment losses, this disclosure is designed to convey to investors that they could still lose a significant amount on an index-linked option, despite having a floor or buffer.

To emphasize the substantial risks associated with an early withdrawal from an index-linked option, RILA issuers would be required to state that an investor could lose a significant amount of money due to the contract adjustment if amounts are removed from an index-linked option prior to the end of its crediting period. To further underscore the risk, RILA issuers would also prominently state (as a percentage)

the maximum amount of loss an investor could experience from a negative contract adjustment, and that this loss could be greater due to surrender charges and tax consequences.

To inform investors of the possibility that their investment options could be unilaterally changed without action on their part, the insurance company would be required to state, if applicable, that it can add or remove index-linked options and change the features of an index-linked options from one crediting period to the next, including the index and current limits on gains and limits on index losses, subject to contractual minimum guarantees.

Similar to the current requirement for prospectuses for contracts that offer variable options, the insurance company would be required to state that certain information regarding the features of each currently offered index-linked option is available in an appendix to the prospectus,¹²⁸ and to provide a cross-reference to that appendix. An instruction would permit this statement to be modified if needed to conform to the corresponding table in the appendix.¹²⁹ As described further below, the appendix would also be amended to include a table listing the index-linked options currently available under the contract.¹³⁰

How Interest Is Calculated and Credited

To aid investors in making informed investment decisions, we propose to require RILA issuers to describe how interest is calculated and credited for each index-linked option.¹³¹ As part of this description, the insurance company would be required to disclose any limits on index losses and/or index gains, the crediting periods available under the contract (e.g., 1, 3, and 6 years), a description of an index-linked option's index crediting methodology, information about each index, what happens when an index-linked option matures, and any other material features associated with index-linked options. We discuss each of these requirements in turn.

How Interest Is Calculated and Credited—Limits on Index Losses and Gains

We are proposing to require the insurance company to describe, as a primary element of a RILA contract, the

limits on index losses and gains for each index-linked option.¹³² In each case, and as applicable, the insurance company would be required to state that such limits apply and describe how index losses and gains would be limited (for example, through the use of a floor or buffer to limit losses, or a cap or participation rate to limit gains). We also are proposing to require the insurance company to provide examples to help investors understand how these limits work in practice. To illustrate the limits on index losses, the prospectus would include an example showing how the limit on index losses could operate to limit a negative return (e.g., if the index return is -25% and the buffer is -10% , the insurance company will credit -15% (the amount that exceeds the buffer) at the end of the term, meaning the investor's contract value will decrease by 15%). The prospectus similarly would include an example of how the limit on gains could operate to limit a positive return (e.g., if the index return is 12% and the cap rate is 4% , the insurance company will credit 4% in interest at the end of the term, meaning the investor's contract value will increase by 4%).

We also propose to require the insurance company to disclose, for each index-linked option, current limits on index losses and gains, as well as the minimum limits on losses and gains that are guaranteed for the life of the contract.¹³³ The guaranteed minimum limits tend to be lower than those currently provided for in the contract but will not change for the life of the contract, whereas the actual limits for an index-linked option will vary from crediting period to crediting period. However, at no point will these limits be lower than the guaranteed minimums. Both pieces of information are important to understanding the potential returns of an index-linked option because one of the central economic tradeoffs a RILA presents is an investor's consideration of whether to sacrifice potential gains in exchange for protection against potential losses. An investor therefore will not only need to consider the guaranteed limits, but also understand that the actual limits can vary over the life of the contract.¹³⁴

¹³² See proposed Item 6(d)(2)(i) and (ii) of Form N-4.

¹³³ Proposed Items 6(d)(2)(i)(B) and 6(d)(2)(ii)(B) of Form N-4.

¹³⁴ This information about minimum guaranteed index gain limits is also set forth in the appendix, which is part of the summary prospectus. See proposed Instruction 7 to Item 17(b); proposed rule 498A(b)(5)(ix). We are also proposing to require RILAs to publish online limits on gains. See *infra* section II.B.3.c. Although changes to an index-

¹²⁵ See OIAD Study at Section 7, Conclusions, Summary of Findings and Discussion.

¹²⁶ See OIAD Study at Section 5, Qualitative Testing, Summary of Qualitative Testing.

¹²⁷ See proposed Item 6(d)(1) of Form N-4.

¹²⁸ See proposed Item 17 of Form N-4.

¹²⁹ See *infra* footnote 164 and accompanying text.

¹³⁰ See *infra* at section II.B.3(b) (describing proposed amendments to Item 17 (Portfolio Companies Available Under the Contract) to include parallel provisions for RILAs).

¹³¹ See proposed Item 6(d)(2) of Form N-4.

We also propose to require the insurance company to state that current limits on gains and limits on index losses will not change during the index-linked option's crediting period. This would help investors understand that although the current limits on gains and limits on losses—unlike the minimum guaranteed limits—can change from crediting period to crediting period, they will not change during any given crediting period.

Because an insurer can generally set rates at its discretion and may take into account a number of factors in setting those rates, we are proposing that the insurance company explain how it selects rates for limiting index losses and gains to help investors understand how the features of a particular index-linked option will impact that option's risk/return profile. In particular, we are proposing to require the insurance company to describe the factors it considers in determining the current limits on losses and gains for an index-linked option (e.g., long-term interest rates, market volatility, the cost of option contracts supporting the index-linked option guarantees, etc.),¹³⁵ and how that choice may impact other features of the option set by the insurance company.

Giving investors information about the factors the insurer considers in determining current limits—which are key features of an index-linked option—may help manage their expectations regarding how the product operates. If an investor sees that last year's cap on an index-linked option was 22% and this year the cap is 17%, the proposed disclosure may help them understand why the insurer's rates have changed.¹³⁶ If an insurer discloses that it takes various specified factors into consideration, but ultimately sets rates at its own discretion, the investor should know that as well.

The proposed disclosure about how the current limits on index gains or losses may impact other aspects of the

linked option, including current limits on gains, are material, we recognize that these limits in particular can change from time to time. Therefore, insurance companies may update current limits on gains using a prospectus supplement filed pursuant to rule 497 under the Securities Act. *See infra* section II.E.2.

¹³⁵ Similar disclosure has been required in other contexts. *See, e.g.*, Item 9(a) of Form N-4 (requiring disclosure of material factors that determine the level of annuity benefits); *see also* Instruction 2 to Item 7(a) of Form N-6 (requiring the identification of factors that determine the applicable cost of insurance rate).

¹³⁶ For example, an insurer might disclose that caps and participation rates may vary depending on factors such as market volatility, hedging strategies and investment performance, the investor's index effective date, or interest rates, among others.

index-linked option is designed to explain the inverse relationship between various features of the index-linked option. For example, the insurance company could include an explanation regarding how the limit on index losses for an index-linked option could impact the current limit on index gains. This could help an investor understand, for example, that if the insurance company determines to increase the extent to which the index-linked option will protect against loss, the insurance company may then reduce the amount of upside index participation the investor could receive. The prospectus would also require an explanation of the factors an investor should consider regarding limits on index losses or gains before selecting an index-linked option for investment. This disclosure should assist an investor in choosing among the index-linked options available under the contract, such as by explaining the difference between a floor and a buffer, or by highlighting index-linked options with features that assume more risk in return for higher potential return, or vice versa.

How Interest Is Calculated and Credited—Crediting Period

We are proposing to require the insurance company to generally describe the crediting periods of the index-linked options available under the contract (e.g., 1, 3, and 6 years), along with the factors an investor should consider regarding different crediting period lengths before selecting an index-linked option.¹³⁷ An example of one such factor an insurance company could include as part of this disclosure would be that crediting periods introduce timing risk that forces investors to take losses at the end of a crediting period, and shorter crediting periods might increase this risk.¹³⁸ The insurance company also would be required to prominently state that amounts must remain in an index-linked option until the end of its crediting period to be credited with all or partial interest, as applicable, and to avoid a possible contract adjustment in addition to potential surrender charges and tax consequences. This discussion

¹³⁷ *See* proposed Item 6(d)(2)(iii) of Form N-4.

¹³⁸ *See* OIAD Report at Section 2, RILAs: Structure of Contracts and Investment Options, Investment Terms (“The role of [crediting periods] also creates a situation that may be unique for RILA purchasers relative to other investments they hold. In particular, RILA investors periodically realize gains or losses at the end of each [crediting period]. In contrast, a mutual fund investor (for example) could wait to sell the fund during down markets, avoiding realizing those losses. Thus, the [crediting period] feature adds a ‘timing risk’ for RILA investors relative to certain other investments.”).

would also include a description of the transactions subject to a contract adjustment (e.g., living benefits), with appropriate cross-references to related disclosures in the prospectus. These disclosures collectively are designed to help an investor make an informed investment decision when selecting an index-linked option, taking into account that withdrawing money before the end of the applicable crediting period can have adverse consequences.

How Interest Is Calculated and Credited—Methodology and Examples

Each index-linked option has an “index crediting methodology” that explains how interest is calculated and credited to the contract. For example, one index crediting methodology is “point-to-point,” that is, the amount credited to the contract is based upon a comparison of the index's performance at two points in time (such as at the beginning and end of the crediting period). We propose to require insurance companies to explain the index crediting methodologies used in the index-linked options available under the RILA contract, along with numerical examples about how these methodologies work. We further propose to require insurance companies to provide a bar chart that illustrates the annual total return of each index along with hypothetical examples of index return after applying standardized limitations on index gains and losses.

Specifically, insurance companies would be required to describe, for each index crediting methodology,¹³⁹ how interest is calculated and credited at the end of a crediting period based on the interest crediting formula or performance measure.¹⁴⁰ Form N-4, as we propose to amend it, would provide examples of common crediting methods that the insurance company would describe if applicable, such as point-to-point, step-up calculations, and enhanced performance.¹⁴¹ To help

¹³⁹ We understand that many index-linked options use the same crediting methodology. If all index-linked options offered by a RILA contract use the same crediting methodology, the prospectus would only include one example of that crediting methodology. If, however, the index-linked options in a RILA contract offer more than one crediting method, or if different index-linked options in a RILA contract offer different crediting methods, this would affect the number of examples to be provided. The number of examples to be provided depends on the number of crediting methodologies, not the number of index-linked options.

¹⁴⁰ *See* proposed Item 6(d)(2)(iv)(A) of Form N-4.

¹⁴¹ As noted above, a point-to-point crediting methodology compares the index's performance at two points in time (such as at the beginning and end of the crediting period). Step-up calculations guarantee a given rate if the index's returns are

investors understand how these crediting methods work, we also are proposing to require the insurance company to include a numeric example to illustrate the mechanics of each index crediting methodology.¹⁴² The examples would be required to show, in a clear, concise, and understandable manner, how each crediting method functions when the index has positive returns as well as negative returns to help investors understand how the crediting method functions in both circumstances.

Specifically, we would require numeric examples that reflect a positive return above the limit on index gains, and a negative return below the limit on index losses for each methodology. The examples also would be required to assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and sales of the contract, and to reflect any charges subtracted from interest credited to or deducted from contract value in the index-linked option to allow investors to understand the impact of these charges on their return. Additional examples, charts, graphs, or other presentations would be permitted if they are clear, concise, understandable. Any additional presentations that assume hypothetical returns and limits also should assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and sales of the contract. We would also require insurance companies to include a legend, in the format specified in the form, that (1) these examples illustrate how the insurance company calculates and credits interest under each index crediting methodology assuming hypothetical index returns and hypothetical limits on index gains and losses and (2) the examples assume no withdrawals.

We also are proposing to require a bar chart for each index available under the currently-offered index-linked options showing the index's annual return for the last 10 calendar years (or for the life of the index, if less than 10 years), with the corresponding numerical performance adjacent to each bar.¹⁴³ Further, insurance companies would be required to provide a hypothetical example alongside each index return that reflects the return after applying a 5% cap and a -10% buffer. If there are

no caps or buffers offered under the contract (if, for example, the contract includes a floor rather than a buffer), insurance companies would be permitted to reflect a rate or measure used to limit index gains or losses under the contract that is comparable. Insurance companies would not be permitted to include additional performance presentations, or historical index performance that precedes the inception of the index. Further, insurance companies would be required to provide two footnotes to this table, if applicable, that disclose (1) that the index return does not reflect dividends paid on the assets in the index, and (2) that the index provider deducts fees and costs when calculating index return.

These bar charts would also be accompanied by the following legend in the format specified in the form:

The bar chart shown below provides the Index's annual returns for the last 10 calendar years (or for the life of the Index if less than 10 years), as well as the Index returns after applying a hypothetical 5% cap and a hypothetical -10% buffer. The chart illustrates the variability of the returns from year to year and shows how hypothetical limits on Index gains and losses may affect these returns. Past performance is not necessarily an indication of future performance.

The performance below is NOT the performance of *any* Index-Linked Option. Your performance under the Contract will differ, perhaps significantly. The performance below may reflect a different return calculation, time period, and limit on Index gains and losses than the Index-Linked Options, and does not reflect Contract fees and charges, including surrender charges and the Contract Adjustment, which reduce performance.

This information is intended to provide context for the index-linked options that the RILA contract offers and would better inform an investor when deciding whether to invest in a RILA. For example, if an index-linked option provides that the investor will experience at least 5% of the upside performance of an index, investors may view the tradeoffs of this investment differently if the index historically has returned, for example, 10% per year (thus capping gains at 5% during those past periods) or 1% per year. Similarly, if an index-linked option offers a -10% buffer, the investor could compare that against the index performance in the bar chart and assess the extent to which the buffer would have provided downside protection against market losses in negative return years.

We appreciate, however, that historical index presentation alone, without the addition of hypothetical caps and buffers, may mislead investors

into thinking that these historical rates of index performance are what investors would have received under the contract if they invested in a particular index-linked option. As we discuss in more detail below, we are concerned that presenting historical RILA performance without additional context can be potentially misleading given that investors cannot access the same RILA terms as were available historically. Relatedly, we are concerned that statements in RILA advertisements are being made without sufficient context so that investors can understand the qualifications to those statements.¹⁴⁴ As an example of how historical index performance could confuse investors, consider an investor who has selected an index-linked option with performance based on the performance of XYZ Index and a one-year crediting period, and this investor has allocated contract value to that index-linked option over 10 consecutive crediting periods. This investor's RILA contract value after 10 years likely will differ from the XYZ Index's 10-year performance. Reasons for this likely difference include, for example, that the index-linked option only provides a portion of the performance of the index because of a cap rate, buffer, or floor.

Accordingly, we are proposing to require insurance companies to provide historical index information to investors, but with important qualifications so that investors will not confuse this index information for the historical performance of the RILA itself. In particular, the overlay of hypothetical caps and buffers is designed to help investors understand better how those limits can cause RILA performance to differ from that of the index. Further, the legends we are proposing also are designed to put investors on notice that the presented performance is not the RILA's performance.

The proposed bar chart, including the proposed 10-calendar-year period, is modeled on the risk/return bar chart in Item 4(b)(2) of Form N-1A. Form N-4 also currently requires variable annuity issuers to show 10-years of performance in the portfolio company appendix. We preliminarily believe that 10 calendar years is an appropriate time to illustrate the performance of the index over the long term to help guide investors. We are proposing to require a 5% cap rate and -10% buffer rate to help investors understand how caps and buffers affect the index return, but without using values that are so high or so low that they will bear no resemblance to the

positive, regardless of the index's actual performance, subject to certain conditions. "Enhanced performance" increases a positive index return, such as by offering a participation rate of more than 100%.

¹⁴² See proposed Item 6(d)(2)(iv)(C) of Form N-4.

¹⁴³ See proposed Item 6(d)(2)(iv)(B) of Form N-4.

¹⁴⁴ See also *infra* section II.F.

level of gains and losses that is being offered. The illustrative rates are designed to achieve this effect because they are higher than typical guaranteed levels of caps and floors, but lower than typical currently offered levels.

How Interest Is Calculated and Credited—Indexes

The index underlying an index-linked option is a central feature of the investment, as the investor's return will be based on the index's performance, subject to applicable limits on gains and losses. We therefore are proposing to require the insurance company to provide for each index a brief description of the types of investments that compose the index and where the investor can find more information about the index.¹⁴⁵ Where there is more than one version of an index (for example a total return version and a price return version), the disclosure would clearly state which version of the index relates to the index-linked option. If the index is an exchange-traded fund ("ETF"), the disclosure would have to clarify whether the index's performance for purposes of determining the amounts credited in the index-linked option is based on the ETF's net asset or closing value and, if the performance is based on the ETF's share price, the impact of using the share price as opposed to total return. These disclosures collectively are designed to help ensure that investors understand the applicable indexes. The disclosure would also state, if applicable, that the index does not reflect dividends paid on its underlying securities, or that the index deducts fees and costs when calculating index performance, which will reduce index performance. This is important disclosure because an index that does not reflect dividends paid on underlying securities, or that deducts fees and costs, will have a lower return, all else equal, than an index that includes dividends and does not deduct fees and costs.

We also propose to require the insurance company to state that it reserves the right to substitute an index prior to the end of the crediting period.¹⁴⁶ This would put investors on notice that the index associated with a particular index-linked option—which is a key driver of the investor's return—could change in the middle of a crediting period. The insurance

company also would be required to disclose all circumstances that could necessitate a substitution, how the insurance company would choose a replacement index, when and how investors would be notified of this change, how index return will be calculated at the end of the crediting period, and what would happen if a suitable replacement index were not found, including whether the index-linked option will be discontinued prior to the end of the crediting period. This information would allow an investor to better understand the likelihood of the insurance company making a substitution and its potential effects.

How Interest Is Calculated and Credited—Maturity and Other Material Features

To help investors anticipate what may happen at the end of an index-linked option's crediting period, the insurance company also would be required to state whether an investor would receive advanced notice of a maturing index-linked option, how an investor might provide instructions regarding the reallocation of the contract value rate at the end of the crediting period, and any automatic default allocation in the absence of such instructions.¹⁴⁷ In describing these matters, the prospectus must also explain how investors will be informed of the index-linked option available for allocation at the end of a crediting period, including any changes to the currently-offered index-linked options and the discontinuance or addition of index-linked options.

Finally, we propose to require the insurance company to describe any other material aspects of the index-linked option to ensure that any other item not discussed above that could affect an investment decision is disclosed.¹⁴⁸ This would include disclosure related to limitations on transfers to or from index-linked options, rate holds, "bail-out" provisions, start dates, and holding accounts.¹⁴⁹ We would also require a

brief description of how charges may impact the index-linked option's value if applicable as part of this discussion.

Fixed Options

In addition to variable options and index-linked options, annuity contracts commonly include fixed investment options, such as traditional, unregistered fixed options and unregistered index options.¹⁵⁰ In the variable annuity context, a fixed option provides an alternative for investors who wish to avoid the market risk of investing in a variable option. A fixed option can also serve as the holding account for amounts that are pending allocation to a particular investment option. In addition, a fixed option may be the default allocation vehicle at the end of an index-linked option's crediting period.

Form N-4 generally requires registrants to describe the fundamental features and risks of an annuity contract, including those, like fixed options, that are distinct from the variable options offered through the registered separate account.¹⁵¹ The form also currently requires specific disclosure about fixed options in the KIT and the Contract Overview.¹⁵² Because we are proposing to include disclosures relating to index-linked options in Item 6, we are also proposing to require disclosures on this other type of investment option available to annuity contract investors so that they have a complete understanding of what they may invest in through that contract, either actively, or by default. This approach is designed to increase investor comprehension by ensuring that substantive information about all of the available investment options is presented in the same location in the prospectus.

The proposed disclosures for fixed options would be similar to those provided for index-linked options, tailored for the specifics of a fixed option. Specifically, registrants would be required to describe the fixed options currently offered under the contract and state that information regarding the features of each currently-offered fixed option, including its name, term, and

are held until the next index-linked option start date. This is used for index-linked options that start on a particular day each month (e.g., the 15th of the month).

¹⁵⁰ See proposed Item 6(e) of Form N-4. Interests in fixed account options are exempt securities under Section 3(a)(8) of the Securities Act.

¹⁵¹ General Instruction C.1.(a) of Form N-4 (stating that "[a] Registrant's prospectus should clearly disclose the fundamental features and risks of the [Contracts], using concise, straightforward, and easy to understand language.").

¹⁵² Items 2 and 3 of Form N-4.

¹⁴⁵ See proposed Item 6(d)(2)(v)(A) of Form N-4.

¹⁴⁶ See proposed Item 6(d)(2)(v)(B) of Form N-4. Insurers generally reserve the right to change the index in the middle of the crediting period if the index is discontinued or there is a substantial change in the calculation of the index. Based on staff experience, such changes are exceedingly rare.

¹⁴⁷ See proposed Item 6(d)(2)(vi) of Form N-4.

¹⁴⁸ See proposed Item 6(d)(2)(vii) of Form N-4.

¹⁴⁹ A "rate hold" locks in interest at the current cap (or other rate limiting index gains) for the period between which the insurance company receives the investor's annuity application and the time the investor's premium payment is allocated to the index-linked option. A bail-out provision is a contract provision that provides if a current cap (or other rate limiting index gains) is set below a specified value, the investor may withdraw value from that index-linked option or RILA without a contract adjustment (and in some cases without a surrender charge) during a specified period after the start of the crediting period. A holding account is typically a conservative investment option (typically a money market fund or a fixed option) where amounts allocated to the index-linked option

minimum guaranteed interest rate is available in an appendix with cross-references.¹⁵³ Further, registrants would be required to describe how interest is calculated and when it is credited for each fixed option as well as the length of the term and minimum guaranteed interest rate (stated as a numeric rate, rather than referring to any minimums permitted under State law). As with index-linked options, the registrant also would be required to state whether an investor would receive advance notice of a maturing fixed option, including what steps an investor might take to provide instructions regarding the reallocation of contract value at the end of the term, and any automatic default allocation in the absence of such instructions. In describing these matters, the registrant must also explain how investors will be informed of the fixed options available for allocation at the end of a term, including any changes to the currently offered fixed options and the discontinuance or addition of fixed options. Also as with index-linked options, we would require disclosure of any other material aspect of the fixed options, including limitations on transfers to or from the fixed options, rate holds, start dates and holding accounts.

Request for Comment

We request comment generally on the proposed amendments to Item 6 of Form N-4, and specifically on the following issues:

42. Should we require each of the specific disclosures (*e.g.*, disclosures relating to limits on index losses and gains, crediting period, *etc.*) relating to the RILAs and index-linked options as proposed? Would all of these proposed amendments provide information that would be important to investors? Should we modify or expand any of these proposed disclosure requirements?

43. Should we make any other changes to the required prospectus disclosures addressing index-linked options? For example, we are proposing to require numeric examples, charts, graphs, or other presentations, as appropriate, to illustrate the mechanics of each type of index crediting methodology.¹⁵⁴ Would the proposed requirement be likely to provide useful information for investors? If not, why not? Would the inclusion of such examples, charts, and graphs be likely to confuse investors about how index-

linked options work? Is there a concern that insurance companies would utilize these examples to over-emphasize the benefits of RILAs relative to their risks? If so, how could this be remedied? Should such examples be included in the prospectus in response to Item 6, or would they be better located elsewhere in the prospectus, for example, in Items 3 or 17? Given the potential length of such examples, should they be included in an appendix to the prospectus?

44. Should the current limits on gains and losses be required in the statutory prospectus, as proposed? If not, where should such disclosure be located? Should insurance companies update current limits on gains as they change from time to time by filing a rule 497 prospectus supplement, or should a rule 485 post-effective amendment be required?

45. Should we require the proposed disclosures relating to the risks of investing in variable options?

46. Should we require that the historical performance of indexes be disclosed as proposed? Is the proposed bar chart an effective or appropriate presentation approach, or should we instead require another presentation approach, such as a line graph or the 1-, 5-, and 10 year table required in the Form N-1A? If so, why? Are there any concerns that investors would confuse the inclusion of historical index information with the performance of the index-linked option itself? If so, are our proposed requirements to provide a hypothetical example of a 5% cap and -10% buffer and a legend sufficient to make clear that the performance illustrated by the bar chart does not show or suggest how an investment in the contract will perform for the investor? Are the 5% cap and -10% buffer appropriate limits to use in the hypothetical examples? Instead of prescribing a specific cap and buffer, should we require or permit issuers to include the current and/or guaranteed limits as an overlay to the bar chart, or would this provide too much visual clutter for investors, or be misleading in any way? Is 10 calendar years of index performance the right amount of time to present?

47. Should we require discussion of fixed investment options currently offered under the contract? Are the proposed disclosure items appropriate for these types of investment options?

48. Is there other information we should require insurance companies to disclose to help investors better understand the economic tradeoffs associated with an index-linked option? For example, issuers of structured notes that offer bounded returns similar to

RILAs disclose the issuer's valuation of the note, based on the value of (1) the embedded derivatives; and (2) a fixed-income bond. This disclosure allows investors to understand the difference between the issuer's valuation and the original issue price that they are paying for the structured note. Would a similar disclosure for RILAs, provided with respect to each permutation of an index-linked option, be helpful to investors? Would the difference between a hypothetical \$100,000 investment in an index-linked option and the value, or the cost to assemble, the economic components underlying the index-linked option be informative to investors? Would it appropriately reflect the implied cost the investor is paying when investing in that index-linked option? If we were to require this disclosure, should it be expressed in dollars, as a percentage of a hypothetical \$100,000 investment, or both? Should we require the insurance company to annualize the costs over a stated period of time to express the cost as more akin to an annual expense? Recognizing that RILAs are intended to be long-term investments, what would be an appropriate period of time (*e.g.*, 10, 20, or 30 years)?

49. If we were to require insurance companies to provide the disclosure described in request for comment 48, should we require the insurance company to compare a hypothetical \$100,000 investment in the index-linked option to the value, or cost, of the following components: derivatives that would provide the index-linked option's investment exposure; a fixed-income component; and the standard insurance features offered with the index-linked option?

50. If we were to require insurance companies to provide the disclosure described in request for comment 48, should we require that the insurance company value or price the derivatives using exchange-listed derivatives, such as exchange-traded options, and based on prices on the exchange, except in cases where exchange-listed derivatives could not efficiently provide the index-linked option's investment exposure? Would that approach provide for consistent and reliable pricing? In practice are insurance companies typically constructing and hedging index-linked options' investment exposure using exchange-listed options or other derivatives where feasible?

51. If we were to require insurance companies to provide the disclosure described in request for comment 48, in determining the value of the derivatives underlying an index-linked option, should we require insurance companies

¹⁵³ As discussed below, we are also proposing to require disclosure relating to any fixed options currently offered under the contract in the Item 17 appendix.

¹⁵⁴ Proposed Item 6(d)(2)(iv) of Form N-4.

to use a collection of hypothetical index options with an expiration equal to the crediting period, consistent with our analysis in section III.B.3?¹⁵⁵

52. If we were to require insurance companies to provide the disclosure described in request for comment 48, what calculation would be appropriate for the fixed-income component of an index-linked option? Should we, for example, provide that the insurance company should use the \$100,000 hypothetical investment discounted by the rate of interest the insurance company is crediting, or would credit, on fixed annuities with a term equal to the duration of the crediting periods of the index-linked option? Conversely, should we require the insurance company to use the value of a risk-free zero-coupon bond with a time to maturity equal to the crediting period of the index-linked option, consistent with our analysis in section III.B.3?

53. If we were to require insurance companies to provide the disclosure described in request for comment 48, how should the insurance company value, or determine the cost of purchasing separately, the standard insurance features? Do insurance companies maintain internal pricing information that could be used for this purpose where those features are not offered separately rather than in connection with annuities or other financial products sold by the insurance company? Should the cost or value of insurance be based on amounts insurance companies are required to reserve in connection with those insurance obligations? Should we require additional disclosure related to early withdrawal charges, fees, or penalties? For example, should we require more prominent placement of these features on marketing or other materials, or should we require a comparison of these features to potential benefits of the RILA to clarify for investors possible trade-offs?

54. If we were to require insurance companies to provide the disclosure described in request for comment 48, should we, in addition to requiring the disclosure of this cost figure, also require the insurance company separately to disclose the costs or values associated with each component underlying the index-linked option?

55. If we were to require insurance companies to provide the disclosure described in request for comment 48, where should insurance companies place it in the registration statement? Would this information be most helpful to investors if it were included in the

disclosure required by Item 6, which provides more detailed information on each index-linked option, or in the summary prospectus appendix identifying the RILA's investment options? Alternatively, should it be disclosed the KIT as a range based on the available index-linked options? If this information were in the summary prospectus, would it change frequently and result in a high number of prospectus supplements delivered to investors? If we were to further require the disclosure of the underlying components and pricing assumptions used to determine the cost to investors disclosure, would the SAI be an appropriate place for that disclosure? Should these disclosures be structured using inline XBRL as proposed for other additional disclosures?

(c) Appendix: Investment Options Available Under the Contract (Item 17)

We propose to amend Item 17 to include a discussion of the index-linked options and fixed options available under the contract. This item currently requires a variable annuity issuer to include in an appendix to the prospectus a table that consolidates certain summary information about each portfolio company offered under the contract. The current appendix is designed to provide investors with an overview of variable options available under the contract in a uniform, tabular presentation that promotes comparison, because the investment experience of an investor in a variable annuity will largely depend on the underlying investments available under the contract.¹⁵⁶ Similarly, we anticipate that an overview of the index-linked options available to investors in a RILA, as well as any fixed option currently available under the contract, would help investors understand and compare the various investment options offered under the contract. Consolidating this summary information about the contract's investment options—equivalent to what is currently provided for variable options—into a concise, easy to read tabular presentation should enhance the ability of investors to understand, evaluate, and compare all the investment options available under the contract.

To reflect the expanded scope of the appendix, we would amend the current heading to “Investment Options Available Under the Contract.”¹⁵⁷ We

would provide a new instruction that explains that issuers may modify this new heading as appropriate under the contract. For example, if there are only variable options offered under the contract, an issuer could change the heading to “Portfolio Companies Available Under the Contract,” consistent with the current requirements of the form. Because variable options, fixed options, and index-linked options can vary by benefit offered under the contract, we also propose to move the restrictions table currently required for variable annuities by instruction 1(f) of Item 17 to be a separate requirement for all investment options, with no other changes.¹⁵⁸

Index-Linked Options

To accommodate the inclusion of index-linked options in the appendix, we propose to add a new table titled “Index-Linked Options.”¹⁵⁹ As part of our approach to layered disclosure, the information to be supplied in the table for index-linked options would summarize certain prospectus disclosures required elsewhere in the prospectus.¹⁶⁰

Legends

Similar to the requirements for variable annuities, the table for index-linked options would be prefaced with a legend. Specifically, the legend would state that the table lists index-linked options currently available under the contract. Further, because insurance companies typically change the index-linked options available over time, we would require the legend to specify that the insurance company may change the features of the index-linked options in the table (including the index and the current limits on gains and limits on losses), offer new index-linked options, or terminate existing index-linked options, and that the insurance company will provide the investor with written notice before making any of these changes.

As discussed above, current limits on index gains for index-linked options would be disclosed in the prospectus in response to Item 6, and changes to current limits on index gains would be disclosed in prospectus supplements.¹⁶¹ However, to avoid frequent updates to the summary prospectus, insurance companies would not be required to include current limits on index gains for index-linked options in the appendix as

¹⁵⁶ VASP Adopting Release at n.267 and accompanying text.

¹⁵⁷ “Investment options” are defined as any variable option, index-linked option, or fixed option available under the contract. See *infra* section II.B.7(b).

¹⁵⁸ Proposed Item 17(d) of Form N-4.

¹⁵⁹ See proposed Item 17(b) of Form N-4.

¹⁶⁰ See, e.g., proposed Item 6(d) of Form N-4.

¹⁶¹ See proposed Item 6(d)(2)(i)(B) of Form N-4 and *supra* footnote 134.

¹⁵⁵ See *infra* footnote 429 and accompanying text.

those limits can change frequently.¹⁶² Instead, and in addition to the disclosure in Item 6, to ensure that investors have convenient access to changes in current limits on index gains, which can significantly affect an investor's returns on an index-linked option, the proposed legend would require insurance companies to state that current limits on gains are available at a website address.¹⁶³ This website address must be specific enough to lead investors directly to current rates, rather than to the home page or other section of the website on which the rates are posted. Requiring RILA issuers separately to include information about current limits on gains on their websites would benefit investors by making this information easier to find and understand. Furthermore, because websites may be updated quickly, website disclosure would be efficient for compiling index-linked options' current limits on gains, given our understanding that these rates can change often and that insurance companies currently disclose current rates on their websites.

Lastly, set off from the rest of the legend and with emphasis, we would require a notation that if amounts are withdrawn from an index-linked option before the end of its crediting period, the insurance company may apply a contract adjustment and that this may result in a significant reduction in the investor's contract value that could exceed any protection from the index's loss that would be in place if an investor held the option until the end of the term. We are proposing this notation given the potential impact on an investor's returns if amounts are withdrawn prior to the end of a crediting period.

We propose to require the legend to include appropriate cross-references to the section(s) of the prospectus that describe the features of the index-linked options as well as the contract adjustment. This approach is designed to help investors that are interested in more detail about key aspects of the index-linked options to locate that information quickly.

¹⁶² As discussed below, the proposed appendix would appear in the summary prospectus, but Item 6 would not. See *infra* section II.C; see also *infra* section II.E.1 (discussing proposal to amend rules 485 and 497 for RILAs).

¹⁶³ Consistent with the current instructions to the form, any website address, including this one, that is included in an electronic version of the statutory prospectus would be required to include an active hyperlink or other means of facilitating access that leads directly to the relevant website address. However, this requirement would not apply to an electronic summary prospectus that is filed on EDGAR. See proposed General Instruction C.3.i of Form N-4.

Table

The legend would be followed by a table that lists and highlights key elements of each index-linked option available under the contract. Specifically, the table would require, in sequential columns, the identification of (1) each index by name; (2) type of index; (3) crediting period, indicating the duration of the index-linked option in years; (4) index crediting methodology; (5) limits on index loss if held to the end of the crediting period; and (6) guaranteed minimum limit on index gain.

The description of the type of index would be a brief statement of which type of index it is (e.g., market index, exchange-traded fund, etc.), or a brief statement describing the assets that the index seeks to track (e.g., U.S. large-cap equities). The column indicating the type of index crediting methodology used for each index-linked option would only be required if the RILA utilizes multiple index crediting methodologies under the contract (e.g., point-to-point, step-up, enhanced upside, etc.).¹⁶⁴ The disclosures regarding limits on index loss would require an issuer to state the current percentage used in the insurance company's interest credit methodology to limit the amount of negative index return credited to the index-linked option and to identify in the table whether this limit is a buffer, floor, or some other rate or measure.¹⁶⁵ In the last column, issuers would be required to state the guaranteed minimum percentage that may be used to limit the amount of positive index return credited to the index-linked option and to identify in the table whether this limit is a cap, participation rate, or some other rate or measure.¹⁶⁶

To ensure investors only receive disclosure relevant to them, RILAs would only be permitted to include in the table those index-linked options that are available under the contract. Further, to promote disclosure in a consistent format to facilitate comparisons, issuers would be allowed to add, modify, or exclude table headings only as necessary to describe the material features of an index-linked

¹⁶⁴ If all index-linked options offered by a RILA contract used the same crediting methodology, the table would not include the column. See, e.g., *supra* footnote 139.

¹⁶⁵ In contrast to current limits on index gain, we understand that the current limits on index loss typically do not change frequently.

¹⁶⁶ As discussed above, instead of also requiring a column for current limits on index gains (in addition to the column for guaranteed minimum limit on index gains), the legend would state that information about current limits on index gains is available at a specified website address.

option. Insurance companies would also be required to indicate if any of the index-linked options are restricted (e.g., because of a "hard" or "soft" close), consistent with the current disclosure requirements for variable options. The proposed instructions also would state that if an index provider calculates the index's return in a manner that does not reflect the full investment performance of the assets tracked by the index (e.g., the return does not reflect dividends paid on the assets composing the index, the return reflects a fee or cost, etc.), a footnote to the table must, if applicable, be included stating that the index's return does not reflect the full investment performance of the assets it tracks, which will reduce the index's performance. An investor evaluating index-linked options may be more familiar with a version of a given index that reflects the full performance of the index constituents, and this disclosure would alert investors that the index associated with a particular index-linked option will have relatively lower returns.

Fixed Options

Consistent with our proposed approach to the Item 6 disclosure requirements, we are proposing to require in the appendix summary information about fixed options currently available under the contract. These disclosure requirements would be similar to the legend and table for index-linked options discussed above, adjusted to reflect fixed option details. The fixed option legend, in addition to identifying that what follows is a list of fixed options currently available under the contract, would indicate that the insurance company (1) may change the features of the fixed options identified, offer new ones, and terminate existing ones and (2) will provide the investor written notice before doing so. The fixed option table would include columns identifying (1) the name of the fixed option, (2) the term, and (3) the minimum guaranteed interest rate.¹⁶⁷ Insurance companies would be instructed to include appropriate cross-references in the legend to the sections of the prospectus that describe the features of fixed options. As with index-linked options, insurance companies could add, modify, or exclude table heading only as necessary to describe material features of a fixed option.

¹⁶⁷ Consistent with the approach in Item 6, the minimum guaranteed interest rate would be required to be stated as a numeric rate rather than referring to any minimums permitted under State law.

Request for Comment

We request comment generally on the proposed inclusion of index-linked option summary information in the appendix, and specifically on the following issues:

56. Should we require these new disclosures to be included in the appendix? Are the proposed appendix disclosures for index-linked options appropriate? Would they help investors to compare information among index-linked options and generally understand the index-linked options available? Is this information likely to be relevant and useful to investors? Is there more or different information that we should require? Should any of the information not be included? For example, should we require current limits on gains to be disclosed in the appendix, rather than requiring the appendix to include a website address where information about current limits is available (as well as requiring this information in the statutory prospectus)? Would investors find it useful to have online access to information about current limits on gains? Will investors find current limits on index loss in the summary prospectus useful even if the current limits on index gains are not included?

57. We are proposing to require in the statutory prospectus numeric examples, charts, graphs or other presentations to illustrate the mechanics of each type of index crediting methodology.¹⁶⁸ Should we permit or require some or all of these examples for index-linked options to be included in the appendix? Would the inclusion of these examples add undue length or complexity to the appendix, or overwhelm the disclosure for other investment options? Could these concerns be ameliorated by only permitting or requiring a limited number of examples (e.g., no more than 4), or by placing certain other limitations on the inclusion of such examples? If so, how? If we were to require examples for index-linked options to be included in the appendix, should we also require the examples to be included in the Item 6 disclosures, or should such disclosures only be required in a single location (and if so, which one)?

58. Should we include the proposed disclosure in the appendix relating to fixed options currently available under the contract? Are there any changes we should make to the specific proposed disclosure requirements?

4. Principal Risks of Investing in the Contract (Item 5)

An investment in a contract offering index-linked options exposes investors to unique risks that may be different from those that are common to other investment products, including contracts that solely offer variable options. We propose to amend Item 5 to address certain principal risks that are particularly relevant to investors in RILAs. In addition to restructuring the current item to incorporate the proposed risk disclosure requirements addressing index-linked options, we propose certain structural changes that are designed to clarify existing requirements but are not anticipated to result in substantively different disclosure requirements for contracts offering variable options. These proposed changes also would consolidate certain risk disclosures insurance companies currently provide for variable annuities in other sections of the prospectus. We are proposing to require these disclosures in a single location to more consistently and effectively communicate risks to investors. As the Commission has previously explained, the principal risk disclosure in the prospectus is designed to provide a consolidated presentation of principal risks, which registrants can cross-reference to reduce repetition that might otherwise occur if the same principal risks were repeated in different sections of the prospectus.¹⁶⁹

The principal risk disclosure item of Form N-4 currently consists of a single paragraph requiring a registrant to summarize in the prospectus the principal risks of purchasing a contract, including the following risks: (1) poor investment performance, (2) that contracts are unsuitable as short-term savings vehicles, (3) limitations on access to cash value through withdrawals, and (4) the possibility of adverse tax consequences. We propose to retain these substantive risk disclosure requirements but would restructure the current single paragraph into separate sub-items while also making certain minor changes designed to clarify existing obligations.¹⁷⁰ The proposed sub-items are designed to be non-exclusive examples of the principal risks of investing in the contract being registered. In addition to existing disclosure requirements, these sub-items would also include new risk disclosures specific to index-linked

options, as applicable.¹⁷¹ We are making parallel changes to the risk disclosures most applicable to variable annuities to avoid any implication that risk disclosure should be provided at a different level of detail than the disclosures for RILAs. Most contracts offering variable options that are currently registered on Form N-4 likely would not need to revise their risk disclosure in response to the proposed amendments to the risk disclosure requirements. In our experience, it is common practice for these registrants currently to include the disclosures that the proposal would require in their prospectuses as principal risk disclosure (or elsewhere in their prospectuses).

The proposed approach would retain the current requirement for registrants to explain the principal risks of purchasing a contract, but would also require an explanation of the principal risks of investing in an investment option, including the risks of poor investment performance.¹⁷² Additionally, for index-linked options, a registrant would disclose the maximum potential loss from negative index performance over the crediting period, as a percentage. Although disclosures that address certain risks of index-linked options would be required in other locations in the prospectus, we are proposing that RILA issuers include certain risk factors, such as this one, in the consolidated summary of principal risks associated with the contract.¹⁷³ The maximum potential loss resulting from negative index performance is a salient way to quantify potential returns for particular investment options. For example, absent this disclosure, it may not be apparent to investors that an index-linked option that offers a -10% buffer still has the potential for 90% loss.¹⁷⁴ This statement would help

¹⁷¹ See proposed Item 5(c) of Form N-4.

¹⁷² See proposed Item 5(a) of Form N-4.

¹⁷³ See proposed Item 1(a)(6) (Outside Front Cover Page) ("Prominently disclose as a percentage the maximum amount of loss from negative Index performance that an investor could experience after taking into account the minimum guaranteed limit on Index loss provided under the Contract."); proposed Item 2(b)(ii) (Overview of the Contract) ("Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance, after taking into account the minimum guaranteed limit on Index loss provided under the Contract."); proposed Item 6(d)(1)(ii) (Investment Options) ("Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance, after taking into account the minimum guaranteed limit on Index loss provided under the Contract.").

¹⁷⁴ We recognize that this example may suggest to some investors that an option with a buffer is riskier than one with a floor. In fact, the protection offered by a buffer is more likely to be triggered than the protection offered by a floor. In general, a buffer

¹⁶⁸ Proposed Item 6(d)(2)(iv) (Methodology and Examples) of Form N-4. We are proposing to permit this information to be included in an appendix. See *supra* section II.B.3(a).

¹⁶⁹ See VASP Adopting Release at n. 690 and accompanying text.

¹⁷⁰ See proposed Item 5(a)-(b), (d)-(f) of Form N-4.

investors assess the particular risks associated with RILAs in the context of the other required principal risk disclosures. The potential risk of loss is particularly important for investors to understand because RILAs are often presented to investors as having the benefit of offering a balance between the opportunity for growth and the reduced risk of loss relative to savings alone or more conservative investments.¹⁷⁵

The next proposed sub-item, which concerns the risks of early withdrawal, would retain the current requirement for registrants to disclose that contracts are unsuitable as short-term savings vehicles and to summarize the limitations on access to cash value through withdrawals, including the possibility of adverse tax consequences.¹⁷⁶ We propose to expand this disclosure requirement to specify that a summary of the limitations on access to cash value through withdrawals may also include, if applicable, surrender charges, as well as negative contract adjustments and loss of interest. These are features of RILAs that implicate why they are not short-term saving vehicles. In addition, insurance companies that offer index-linked options would be required to state the maximum potential loss resulting from a negative contract adjustment, as a percentage. Although this last statement would be required to be provided in other locations in the prospectus, we are proposing to include this risk disclosure in the consolidated summary of principal risks because contract adjustments can significantly affect contract value.¹⁷⁷ Also, contract adjustments are a distinctive feature of contracts with index-linked options that we recognize (based on results of

qualitative investors interviews) investors can find difficult to understand. Quantifying maximum potential loss resulting from a negative contract adjustment is intended to illustrate the possible effects of these adjustments. Further, unlike other types of losses, contract adjustments are typically avoidable by investors. As a result, we anticipate that showing the maximum loss possible would help investors evaluate whether to take an action that would result in a contract adjustment. It also would help investors understand the potentially significant risks that they could face in a RILA, regardless of a RILA's bounded return structure. Therefore, this statement would assist investors in assessing unique risks associated with index-linked options in the context of the other required principal risk disclosures.

The next proposed sub-item, which concerns the principal risks associated with index-linked options, would include new risk disclosure requirements tailored to address unique risks associated with these investment options.¹⁷⁸ Under these proposed requirements, a registrant would have to describe the principal risks of investing in any index-linked options offered under the contract (in addition to the risks of potential loss from negative index performance, as discussed above). The proposed sub-item would require the prospectus to include a statement that an investor in an index-linked options is not invested in the index or in the securities tracked by the index. This reflects our concern, based on the results of qualitative investor interviews, that investors may be confused about whether an investment in an index-linked option is a direct investment in the index.

To help ensure that RILA prospectuses address certain key risks, the proposed instructions to this disclosure requirement would specify that discussion of the principal risks related to index-linked options would be required to include the principal risks relating to, as applicable: (1) limiting positive index returns; (2) the possibility of losses despite limits on negative index returns; (3) interest crediting methodologies; (4) the impact of contract fees on the amount of interest credited; and (5) the reallocation of contract value at the end of an index-linked option's crediting period. We are also proposing instructions specifying that this discussion would be required to include, as applicable, principal index

risks relating to: (1) the type of index (e.g., market risk, small-cap risk, foreign securities risk, emerging market risk, etc.); (2) the exclusion of dividends from index return; and (3) market volatility. These instructions would require RILA issuers to specify which risks relate to each index offered under the contract, and to describe the principal risks related to the possible substitution of the index before the end of an index-linked option's term.

An additional proposed new sub-item would require a description of the principal risks associated with any contract benefits (e.g., death benefits, living benefits), including the impact of excess withdrawals, if applicable. These risks include, for example, investment restrictions associated with a living benefit, which may limit investment performance.¹⁷⁹ As an additional example, there are risks that withdrawals may substantially reduce the benefit, that some guaranteed benefits are based on a contingency that may never occur (e.g., the contract value falling to zero), that the rates for contract benefits may change over time, and that certain benefits may be discontinued prior to election. Because these risks could impact the expected performance of the annuity, or in some cases could even terminate the annuity, we are proposing to require issuers to disclose them to in the prospectus.

Another proposed new sub-item would require an explanation of the principal risks associated with the insurance company's ability to meet its guarantees under the contract, including risks relating to its financial strength and claims-paying ability, which as described below may be of particular concern for investors who allocate contract value to index-linked options.¹⁸⁰ We recognize that a summary of certain insurance company risks is currently required to be disclosed in the KIT.¹⁸¹ Moreover, although there is no corresponding disclosure requirement that mandates the inclusion of insurance-company-related risks in the principal risk disclosure in contract prospectuses, most Form N-4 registrants already provide this disclosure. We therefore do not expect that current Form N-4 registrants likely would have to modify their disclosures to comply with the proposed requirement. Nevertheless, we propose to require this disclosure to be included in the consolidated principal risks section of the prospectus for

protects the investor from experiencing smaller, more common losses on an index (as well as a portion of any larger losses), while a floor protects the investor from larger, less-common losses (but does not protect against smaller losses). Insurers that offer both buffers and floors should generally make this distinction clear to investors in their Item 5 risk disclosures, as well as in response to proposed Items 2(b)(2) and 6(d) of Form N-4.

¹⁷⁵ See OIAD Report at Section 4, Review of RILA Marketing.

¹⁷⁶ See proposed Item 5(b) of Form N-4.

¹⁷⁷ See proposed Item 1(a)(7) (Outside Front Cover Page) ("Prominently state as a percentage the maximum potential loss resulting from a negative Contract Adjustment, if applicable."); proposed Instruction 2(a) to Item 3 (Key Information Table) ("Include in this statement the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment. . . ."); proposed Item 4 (Fee Table—Transaction Expenses) ("Contract Adjustment Maximum Potential Loss (as a percentage of Contract value at the start of the Crediting Period or amount withdrawn, as applicable)"); and proposed Instruction 1 to Item 7(e) (Contract Adjustment) ("State the maximum potential loss, as a percentage, that could result from a negative Contract Adjustment.").

¹⁷⁸ See proposed Item 5(c) of Form N-4.

¹⁷⁹ See proposed Item 5(d) of Form N-4.

¹⁸⁰ See proposed Item 5(e) of Form N-4.

¹⁸¹ See current Instruction 3(d) to Item 2 of Form N-4.

completeness, and to help ensure that a prospectus for a contract that offers fixed options and index-linked options discloses the insurance company's claims-paying ability with regard to its contractual guarantees. In contrast to variable options, where amounts invested are held in a separate account insulated from the insurance company's general account and protected from general account creditors, assets invested in an index-linked option are subject to the insurance company's claims-paying ability for most RILAs.

Lastly, we propose a final new sub-item, which would require a description of the principal risks relating to any material reservation of rights under the contract, including if applicable, (1) the right to remove or substitute portfolio companies; (2) add or remove index-linked options and change the features of an index-linked option from one crediting period to the next; (3) stop accepting additional purchase payments; and (4) impose investment restrictions or limitations on transfers.¹⁸² We propose to require this disclosure because the ability to discontinue contract features, alter an investor's ability to participate in an index's upside performance, and otherwise change features is important information for investors when making an investment decision.

We request comment generally on the proposed amendments to Item 5 of Form N-4, and specifically on the following issues:

59. Do the proposed amendments to Item 5 appropriately describe the types of principal risks that are typically associated with investing in a contract that offers variable options and/or index-linked options? Should different or additional principal risks be required to be summarized in the prospectus?

60. Do commenters agree with the proposed approach of amending Item 5 to restructure the current item into separate sub-items? For contracts offering variable options, do commenters agree that the proposed changes would clarify existing requirements, but would not generally result in substantively different principal risk disclosure requirements? Would the proposed changes to Item 5 require contracts offering variable options that are currently registered on Form N-4 to revise their current risk disclosure, or could they continue to use their existing disclosures? Why or why not? To the extent that Form N-4 registrants are currently disclosing risks on topics that the proposed changes address in other parts of the prospectus,

would this current risk disclosure be considered to be "principal" risk disclosure?

61. Although we are proposing to require disclosure of specified index-linked option-related principal risks to be provided in response to the Item 5 disclosure requirements, we also propose to require aspects of these risks to be disclosed in response to certain other prospectus disclosure requirements, facilitating a layered disclosure approach. Is this appropriate? What "layers" of risk disclosure are appropriate for the summary prospectus, statutory prospectus, and SAI?

62. Are the proposed additions to the current principal risk disclosures appropriate? If not, why not? Should we, for example, require a registrant specifically to disclose principal risks associated with index-linked options, contract benefits, the insurance company, and any material reservation of rights under the contract, as proposed? If not, why not? Is an insurer's ability to discontinue contract features, reduce index limits on gains and otherwise change features likely to be inconsistent with an investor's reasonable expectations, as we state above? Should we modify any of the aspects of these proposed principal risk disclosure requirements?

5. Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures (Items 4, 7, and 22)

We are proposing amendments to Form N-4 to require specific disclosures regarding contract adjustments and other implicit RILA-specific costs that can result in a significant erosion of investment principal. The proposed disclosures are designed to provide investors with a better understanding of the mechanics of these costs and the associated potential for loss. Under the proposed approach, these disclosure requirements would be set forth in Items 4, 7, and 22(d) of Form N-4. We are also proposing revisions to the existing provisions of these Items, applicable to all Form N-4 issuers, to clarify certain terminology.

(a) Amendments to Fee Table Disclosure Requirements (Item 4)

We propose amending Item 4 to require specific disclosures regarding contract adjustments and other costs specific to RILAs. Item 4 currently requires variable annuity registrants to provide comprehensive information on the fees and expenses investors will pay when buying, owning, and surrendering or making withdrawals from a contract, as well as expenses paid each year

during the time the investor owns the contract. While RILAs typically do not charge the explicit ongoing fees and expenses common to variable annuities, investors do experience an implicit ongoing fee to the extent the insurer limits, through the use of a cap, participation rate, or some other rate or measure, index gains. Moreover, RILA issuers typically utilize contract adjustments, which can result in a significant charge to investors who make withdrawals from an index-linked option or from the contract before the end of a specified period. Further, investor testing suggested that most participants struggled to fully comprehend the costs to investors of these products.¹⁸³ These costs include contract adjustments because they can negatively affect an investor's contract value or the amounts an investor could withdraw from the contract.¹⁸⁴ Accordingly, we are proposing to include a detailed description of contract adjustments in the prospectus, and that this disclosure be proximate and similar to other disclosures regarding fees and expenses. Thus, we are proposing several amendments to incorporate the concept of contract adjustments as well as implicit ongoing fees and expenses into the current Item 4 disclosure requirements. We propose generally expanding the tabular disclosures that Item 4 requires to address contract adjustment costs that investors will pay when buying, owning, and surrendering or making withdrawals from an investment option, and as noted below, requiring disclosures about the maximum potential loss that an investor could experience in connection with a contract adjustment. We are also proposing to expand the tabular disclosures with respect to annual contract expenses, to alert investors to the implicit ongoing costs associated with limiting positive index returns. In addition, we are proposing certain non-substantive changes to the fee table disclosures and instructions that would be applicable to all issuers.¹⁸⁵

¹⁸³ See OIAD Report at Section 6, Quantitative Testing, Testing Impacts, Table 9 (noting that 16.2 percent of participants understood that a participation rate reduces potential gains from the market and 52.1 percent of participants understood that a cap reduces potential gains from the market).

¹⁸⁴ See, e.g., OIAD Report at Section 5, Qualitative Testing, Results From Round 2.

¹⁸⁵ In order to eliminate unnecessary information in the prospectus, we propose amending the general instructions to clarify that registrants may omit a narrative explanation that is not applicable under the contract. See proposed instruction 1 to Item 4 of Form N-4. We also are proposing an amendment to general instruction 5 regarding the preparation of the Transaction Expenses and Annual Contract Expenses tables, clarifying that the instruction to

¹⁸² See proposed Item 5(f) of Form N-4.

Particularized changes we propose to the fee table disclosures are discussed below.

Transaction Expenses Table

Form N-4 issuers currently must include a transaction expenses table in their prospectuses, describing fees and expenses investors must pay when buying, owning, and surrendering or making withdrawals in connection with a contract. This requires a description of the sales load imposed on purchases (as a percentage of purchase payments), the deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable), and transfer fees. To provide proximate and similar disclosure for RILA-specific costs, we propose to require that insurance companies additionally include the maximum negative contract adjustment that may be imposed, to be expressed as a percentage of contract value at the start of the crediting period or the amount withdrawn, as applicable. To provide investors notice of the circumstances where they might be subject to this cost, we also propose that insurance companies include a footnote describing all transactions potentially subject to a contract adjustment.¹⁸⁶

Currently this table also requires registrants to describe the maximum exchange fee that investors could incur for any exchange or transfer of contract value from the registrant to another investment company, or between sub-accounts or to the insurance company's general account. In a change relevant to all Form N-4 issuers, we are proposing a terminology change, replacing the term "exchange fee" with "transfer fee," as this term better reflects our experience, namely that the vast majority of such fees are those imposed on transfers of account value among investment options under the contract.¹⁸⁷

disclose the maximum guaranteed charge as a single number where a fee is calculated based on a benchmark does not apply to a contract adjustment. See proposed instruction 5 to Item 4 of Form N-4.

¹⁸⁶ See proposed instruction 11 to Item 4 of Form N-4.

¹⁸⁷ See proposed Instruction 10 to Item 4 of Form N-4. Under the proposed definition, "transfer fee" would encompass both the maximum fee charged for any exchange or transfer of contract value between investment options as well as the maximum fee charged for any exchange or transfer of contract value from the registered separate account to another investment company or from the registered separate account to the insurance company's general account. Thus, the proposed amendments regarding the definition and terminology surrounding transfer fees would not result in any substantive change for existing Form N-4 issuers.

Annual Contract Expenses

Form N-4 issuers currently must include an annual contract expenses table in their prospectuses, detailing the fees and expenses that investors pay each year in administrative expenses, base contract expenses, and optional benefit expenses. Currently, base contract expenses must be expressed as a percentage of average account value. In a change relevant to all Form N-4 issuers, we propose an amendment that would also allow base contract expenses to be expressed as a percentage of average account value or contract value. We do not expect that this change will substantively affect variable annuities' existing disclosure. We are proposing this expansion to describe expenses deducted where index-linked options or fixed options are implicated, as those options do not generally use the concept of average account value.¹⁸⁸ Additionally, to place investors on notice of the unique and ongoing trade-off costs associated with RILAs that may not be captured by this table, we are proposing to require registrants to include the following statement in the table:

In addition to the fees described above, we limit the amount you can earn on an Index-Linked Option. Imposing this limit helps us make a profit on the Index-Linked Option. In return for accepting this limit on Index gains, you will receive some protection from Index losses.

Annual Portfolio Company Expenses

Form N-4 currently requires issuers to include in the prospectus an annual portfolio company expenses table, disclosing the minimum and maximum total operating expenses charged by the portfolio companies offered by variable annuity contracts that may be periodically charged to investors during the time they own the contract. This includes costs incurred by portfolio companies directly and, if the portfolio company invests in other mutual funds, the fees and expenses the portfolio company indirectly incurs from these

¹⁸⁸ We are also proposing two related, non-substantive amendments to the instructions relating to annual contract expenses relevant to all issuers. These changes are to broaden terminology given the expanded scope of issuers that under the proposal could file on Form N-4. Currently the instruction for describing administrative expenses references "any Contract, account, or similar fee on all Investor Accounts;" however, as noted below, we propose deleting the term "Investor Account," and accordingly also propose amending this instruction to conform to that change. Relatedly we are proposing to amend the instruction regarding base contract expenses to remove a reference to fees and expenses deducted "from separate account assets or charged to all Investor Accounts," replacing it with an instruction to consider fees and expenses "charged to any Investment Option."

investments. In a change that also would apply to variable annuities prospectuses, we are proposing that registrants disclose that expenses shown in this table may change over time and may be higher or lower in future. We propose this change for two reasons. First, this modification would help to ensure that investors understand that these charges may increase over time, notwithstanding that these charges are described as maximum expenses. Second, given that we are proposing similar disclosures with regard to features of RILA offerings that are subject to change, we propose to require a similar level of disclosure with regard to variable annuity offerings where appropriate.

Example

Form N-4 issuers currently must provide an example in their prospectuses that is designed to allow variable annuity investors to compare the cost of investing in the contract with the cost of investing in other variable annuity contracts. We propose amending the example requirements to clarify, for variable annuity and RILA issuers, that the example is designed to permit investors to compare costs of investing solely in *variable* options under the contract with costs associated with variable options offered under other annuity contracts. Under the proposal, the example would be preceded with a legend specifically stating that: the example assumes that all contract value is allocated to variable options; the example does not reflect contract adjustments; and costs would likely differ if an investor selects index-linked options or fixed options.

(b) Charges (Item 7)

Currently, Item 7 requires registrants to provide a brief description in their prospectuses of all current charges deducted from purchase payments, investor accounts, or assets of the registrant. Consistent with the proposed changes to Item 4, we also are proposing a change in terminology that would affect all Form N-4 issuers, replacing references in Item 7 to "investor accounts" and the assets of "registrants" with the terms "contract value" and "investment option" assets, respectively. Therefore, in responding to Item 7, variable annuity and RILA issuers would describe charges deducted from purchase payments, contract value, or investment option assets.¹⁸⁹

¹⁸⁹ Additionally, we are proposing two non-substantive terminology changes in Instruction 3 to

For the reasons described above and given the potentially significant economic consequences contract adjustments can have on RILA investors, we are also proposing additional specific requirements to incorporate contract adjustments into the prospectus's disclosure of charges, which would entail detailed descriptions of any contract adjustments under the contract. These disclosures are designed to be comparable in scope and proximate to existing disclosures about contract charges applicable to variable annuities.¹⁹⁰

Specifically, we are proposing that insurance companies would have to: (1) disclose (as a percentage) the maximum potential loss that could result from a negative contract adjustment; (2) define the period during which any contract adjustment would apply; and (3) describe all transactions subject to a contract adjustment.¹⁹¹ Insurance companies also would have to include a description of how the contract adjustment will affect the contract value, surrender value, death benefit, and any living benefits, and disclose that a negative adjustment could reduce the value under the contract in an amount greater than the value withdrawn.¹⁹² They would also need to describe, in simple terms, how the contract adjustment is determined under the contract, and the relationship between the contract adjustment and any other charges or fees applied under

Item 7(a) regarding how registrants must describe the sources that will be used to cover shortfalls where proceeds from sales load will not cover expected costs. First, we propose replacing the term "depositor" with the term "insurance company." Second, where shortfalls are to be made from an insurance company's general account, this instruction requires a disclosure that amounts paid by the insurance company may consist of proceeds derived from base contract expenses *deducted from the registered separate account*. We propose striking this italicized language referring to assets of the registered separate account because it is superfluous given the definition of "base contract expenses" in proposed Instruction 14 to Item 5, discussed above.

¹⁹⁰ See instructions (a) through (d) to Item 7 of Form N-4.

¹⁹¹ See proposed instructions (e)(1) through (e)(3) to Item 7 of Form N-4. In describing the transactions subject to a contract adjustment, the insurance company would need to describe, for example, whether adjustments apply if amounts are transferred or withdrawn from an index-linked option or from the contract due to a partial withdrawal, surrender, election of an annuity option, or payment of death benefit proceeds, or where a particular optional benefit (e.g., a withdrawal under a guaranteed living benefit) is utilized, and to describe any circumstances under which the adjustment will be waived.

¹⁹² See proposed instruction (e)(5) to Item 7 of Form N-4. If applicable, the insurance company would also be required to state the impact of the contract adjustment on interest to be credited to an index-linked option at the end of its crediting period.

the contract, including, for example, the sequence in which charges and adjustments are applied.¹⁹³ The required disclosure would also require the issuer to briefly describe the purpose of the contract adjustment, including, for example, that the contract adjustment transfers risk from the insurance company to the investor to protect the insurance company from losses on its own investments supporting contract guarantees if amounts are withdrawn prematurely.¹⁹⁴ Finally, issuers would be required to disclose how an investor can obtain information about the current value of the contract adjustment, while stating that this value can fluctuate daily, and that the quoted value may differ from the actual value at the time of adjustment.¹⁹⁵

These proposed disclosures are intended to provide investors with the necessary scope and level of detail of the contract adjustments that could negatively affect an investor's contract value or the amounts an investor could withdraw from the contract. These disclosures are further justified given the RILA Act's requirement that the Commission use the results of investor testing in designing a registration form for RILAs. That mandated investor testing showed that participants were confused about contract adjustments, their purpose, the situations in which they could arise, their potential magnitude, and their relationship to other fees and charges (e.g., surrender fees).¹⁹⁶ These disclosures are designed to address these areas of identified confusion.

To simplify this disclosure, we propose specifying that detailed disclosure on the method of calculating the contract adjustment appear in the SAI, as opposed to the prospectus.¹⁹⁷ We also propose requiring that Item 7(e) include a cross-reference to Item 22 of

¹⁹³ See proposed instructions (e)(4) and (e)(6) to Item 7 of Form N-4. The description of how the contract adjustment is determined would have to provide a meaningful explanation of all the material features of the contract adjustment's application, including: (1) information about any formula applied (e.g., a change in value of hypothetical derivative instruments); (2) the factors that may cause an adjustment (e.g., timing of withdrawal, index volatility, increase in external interest rates); (3) a description of any proportionate withdrawal calculations; and (4) how adjustments are applied (e.g., allocated among the investment options, applied to a withdrawal amount).

¹⁹⁴ See proposed instruction (e)(7) to Item 7 of Form N-4.

¹⁹⁵ See proposed instruction (e)(8) to Item 7 of Form N-4.

¹⁹⁶ See, e.g., OIAD Report at Section 5, Qualitative Testing, Results From Round 2 and Section 7, Conclusions.

¹⁹⁷ See proposed instruction (e)(4) to Item 7 of Form N-4.

Form N-4, which would require more-detailed disclosure on the contract adjustment's calculation (including illustrative examples as to adjustment's operation) to appear in the SAI. The more detailed SAI discussion is not, however, a substitute for the Item 7 requirements. Thus, for example, an insurance company could not include the formula underlying the contract adjustment calculation in the SAI in lieu of the required discussion of the formula in the prospectus. Rather, in addition to stating the formula in the SAI, the insurance company would need to include in the prospectus a brief description, in simple terms, of the manner in which contract adjustment is determined.

Further, while the proposed disclosures are tailored to the mechanics of contract adjustments, they are also designed to be, where possible, consistent with existing requirements regarding disclosure of current charges deducted from purchase payments, investor accounts, or assets of the registrant. For example, Form N-4 currently requires disclosure of current fees and charges, which are typically expressed as a percentage. Because the value of a given contract adjustment can change daily, we are proposing that insurance companies disclose the maximum potential loss, as a percentage, that could result from a negative contract adjustment (rather than mandate a disclosure of a current contract adjustment value that could quickly become outdated).¹⁹⁸

(c) Purchase of Securities Being Offered (Item 22)

We are proposing to amend Item 22, which addresses the purchase of securities being offered, to require specific, detailed contract adjustment disclosures to appear in RILA issuers' SAIs. As discussed above, issuers would be required to provide a simple explanation of the underlying mechanics of contract adjustments in their prospectuses, while noting that further detail is available in the SAI and providing a cross reference to that information. Under the proposal, in addition to the discussion required in the prospectus by Item 7, Item 22 would require issuers to explain fully the operation of any contract adjustment that can be applied under the contract. This more detailed explanation would not take the place of the prospectus discussion and would need to address all the material features of the adjustment and include an explanation

¹⁹⁸ See proposed instruction (e)(1) to Item 7 of Form N-4.

of any formulas used to calculate the adjustment, and at least one numeric example to illustrate the application of the contract adjustment. This numeric example would have to include a negative adjustment, reflect surrender charges (if applicable), and disclose the percentage change in contract value as a result of the adjustment.

The mechanics of contract adjustments under a RILA contract are typically complex, often implicating the application of factors or formulas that can be difficult for many investors to understand. Because the application of a negative contract adjustment can substantially affect an investor's contract value, however, we propose to require the inclusion of information on negative contract adjustment in the SAI, so that investors who wish to learn more about the calculation may do so. In addition to promoting transparency generally, this proposed disclosure would ensure that liability attaches under section 11 of the Securities Act for any material misrepresentations regarding the application of a contract adjustment.

We are also proposing to make applicable to RILA issuers certain existing SAI disclosure requirements about the purchase of securities being offered. Specifically, we are proposing revisions to the instructions to the existing requirement to describe the manner in which the securities are offered to the public, which would instruct RILA issuers to respond by addressing any exchange privileges between investment options.¹⁹⁹ Additionally, we propose to make the existing requirement to describe the method used to determine the sales load applicable to RILA issuers.²⁰⁰ We do not propose applying the existing disclosure requirement dealing with frequent transfer arrangements to RILA issuers, as its provisions are relevant only to variable annuity contracts.²⁰¹

(d) Request for Comment

We request comment on these proposed amendments.

63. Do commenters agree that it is appropriate to include a discussion of contract adjustments in Items 4, 7, and 22 as proposed? If not, how would commenters suggest issuers disclose contract adjustments to ensure that investors have sufficient information to make an informed investment decision regarding RILAs?

64. Is it appropriate to require the disclosure of the contract adjustment

maximum potential loss in the transaction expense table? Do commenters agree that it is appropriate to require that issuers express the contract adjustment maximum potential loss as a percentage? If not, what alternative measure would commenters suggest?

65. Do commenters agree that the proposal strikes the proper balance in the location of the proposed contract adjustment disclosures? Are there any contract adjustment disclosures we propose including in the SAI that commenters believe would be more appropriately located in the prospectus? Are there any contract adjustment disclosures we propose including in the prospectus that commenters believe would be better situated in the SAI?

66. Do commenters agree with our proposal that issuers be required to include, in the annual contract expenses table, a statement disclosing that, in addition to the expenses described in the table, investors will be subject to limits on the amounts they can earn in connection with index-linked options? Do commenters agree that it is appropriate to include a statement addressing current limits on gains in conjunction with the annual contract expenses table? Do commenters agree the proposed statement captures the most salient concerns to investors of these kinds of limits on gains? Do commenters have any suggestions for alternate wording or placement of the statement?

67. Do commenters have any suggestions about additional or alternative disclosures that would address the areas of confusion regarding contract adjustments that this release describes as being identified in investor testing?

68. Are there any concerns with our proposal to use the term "contract adjustment" when referring to MVAs (market value adjustments) and IVAs (interim value adjustments)? Is there an alternative term that we should use to describe these kinds of adjustments?

69. Does our proposal to replace the term "exchange fee" with "transfer fee" in Item 4 raise any concerns?

70. With regard to the numeric examples we propose requiring in the SAI, should there be any additional requirements for what those examples would need to include? For example, should we require that the example utilize the average negative contract adjustment in operation for the preceding year, or the negative contract adjustment expected over the next year? Should we also (or instead) require an example of a contract adjustment in the prospectus? If so, why, and what

particular assumptions should we require in the example?

71. Do commenters agree with our recommendation to place the more detailed disclosures associated with the mechanics of contract adjustments (such as applicable formulas) in the SAI as opposed to the prospectus? Why or why not?

72. In addition to the contract adjustment disclosures we have proposed, should we also require issuers to provide a graphic illustrating the operation of a contract adjustment? If so, where should we require that graphic illustration be presented, and what particular circumstances should it illustrate? For example, would it be helpful to require issuers to include a graphic illustration demonstrating how a contract adjustment works when investors withdraw amounts from their contract prior to the end of a crediting period? Should we require illustrations that demonstrate the operation of a contract adjustment for investors in circumstances where they change to a different index-linked option before the end of a crediting period, and demonstrating how they can change investment options to minimize the financial impact to their contract value?

6. Information About Contracts With Index-Linked Options (Item 31A)

We are proposing new Item 31A of Form N-4 to require census-type information regarding RILAs offered in connection with the applicable registration statement. Specifically, under proposed Item 31A, an insurance company would be required to provide the following information regarding any RILA offered through the registration statement, as of the most recent calendar year-end: (1) the name of each contract; (2) the number of contracts outstanding; (3) the total value of investor allocations attributable to index-linked options; (4) the number of contracts sold during the prior calendar year; (5) the gross premiums received during the prior calendar year; (6) the amount of contract value redeemed during the prior calendar year; and (7) whether the contract is a "combination contract," that is, a contract that offers variable options in addition to index-linked options. This information would be required as of the most recent calendar year-end and, accordingly, would generally be updated through a post-effective amendment to a registration statement on Form N-4.²⁰²

²⁰² See proposed Item 31A of Form N-4. An issuer transitioning from an existing registration statement on Form S-1 or S-3 to Form N-4 through

¹⁹⁹ See proposed Item 22(a) of Form N-4.

²⁰⁰ See proposed Item 22(b) of Form N-4.

²⁰¹ See proposed Item 22(c) of Form N-4.

This information is census-type data that would provide contract-level disclosures designed to assist the Commission and staff in identifying trends in insurance companies' offerings of RILAs. This information would also provide improved transparency to investors by supplementing the information available about the marketplace for the contracts offered in connection with a registration statement. These items are relatively limited in scope and primarily consist of information that should generally be readily available to issuers. The particular data required is similar to that provided by registered separate accounts that likewise assist the Commission and staff in identifying trends in variable annuities.²⁰³

We are proposing to require information to be presented as of the most recent calendar year-end to provide the Commission and its staff with information that will be updated with an annual frequency for offerings of RILAs. We anticipate that this information would typically be updated as part of an issuer's annual update to its registration statements for such contracts.²⁰⁴ This approach would result in information provided as of a uniform date for all offerings of RILAs, regardless of the issuer's filing date, and, in turn, would provide for increased comparability across issuers and contracts.²⁰⁵ Requiring this information to be updated annually is intended to achieve an appropriate balance between providing the Commission and its staff with current information while avoiding overburdening issuers. An annual snapshot should be sufficient for the census-type nature of the information and would provide Commission staff with appropriate intervals of data points over time in which to identify trends in insurance companies' offerings of RILAs. Requiring these issuers to report such census information semi-annually or more frequently would place an increased burden on issuers that may not be justified by a commensurate

a post-effective amendment would be required to report this information as of the most recently completed calendar year in its first post-effective amendment transitioning onto Form N-4.

²⁰³ See Item F.14 of Form N-CEN; see also Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] at the sentences following n.1142.

²⁰⁴ See 15 U.S.C. 77j(a)(3).

²⁰⁵ We understand that insurance companies offering RILAs have a December 31 fiscal year end which, in practice, means a distinction between calendar year and fiscal year would result in limited effect on the reporting.

increase in the value of the information received by the Commission.

This reporting would provide the Commission with additional transparency into the RILA market segment, which would in turn improve the effectiveness of the Commission's oversight of offerings on Form N-4. Requiring this high-level reporting would permit the Commission to identify trends occurring in this market segment over time and assist with allocating the Commission's resources in administering the form. This reported information on index-linked options would complement parallel census-type information that is currently required to be reported annually on Form N-CEN by registered unit investment trusts offering variable annuities.²⁰⁶ The new census-type information therefore would help provide the Commission with a more complete picture of the marketplace for insurance products offered through registration statements on Form N-4. In addition, this information may benefit the public in supplementing the information available about RILAs.

We request comment on these proposed amendments.

73. Are the required reporting elements in Item 31A of proposed Form N-4 appropriate and clear? If not, what elements require additional instruction?

74. Do commenters agree that it is appropriate to require reporting under Item 31A to be provided as of calendar year-end? Do commenters agree that there is limited practical difference between requiring a fiscal year-end and calendar year-end requirement in light of investment company practices?

75. Should we require additional or different reporting of census-type reporting regarding RILAs? If so, should we also amend the requirements of Form N-CEN to ensure parallel reporting by registered unit investment trusts offering variable annuities registered on Form N-4?

76. Would RILA issuers face any significant challenges in providing the required reporting elements? If so, why?

77. Do commenters agree that it would be appropriate for issuers with existing contracts to report information required by proposed Item 31A for the calendar year prior to the calendar year the issuer first transitions its registration statement onto Form N-4?

²⁰⁶ Issuers registering combination contracts on Form N-4 would be required to exclude amounts allocated to a variable option when providing information in response to Item 31A as these allocations would be separately reported by registered separate accounts on Form N-CEN.

7. Other Amendments and Provisions

Our proposed amendments also include certain other amendments to Form N-4 and related rules designed to accommodate the inclusion of RILA issuers on that form. These include amendments to Form N-4's facing sheet, definitions, exhibit list, and required representations, as well as amendments to certain Securities Act rules that help to implement the proposal. These proposed amendments are discussed below.

(a) Facing Sheet

We are proposing amendments to include a new checkbox section on the facing sheet. Specifically, an issuer would be required to identify in this new section: (1) if it is a new registrant, defined as, as applicable, a registered separate account or insurance company that has not filed a Securities Act registration statement or amendment thereto within 3 years preceding this filing;²⁰⁷ (2) if it is an emerging growth company ("EGC"), as defined by Rule 12b-2 under the Exchange Act; (3) if it is an EGC, whether it has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act; and (4) if it is relying on an exemption from Exchange Act reporting requirements in reliance on rule 12h-7.²⁰⁸ These changes would help the Commission better understand the types of registration statements being filed on Form N-4 and, in the case of the EGC information, mirrors similar facing sheet requirements found in Form S-1. In addition, we are proposing amendments to the description of the types of entities that use Form N-4 to include insurance companies that offer index-linked options, either as stand-alone or combination products.²⁰⁹

(b) Definitions (General Instruction A)

We are proposing amendments to General Instruction A to update the

²⁰⁷ For example, a variable annuity separate account that has not previously filed a Securities Act registration statement would identify itself as a new registrant, regardless of whether the sponsoring insurance company has filed a recent Securities Act registration statement or amendment thereto as the proposed requirements request information on the registrant. In the same manner, an insurance company filing on Form N-4 would determine whether it is a new registrant solely with respect to its own Securities Act registration statement filings.

²⁰⁸ In addition to this checkbox, we are proposing an instruction that implements the requirements of rule 12h-7 to indicate that the insurance company is relying upon the exemption provided by that rule in the relevant prospectus. See *supra* section II.B.3.b.

²⁰⁹ See *supra* section II.A.

existing definitions in Form N-4, add new definitions to accommodate the inclusion of RILAs on Form N-4, and implement these proposed definitions throughout the form. However, unless otherwise stated, the proposed amendments to the definitions in General Instruction A would not alter the existing obligations under Form N-4 for current issuers on Form N-4. These changes should provide a standard set of definitions to convey form provisions in a consistent and efficient manner without the need for lengthy descriptions in each instance and clarify which form provisions apply to which categories of issuers and investment products.²¹⁰

Specifically, we propose to add a new definition for “index-linked option.” The proposed definition covers RILAs and index-linked options offered in combination contracts, as an investment option offered under any contract, pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified index.²¹¹ This is a functional definition focused on the key features of a RILA and would cover RILAs as defined in the RILA Act. We also propose to define “fixed option” as an investment option under the contract pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, will earn interest at a rate specified by the insurance company, subject to a minimum guaranteed rate under the contract. Further, we would change the existing definition of “variable annuity contract” to “variable option” and move the parts of that definition that refer to annuity contracts generally to a new definition for “contract.” In connection with the addition of other types of investment options on Form N-4, we are proposing to amend “portfolio company” to clarify that this term relates to the investment companies offered as investment options in contracts containing variable options. We also propose to add a new defined term “investment option” to refer collectively to any index-linked, variable, or fixed option. We propose to add these items to help clarify which provisions of amended Form N-4 apply

to which types of annuities or investment options.

Because an insurance company issuing a RILA is not acting as a depositor, we propose to change the definition of “depositor” to “insurance company.” The proposed definition refers to the insurance company that issues the contract, which company is subject to state supervision, and that the insurance company may also be the depositor or sponsor for a variable annuity separate account. We would also add a new definition of “registered separate account” defined as the separate account in which the contract participates with regard to any variable option offered under the contract, and refine the definition of “registrant” to mean either the registered separate account or insurance company, as applicable. These changes further help to clarify which provisions of the form apply to variable annuities and RILAs.

We also propose to add definitions of “index,”²¹² “contract adjustment,”²¹³ and “crediting period”²¹⁴ to refer to these RILA-centric concepts in the form and, in the case of “contract adjustment” and “crediting period,” help clarify when the relevant disclosures would be required. Lastly, we propose to eliminate the currently defined term “investor account.” Insurance companies typically do not use this term in their disclosure, and the more generalized concept of contract value, which also is designed to address the value of an investor’s investment, is intended to convey the characteristics of the broader scope of annuities that insurance companies could register on Form N-4 under the proposal.

We also are proposing related amendments throughout Form N-4 to help implement the proposed new definitions. For example, we are proposing to clarify the applicability of certain variable annuity or Investment Company Act-specific disclosure to limit those requirements to “registered

separate accounts” or “variable options” when appropriate.²¹⁵ As another example, the form requires disclosure of the procedures to purchase an annuity contract including certain particularized information.²¹⁶ We would apply this provision generally to all annuities including RILAs, but are only requiring certain disclosures relating to the operation of accumulation units and sub-accounts to contracts with variable options as those elements are not utilized by RILAs.

(c) Rules 405, 480, 481, 483, and 484

We are proposing amendments to rule 405 under the Securities Act to add the new defined terms “Form available solely to investment companies registered under the Investment Company Act of 1940” and “registered index-linked annuity” for purposes of Securities Act rules.

Certain Securities Act rules apply only to registration statements that are prepared on a form available solely to a registered investment company or a business development company. These rules are 17 CFR 230.480 (“rule 480”), 17 CFR 230.481 (“rule 481”), 17 CFR 230.483 (“rule 483”), and 17 CFR 230.484 (“rule 484”) under the Securities Act, and include forms such as Forms N-1A, N-2, N-3, N-4, N-5, and N-6. These rules prescribe requirements relating to: information given with the title of securities; information contained in registration statements; exhibits filed as part of the registration statement; and undertakings required with respect to requests for acceleration.

By virtue of moving RILAs, which are not issued by a registered investment company, onto Form N-4, Form N-4 would be outside the scope of this description absent the proposed amendments. As such, the proposed new defined term “form available solely to investment companies registered under the Investment Company Act of 1940” would specify that these rules would continue to apply to registration statements filed on Form N-4. Specifically, we are proposing to amend rule 405 to state that “a form available solely to investment companies registered under the Investment Company Act of 1940” includes the form used to register the offering of securities of a registered index-linked annuity for purposes of the Securities Act of 1933. By operation of this new

²¹⁰ We are also proposing to amend Form N-4 throughout to use the gender-neutral reference of “investor” where appropriate. See, e.g., proposed Instruction 6 to Item 2 of Form N-4.

²¹¹ Because RILA returns may not be one for one with the index, we propose to indicate that positive or negative interest is only based “in part” on the index’s performance.

²¹² As proposed, “index” means any index, rate, or benchmark (such as a registered exchange-traded fund that tracks an index) used in the calculation of positive or negative interest credited to an index-linked option. See proposed General Instruction A to Form N-4.

²¹³ As proposed, “contract adjustment” means a positive or negative adjustment made to the value of the contract by the insurance company if amounts are withdrawn from an index-linked option or from the contract before the end of a specified period. This adjustment may be based on calculations using a predetermined formula, or a change in interest rates, or some other factor or benchmark. See id.

²¹⁴ As proposed, “crediting period” means the period of time over which an index’s performance is measured, subject to applicable limits on index gains and losses, to determine the amount of positive or negative interest that will be credited to an index-linked option at the end of the period.

²¹⁵ See, e.g., proposed Items 3, 7, 8, 24, 32, and 34(a) of Form N-4; see also proposed definitions for “class” (clarifying applies to all contracts) and “platform charge” (clarifying only applies if there is a variable option).

²¹⁶ See Item 11 of Form N-4.

term, RILA registration statements on Form N-4 would be subject to rules 480, 481, 483, and 484.²¹⁷ We propose to subject RILA registration statements to these rules to help facilitate a consistent application of Form N-4 requirements.

We are also proposing to add a definition of “registered index-linked annuity” to rule 405, which provides consistent definitions for select terms used throughout the Securities Act rules, to simplify references to RILAs in the proposed Securities Act rule amendments. Specifically, we would define “registered index-linked annuity” as an annuity or an option available under an annuity (1) that is deemed a security; (2) that is offered or sold in a registered offering; (3) that is issued by an insurance company that is the subject to the supervision of either the insurance commissioner or bank commissioner of any state or any agency or officer performing like functions as such commissioner; (4) that is not issued by an investment company; and (5) whose value, either during the accumulation period or after annuitization or both, will earn positive or negative interest based, in part, on the performance of any index, rate, or benchmark.

Under the RILA Act, the term “registered index-linked annuity” means an annuity (A) that is deemed to be a security, (B) that is registered with the Commission in accordance with section 5 of the Securities Act, (C) that is issued by an insurance company that is subject to the supervision of the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commission, (D) that is not issued by an investment company, and (E) the returns of which are based on the performance of a specified benchmark index or rate (or a registered exchange traded fund that seeks to track the performance of a specified benchmark index or rate) and may be subject to a market value adjustment if amounts are withdrawn before the end of the period during which that market value adjustment

applies.²¹⁸ The proposed definition in rule 405 differs in certain respects from this definition, but covers all offerings that would be included in the RILA Act’s definition. These differences are intended to simplify the definition and use terminology that is consistent with other rules under the Securities Act. For example, the proposed definition clarifies that the insurance company is registering the offering of a RILA, rather than the RILA itself, with the Commission.²¹⁹ As another example, the proposed definition in rule 405 does not include a reference to a “market value adjustment,” as the RILA Act’s definition does, because the RILA Act did not require that feature as a predicate for being a “RILA.”²²⁰ Since the presence of a market value adjustment does not factor into the assessment of whether a security is a RILA under the RILA Act’s definition, it is unnecessary to refer to this feature in the proposed definition in rule 405. The proposed definition, however, continues to encompass the full scope of the RILA Act’s definition.

(d) Exhibits and Undertakings (Items 27 and 34)

As a function of moving RILAs onto Form N-4 and subjecting them to the requirements of rule 483, RILA issuers would be required to file various exhibits as part of a registration statement, similar to the requirements these issuers are subject to when registering RILA offerings on Forms S-1 and S-3 currently.²²¹ Further, in addition to the requirements of rule 484, we are proposing to amend Item 34 of Form N-4 to include certain undertakings currently required of RILAs as part of their Form S-1 and S-3 registration statements.²²²

²¹⁸ See Public Law 117–328; 136 Stat. 4459 (Dec. 29, 2022).

²¹⁹ This is functionally the same as the requirement of the RILA Act that the RILA “be registered with the Commission in accordance with section 5 of the Securities Act of 1933.” See section 101(a)(5) of Division AA, Title I of the Consolidated Appropriations Act, 2023.

²²⁰ See Public Law 117–328; 136 Stat. 4459 (Dec. 29, 2022) (defining RILA as an annuity, among other things, the returns of which *may be* subject to a market value adjustment if amounts are withdrawn before the end of a period in which that market value adjustment is applied) (emphasis added).

²²¹ See Item 16 of Form S-1; Item 16 of Form S-3; Item 601 of Regulation S-K.

²²² The disclosure currently required in Item 34, the fee representation mandated of registered separate accounts under the Investment Company Act, would be retained as paragraph (a) of this item, limited in application to variable options, and the new undertakings added as new paragraph (b) and limited to index-linked options. See also 15 U.S.C. 80a-26(f)(2)(A). We would also rename this item “Fee Representation and Undertakings.”

Item 27—Exhibits

RILA issuers are currently subject to the integrated disclosure requirements of Regulation S-K when registering their offerings, which provide requirements for exhibits that must be filed as part of the registration statement.²²³ Conversely, issuers on Form N-4 are required to file the exhibits required by rule 483 and Item 27 of Form N-4. To provide consistent requirements for Form N-4 issuers, we are proposing amendments to require RILA issuers to adhere to the same requirements as current issuers on Form N-4. RILA issuers and current Form N-4 issuers are subject to somewhat different provisions for filing exhibits to a registration statement. However, there are significant similarities between the types of the exhibits that each type of issuer is required to file, and thus we generally are not proposing to change those requirements. RILA registration statements will therefore continue to include the types of exhibits currently included in their registration statements on Forms S-1 and S-3. For example, RILA issuers filing on Form N-4 would continue to be required to file such exhibits as the insurance company’s certificate of incorporation and by-laws, forms of contracts offered in connection with the registration statement, underwriting agreements, legal opinions, and other material contracts, as applicable.²²⁴

We are not, however, proposing to amend Item 27 of Form N-4 to include required exhibits under Regulation S-K that are generally not applicable to RILAs or would no longer be relevant in light of the proposed amendments.²²⁵ For example, RILA registration statements are currently required to include a filing fee exhibit. Under the proposed amendments, RILA issuers would no longer include registration fee payments as part a registration statement or post-effective amendment filing. Therefore, the proposed amendments to Item 27 of Form N-4 omit this existing exhibit requirement for RILAs.²²⁶

We are, however, proposing to amend Form N-4’s required exhibits list to add new Item 27(p) for all issuers, which would require the filing of any power of

²²³ See 17 CFR 229.601.

²²⁴ See 17 CFR 229.601; proposed Item 27 of Form N-4.

²²⁵ See 17 CFR 229.601; proposed Item 27 of Form N-4. For example, some items, like Item 601(b)(96) of Regulation S-K which requires a technical report summary to be filed as an exhibit to a registration statement on Form S-1 when a registrant discloses information concerning its mineral resources, are wholly inapplicable to RILAs.

²²⁶ See 17 CFR 229.601(b)(107).

²¹⁷ These rules currently apply to registration statements on Form N-4. Rule 480 prescribes requirements relating to information given with the title of securities. Rule 481 prescribes certain information to be required in the registration statement (e.g., certain legends to appear on the front and back cover pages of prospectuses). Rule 483 prescribes certain requirements relating to exhibits filed as part of the registration statement. Rule 484 prescribes certain required undertakings with respect to requests for acceleration under 17 CFR 230.461 when certain arrangements exist with respect to indemnification of specified persons against liability under the Securities Act.

attorney included pursuant to rule 483(b).²²⁷ While this exhibit is already required to be filed with a Form N-4 registration statement under rule 483(b), practices differ in regards to the placement of a required power of attorney exhibit within the exhibit list. This amendment is designed to assist the public in comparing these exhibits by standardizing their location in the registration statement. In addition, we are proposing conforming changes in Item 27 to reflect the proposed amendments to the definitions in Form N-4.

Item 34—Fee Representation and Undertakings

We are also proposing amendments to Item 34 of Form N-4 to require RILA issuers to include specific undertakings in their registration statements on Form N-4. Under the proposed amendments, a RILA issuer would be required to furnish two undertakings as part of the registration statement on Form N-4. These undertakings are (1) to file, during any period in which offers or sales are being made, through a post-effective amendment to its registration statement, any prospectus required by section 10(a)(3) of the Securities Act and (2) that, for the purposes of determining liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. These proposed undertakings are the same as two undertakings RILA issuers currently provide in registration statements,²²⁸ and mirror the effect of similar provisions of section 24(e) of the Investment Company Act, which

applies to amendments to Form N-4 registration statements by registered separate accounts.²²⁹ We are proposing that RILA issuers continue to furnish these representations concerning post-effective amendments to a registration statement as, under the proposed amendments, RILAs may be continuously offered on a registration statement for an indefinite amount of time. In that time, a RILA registration statement may be subject to a number of various post-effective amendments. Conversely, the proposed amendments do not include other undertakings which may be currently required in RILA registration statements. These undertakings relate to the process for conducting continuous offerings under rule 415, which RILAs will no longer be subject to under the proposed amendments. In addition, we are not including other undertakings that are unnecessary in light of the proposed amendments as a whole.²³⁰ For example, RILA issuers currently are required to include an undertaking to remove from registration any of the securities being registered that remain unsold at the termination of an offering through a post-effective amendment.²³¹ However, under the proposed amendments, RILA issuers will be registering an indeterminate amount of securities and paying registration fee payments in arrears on amended Form 24F-2 for the life of an offering. Under this approach, a RILA issuer would only pay registration fees on the exact amount of net issuance of securities relating to an offering and therefore, it is unnecessary to additionally require an undertaking that relates to a surplus registration of securities during an offering.

(e) Request for Comment

We request comment on these proposed amendments.

78. Are the instructions for the proposed new section on the facing sheet appropriate? Should there be additional or different options for the proposed new section on the facing sheet?

79. Are the definitions in Part A of the General Instructions of Form N-4 appropriate? If not, which definitions

require additional clarity or modifications? For example, do commenters believe it is appropriate to use the collective term “registrant” to include insurance companies that may not be registered entities under the Securities Act? Do the definitions effectively convey which provisions apply to which type of annuity contract?

80. Do commenters agree with the statement that “investor account” is not generally used in insurance company disclosures to investors relating to annuity contracts?

81. Did we appropriately scope those provisions that practically only apply to variable options to those types of investment options? Are there any other disclosures we should limit to variable options? Conversely, are there provisions we limited to variable options that we should also apply to index-linked options?

82. Should we add any additional definitions to Part A of the General Instructions to Form N-4? Should we retain the term “investor account”?

83. Is the definition of “Index-Linked Option” appropriate? Should we revise the definition in any way? Does this definition encompass all potential RILAs and index-linked options offered in combination contracts as proposed as required by the RILA Act?

84. Do commenters agree that the proposed definition of “registered index-linked annuity” in rule 405 is appropriate? Do commenters agree that the proposed definition is inclusive of the types of RILAs encompassed in the definition of “registered index-linked annuity” in the RILA Act?

85. Do commenters agree that with the proposed definition of “Form available solely to investment companies registered under the Investment Company Act of 1940?” Do commenters think this may cause confusion as RILA issuers are not investment companies registered under the Investment Company Act?

86. Should we require RILA issuers to adhere to rules 480, 481, 483, and 484 when registering RILAs on Form N-4?

87. Do commenters agree that the Exhibit List for proposed Form N-4 encompasses the types of exhibits that RILA issuers currently include in registration statements and is appropriate for RILAs? If not, what exhibit requirements should govern RILAs registered on Form N-4? Are there additional exhibits that RILA issuers should be required to file as part of their registration statements on Form N-4? Are there any exhibits that the integrated disclosure requirements of Regulation S-K currently include that we should require on Form N-4?

²²⁷ RILA registration statements on Forms S-1 and S-3 similarly include a power of attorney, when applicable, to be filed as part of the registrations statement. See 17 CFR 229.601(b)(24). See also *supra* section II.D (discussing the addition of a new exhibit relating to changes in accountants).

²²⁸ See rule 415(a)(3) and 17 CFR 229.512(a). Under the proposed amendments, RILAs would be exempt from the conditions of rule 415, including furnishing the required undertakings pursuant to Item 512(a) of Regulation S-K. See *infra* footnote 331. For example, RILA registration statements would no longer be required to include a statement that the issuer undertakes to file a post-effective amendment to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. We preliminarily believe this requirement is not necessary for RILA registration statements on Form N-4 in light of the other amendments we are making to the prospectus and registration statement filing process for RILAs. See *infra* section II.E (discussing proposed amendments to rules 485 and 497 under the Securities Act).

²²⁹ See Section 24(e) of the Investment Company Act [15 U.S.C. 80a-24(e)]. Section 24(e) generally requires a registered separate account to amend its registration statement annually to update its prospectus for the purposes of section 10(a)(3). Section 24(e) also provides that, for the purposes of liability under Securities Act, the effective date of the latest amendment is deemed to be the effective date of the registration statement with respect to securities sold after the effectiveness of amendment.

²³⁰ See 17 CFR 229.512(a).

²³¹ See 17 CFR 229.512(a)(3).

88. Is it appropriate to require RILA issuers to furnish the undertakings in Item 34 of proposed Form N-4? Are there different or additional undertakings that should be required for these issuers?

8. Remaining Form N-4 Items

We propose to make applicable to RILAs the remaining requirements and disclosure items on the existing Form N-4 discussed below, which we do not propose to substantively change.²³² The general instructions to the proposed form include both organizational requirements along with substantive requirements for the preparation of the registration statement, including instructions relating to the organization, presentation, and prospectuses permitted to be included in a registration statement. The remaining disclosure items principally provide investors with information about the annuity contract and how it operates. In addition, these items provide basic information about the insurance company or the securities offering itself, consistent with some of the disclosures provided currently in Forms S-1 or S-3.

(a) General Instructions

RILAs offerings registered on Form N-4 will need to comply with the general instructions of that form. These general instructions are structured to include four parts: (A) Definitions;²³³ (B) Filing and Use of Form; (C) Preparation of the Registration Statement; and (D) Incorporation by Reference.²³⁴ This would result in a number of substantive outcomes for those issuers.²³⁵ Specifically:

²³² As noted above, some of these items would be amended to account for changes in defined terms and to use gender-neutral terminology. See *supra* section II.B.7.

²³³ See *supra* section II.B.7(b) (discussing proposed amendments to the definitions used in the form).

²³⁴ The items described in this section can generally be found in proposed General Instruction C of Form N-4. See also *supra* section II.B. (Other Amendments) (discussing definitional updates). EDGAR permits registrants to file required financial statements separately under a specific submission type. Thus, registrants may incorporate by reference into their post-effective amendment and other filings the financial statements filed under this EDGAR submission type. See VASP Adopting Release at n.592.

²³⁵ We are also proposing to correct a typographical error in General Instruction B.2(b) regarding items that can be omitted for registration statements or amendments filed only under the Investment Company Act. Currently, the instructions state that issuers can omit from Part C Items 26(c), (k), (l), and (m), but those items do not exist in the form and Item 26 (Financial Statements) is in the SAI, not Part C. This is supposed to refer to Item 27 (Exhibits), which do exist, are in Part C, and are more Securities Act in nature. This

- *Plain English.* The instructions provide a number of points to issuers on how best to promote effective communication between issuers and prospective investors. For example, issuers are directed to use document design techniques that promote effective communication and to respond to the items in the form as simply and directly as reasonably possible and avoid the use of formulas as the primary means of communicating certain terms or features of a contract.²³⁶ Issuers are also encouraged to use, as appropriate, Q&A formats beyond the KIT, tables, and other presentation methods in the form generally.²³⁷

- *Organization.* Issuers are directed to organize information in the prospectus and SAI to make it easy for investors to understand, with some limitations on the order of presentation.²³⁸

- *Other Information.* Issuers are permitted to include (other than in Items 2 or 3) information in the prospectus or SAI not otherwise required as long as the additional information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure, or impede understanding of the information that is required.²³⁹ In similar circumstances, issuers may include sales literature in the prospectus.²⁴⁰

- *Terminology.* Issuers are required to define special terms used in the prospectus in any presentation that clearly conveys meaning to investors.²⁴¹ Only these special terms must be defined or listed in any glossary or list of definitions elected to be used.²⁴² Registrants are not required to use the same terminology as that used in the form as long as the registrant clearly conveys the meaning of, or provides

instruction would be updated to refer instead to Item 27 as a result.

²³⁶ See proposed General Instructions C.1.(a) and (c) to Form N-4. This specific text is not intended to discourage use of a formula, but rather, to clarify that if a formula is used in connection with a term or feature, investors are first provided appropriate plain English disclosure regarding the operation of the term or feature. See VASP Adopting Release at n.591.

²³⁷ See proposed General Instruction C.3.(c) to Form N-4. As discussed above, we are proposing to require Q&A formatted responses to the Key Information Table. See *supra* section II.B.2.

²³⁸ See proposed General Instruction C.3.(b) to Form N-4.

²³⁹ See proposed General Instruction C.3.(b) to Form N-4.

²⁴⁰ See proposed General Instruction C.3.(g) to Form N-4.

²⁴¹ See proposed General Instruction C.3.(d) to Form N-4.

²⁴² Registrants are also permitted to define terminology only used in one section in such section.

comparable information as, the form's terminology.

- *Multiple Contracts.* Issuers are permitted to describe multiple contracts that are essentially identical in a single prospectus, and the instructions discuss the presentation of information regarding multiple contracts in these circumstances.²⁴³ Further, issuers are permitted to combine multiple prospectuses into a single registration statement where the contracts are substantially similar.

- *Timing.* The instructions state that, consistent with Securities Act rules, in most circumstances prospectuses and SAIs used after the effective date of the registration statement shall be dated approximately as of such effective date, but that a revised or amended prospectus or SAI used thereafter need only bear the approximate date of its issuance. Each supplement to the prospectus or SAI shall be dated separately the approximate date of its first use.²⁴⁴

- *Provision of Websites.* Any websites included in an electronic version of the prospectus must include active hyperlinks or other means of facilitating access that leads directly to the relevant website address, though this requirement does not apply to a prospectus filed on EDGAR.²⁴⁵

- *Incorporation by Reference.* In addition to the general requirements of the Commission rules on incorporation by reference, issuers are not permitted to incorporate by reference information required to be in the prospectus unless otherwise permitted by the form, but may incorporate by reference the SAI into the prospectus without delivering the SAI and incorporate by reference information required to be included in the SAI or Part C.²⁴⁶

Collectively, these general instructions are designed to require clear disclosure to investors about the variable annuity contracts currently registered on the form and to make clear how issuers must prepare and file their registration statements. Requiring RILA issuers to prepare their registration statements in accordance with these instructions would likewise facilitate the provision of clear disclosure to

²⁴³ See proposed General Instruction C.3.(e) to Form N-4. The instructions state that "essentially identical" is a facts and circumstances-based determination but that contracts that differ in providing optional benefits or being group or individual contracts are not essentially identical whereas variances due only to State regulatory requirements would be.

²⁴⁴ See proposed General Instruction C.3.(f) to Form N-4; 17 CFR 230.423.

²⁴⁵ See proposed General Instruction C.3.(i) to Form N-4.

²⁴⁶ Proposed General Instruction D of Form N-4.

investors and provide clear direction to these issuers on how to prepare and file their registration statements. Further, applying these requirements to RILAs as proposed would help ensure the comparability of different annuity offerings, for example, by ensuring that

the filings are held to the same plain English, multiple contract disclosure, timing, website, and incorporation by reference standards.

(b) Contract Disclosures

The table below summarizes disclosures in the existing Form N-4

about the annuity contract, how it operates, and how it is serviced by the insurance company, that we propose making applicable to RILA issuers without substantive change.

TABLE 4—CONTRACT DISCLOSURES

Item	Description
Prospectus (Part A)	
<i>General Description of the Contracts (Item 8) ...</i>	A general description of the contract, including disclosure of the parties' material rights under the contract; relevant contract provisions and limitations; contract obligations funded by the insurance company's general account; class of purchasers, and material changes that can be made to the contract by the insurance company.
<i>Annuity Period (Item 9)</i>	A description of the annuity options available, including a discussion of material factors that determine the benefits; annuity commencement date; frequency and duration of annuity payments; the effect of assumed investment return; any minimum amount necessary for an annuity option and the consequences of an insufficient amount; rights to change annuity options; and, if applicable, a disclosure that the investor will be unable to withdraw any contract value amounts after the annuity commencement date.
<i>Benefits Available Under the Contract (Item 10)</i>	A tabular summary overview of the benefits available under the contract (e.g., standard or optional death benefits, standard or optional living benefits, etc.), briefly discussing, among other things: whether the benefit is optional; current and maximum fees associated with the benefit; how the benefit amount is calculated; and any associated restrictions or limitations.
<i>Purchases and Contract Value (Item 11)</i>	A description of the procedures for purchasing a contract, including concise explanations of minimum initial and subsequent purchase payment required, when these payments are credited, and how they are allocated to investment options. Also an identification of the principal underwriters (other than the insurance company) of the contracts and other information about that underwriter such as any affiliations.
<i>Surrenders and Withdrawals (Item 12)</i>	A description of how surrenders and withdrawals can be made from a contract, including limits on the ability to surrender, how proceeds are calculated, and when surrenders and withdrawals are payable. Issuers must also describe potential effect of surrenders and withdrawals, including how they could affect a contract's value or benefits, and whether any charges or contract adjustments will apply. Issuers should also describe any involuntary redemption provisions and any revocation rights, disclosing the calculation methodology and any associated limitations to investment options.
<i>Loans (Item 13)</i>	A description of the loan provisions of the contract, including, for example, loan availability and related restrictions, interest mechanics, the effect of a loan on the contract's value and death benefit, other effects that a loan could have on a contract; and loan procedures.
<i>Taxes (Item 14)</i>	A description of the material tax consequences to the investor and beneficiary of buying, holding, exchanging, or exercising rights under the contract. The description should include a discussion of the taxation of annuity payments, death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the contract, as well as the tax benefits accorded the contract and other material tax consequences. Issuers must identify the types of qualified plans for which the contracts are intended to be used and describe any effect of taxation on the determination of contract values.
Statement of Additional Information (Part B)	
<i>Cover Page and Table of Contents (Item 18)</i>	A statement of the name of the insurance company, the contract, and related class or classes. This item also requires a table of contents, a statement that the SAI is not a prospectus, information about how to obtain the prospectus, and a discussion of information the SAI incorporates by reference.
<i>Non-principal Risks of Investing in the Contract (Item 20).</i>	A summary of the non-principal risks of purchasing a contract not otherwise disclosed in the prospectus.
<i>Services (Item 21)</i>	Information on services provided to the registrant in connection with the contract. If not disclosed elsewhere, this requires a summary of the substantive provisions of certain management-related service contracts. The registrant must also provide the name and address of its independent public accountant. Where affiliates of the insurance company act as agents for the registrant in connection with the contract, issuers are required to provide specific information about the services performed and remuneration paid for the services. Issuers must also disclose if the insurance company is the principal underwriter of the contract.
<i>Annuity Payments (Item 25)</i>	A description of the method for determining the amount of annuity payments if not described in the prospectus and how any change in the amount of a payment after the first payment is determined.
Other Information (Part C)	
<i>Management Services (Item 33)</i>	A summary of the substantive provisions of any management-related service contracts not discussed in Parts A or B, including the last three years' payment history.

These requirements apply to existing Form N-4 issuers because these disclosures provide investors in these products with a concise presentation of material information about the annuity contract they would be purchasing, as well as other information that provides necessary context about the contracts such as management service disclosures.²⁴⁷ Because disclosure of this information is equally fundamental to the ability of investors to make informed investment decisions about

RILA contracts, we are proposing to apply these requirements to RILAs. For example, existing Form N-4 issuers are required to summarize standard and optional benefits available to the investor under the contract because these benefits are primary features of variable contracts and are also often key differentiators between competing products.²⁴⁸ Insurance companies also offer these benefits in connection with RILAs.

(c) Issuer and Offering Disclosures

In addition to disclosures about the contract, the proposed amendments to Form N-4 would require that RILA issuers make certain disclosures relating to the issuer and offering consistent with the form's current requirements. The table below summarizes these items, omitting items in Form N-4 that, by their terms, would not apply to RILAs.

TABLE 5—ISSUER AND OFFERING DISCLOSURES

Item	Description	Similar form S-1 disclosure
Prospectus (Part A)		
<i>Legal Proceedings (Item 15)</i>	A description of material pending legal proceedings to which the registered separate account, the principal underwriter, or the insurance company is a party, including similar information regarding any proceedings instituted or known to be contemplated by a governmental authority.	Item 11(c) (legal proceedings).
Statement of Additional Information (Part B)		
<i>General Information and History (Item 19).</i>	Basic information regarding the background and organization of the insurance company, including the jurisdiction in which it is organized and a description of its business.	Item 11(a) (description of business).
<i>Underwriters (Item 23)</i>	Identification of the principal underwriters (other than the insurance company), and for affiliated underwriters, a description of the nature of the affiliation. For each principal underwriter distributing the registrants' contracts, the insurance company must provide information about the offering and related commissions. If the registrant made payments to an underwriter or of dealer in the contracts during its last fiscal year over a threshold amount, the registrant must disclose certain information about those payments.	Item 8 (plan of distribution).
Other Information (Part C)		
<i>Directors and Officers of the Insurance Company (Item 28).</i> <i>Persons Controlled by or Under Common Control with the Insurance Company or the Registrant (Item 29).</i> <i>Indemnification (Item 30)</i>	A statement of the name, principal business address, position, and office held for each director or officer of the insurance company. Disclosure of persons directly or indirectly controlled by or under common control with the registrant or the sponsoring insurance company.	Item 11(k) (directors and executive officers). Item 11(k) (directors and executive officers).
<i>Principal Underwriters (Item 31)</i>	Information about the effect of relevant indemnification agreements, arrangements, or statutory provisions through which underwriters or affiliates are insured or indemnified against any liability incurred in their official capacity.	Item 14 (indemnification of directors and officers).
	A statement of investment companies, other than any registered separate account related to the filing, each principal underwriter is also acting as a principal underwriter. More detailed information about principal underwriters identified in Item 23, such as recent information about commissions and other compensation received from the registrant by each principal underwriter.	Item 8 (plan of distribution).

Information about the issuer and the offering process are relevant when purchasing an annuity contract, including in the context of a RILA.²⁴⁹ These items, which largely correspond to items currently required to be disclosed by RILAs on Forms S-1 and S-3 as detailed in the table above,

provide the appropriate amount of information about the issuing insurance company and the offering of securities in a way tailored to annuity contract investors. For example, because an investor's rights under RILAs are dependent on the insurance company's claim-paying ability, RILA purchasers

also share an interest in disclosures of material pending legal proceedings involving the insurance company or related parties. On the other hand, where Form S-1 disclosures have less relevance to RILAs, we have not included those disclosures in proposed Form N-4.

²⁴⁷ See Registration Forms for Insurance Company Separate Accounts That Offer Variable Annuity Contracts, Investment Company Act Release No.

14575 (June 24, 1985) [50 FR 26145 (June 25, 1985)] ("Forms N-3 and N-4 Adopting Release").

²⁴⁸ See VASP Adopting Release at n.26 and accompanying text.

²⁴⁹ See Forms N-3 and N-4 Adopting Release.

(d) Request for Comment

We request comment on our proposed application of these requirements and disclosures to RILAs.

89. Is it appropriate to require RILA issuers to meet these general instructions of the form? Should we tailor any particular provision to account for the differences between RILAs and the variable annuities that currently use the form? For example, is there any reason to treat RILAs different for purposes of the “essentially identical” test?

90. The investor testing results suggested that investors had significant difficulty in understanding certain terminology used in connection with RILAs, in particular the words “term” and “investment term.”²⁵⁰ Should we, as a result, change any instruction to aid in investor understanding? For example, the form currently provides that the prospectus disclosure requirements in Form N-4 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters.²⁵¹ In light of this feedback in investor testing, should we amend this instruction or otherwise provide that insurance companies should not use “term,” “investment term,” or other terminology that investors found confusing? Regardless of whether insurance companies use “investment term” or different terminology, in the glossary definition of the “investment term” (or another term to describe that concept) should insurance companies be required to specifically disclose to investors that the “investment term” is not the same as the life of the contract? As another example, should we require, rather than permit, the use of a glossary or list of definitions for the entirety of the form so that investors have one place to look to understand a particular term? Should we clarify what terms are “special terms”? What terminology in particular should be considered a special term in the RILA context?

91. Should we define certain key terms that insurance companies must use in their registration statement to help to mitigate investor confusion and help investors compare one RILA to another? Which key terms should we address and how should they be defined?

92. Is it appropriate, as proposed, to apply these exiting Form N-4 disclosure requirements to RILA issuers? Are any of these disclosure items inappropriate for including in a RILA registration?

93. Are there other details about the RILA contract, not otherwise addressed above, that we should require be disclosed on amended Form N-4? Are there details regarding the issuer or offering that we should require?

94. Certain of these disclosures are repeated throughout the registration statement. For example, similar disclosures regarding principal underwriters are contained in the prospectus (Item 11) and SAI (Item 23). Should we limit these items to a particular location in the registration statement?

95. Under the proposal, certain information that RILA issuers currently provide on Forms S-1 and S-3 would still be required by Form N-4, but would be placed in the SAI rather than the prospectus. Should any of the information we propose to require in the SAI instead be provided in the prospectus?

96. Are these items properly ordered? Should we move any of these items to greater prominence or move items from the prospectus, SAI, or Part C to another part of the registration statement?

9. Inline XBRL

We are proposing to require RILA issuers to tag certain of the information they would disclose in their prospectuses and SAIs in a structured, machine-readable data language. Specifically, we are proposing to require RILA issuers to tag the required information in Inline XBRL in accordance with Rule 405 of Regulation S-T (17 CFR 232.405) and the EDGAR Filer Manual.²⁵² The proposed requirements for RILA issuers would include tagging of the overview and more in-depth descriptions of index-linked options and contract adjustments that RILA issuers would have to include in their prospectuses under the proposal, the proposed disclosure of census-type information regarding contracts with index-linked options, and information disclosed about changes in and disagreements with

accountants.²⁵³ RILA issuers, in addition to variable contracts issuers whose contracts offer fixed options, would have to tag the proposed descriptions of fixed options available under the contract.²⁵⁴ Form N-4 filers also would have to tag the proposed new disclosures indicating that the insurance company is relying on the exemption provided by rule 12h-7, and variable contract issuers would have to tag the proposed new statement relating to the risks of variable options.²⁵⁵

In addition, RILA issuers would have to tag those prospectus disclosures that Form N-4 currently requires to be tagged.²⁵⁶ These include the following disclosure items: the Key Information Table, Fee Table, Principal Risks of Investing in the Contract, Other Benefits Available Under the Contract, and Investment Options Available Under the Contract in the statutory prospectus. The proposed Inline XBRL requirements, like the current Inline XBRL requirements for Form N-4 issuers, would only apply to contracts being sold to new investors. The result of this proposed approach would be that prospectus disclosure for contracts that are no longer being sold to new investors would not need to be tagged, as we believe tagging this disclosure would have less utility for current investors and other market participants.²⁵⁷ Issuers of variable annuities registered on Form N-4 are currently required to tag certain registration statement disclosure items using Inline XBRL.²⁵⁸ These items are those that would be most suited to being tagged in a structured format and be of greatest utility for investors and other data users that seek structured data to analyze and compare RILA contracts. This rationale is the same as that which the Commission articulated in originally adopting these tagging requirements in

²⁵³ See proposed General Instruction C.3(h) of Form N-4; *see also* proposed Items 2(b)(2), 2(d), 6(d), 7(e), 26(c), and 31A.

²⁵⁴ See proposed General Instruction C.3(h) of Form N-4; *see also* proposed Item 6(e).

²⁵⁵ See proposed General Instruction C.3(h) of Form N-4; *see also* proposed Items 6(a) (instruction) and 6(c)(1).

²⁵⁶ See rule 405(b) of Regulation S-T; proposed General Instruction C.3(h) of Form N-4; *see also* proposed Items 3, 4, 5, 10, and 17.

²⁵⁷ See VASP Adopting Release at paragraph accompanying n.904.

²⁵⁸ See General Instruction C.3(h) of current Form N-4; *see also* Interactive Data to Improve Financial Reporting, Release No. 33-9002 (Jan. 30, 2009) [74 FR 6776], as corrected by Release No. 33-9002A (Apr. 1, 2009) [74 FR 15666] (requiring operating companies to submit financial statements accompanying their registration statements and periodic and current reports in XBRL).

²⁵⁰ See OLAD Report at Section 7, Conclusions, Summary of Findings.

²⁵¹ See Instruction C.1.b of Form N-4.

²⁵² This proposed tagging requirements would be implemented by amending General Instruction C.3(h) of Form N-4, and by revising rule 405(b) of Regulation S-T to include the proposed RILA-specific disclosures. Pursuant to rule 301 of Regulation S-T, the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S-T governs the electronic submission of documents filed with the Commission. Rule 405 of Regulation S-T specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in rule 405(a)(3) to use Inline XBRL as the specific structured data language to use for tagging the disclosures.

the context of variable annuity disclosure.²⁵⁹

In addition to these existing items, requiring Inline XBRL tagging of the new disclosure requirements we are proposing to include in Form N-4 would benefit investors, other market participants, and the Commission by making the disclosures more readily available and easily accessible for aggregation, comparison, filtering, and other analysis.²⁶⁰ We chose these particular items in the form to structure—including those that issuers of variable annuities would newly have to structure—because we believe that they are the most salient to investors and benefit most from being structured. We believe that tagging this disclosure, along with the requirement for RILA issuers to tag the same other disclosure items that are currently tagged, would result in information being tagged that would best permit investors and other data users to analyze and compare RILAs. For example, this would enable automated extraction and analysis of descriptions of index-linked options available under the contract, information regarding the features of each currently offered index-linked option, and information regarding contract adjustments. This would allow investors and other market participants more efficiently to perform large-scale analysis and comparison across RILAs (including the index-linked options that different RILAs offer) and time periods. Similarly, the requirement to tag information about fixed options will permit the same type of analysis with respect to these investment options—including comparing fixed options across contracts, as well as index-linked options, variable options, and fixed options offered under the same contract.

As another example, census-type information about variable annuity contracts, which is parallel to the SAI disclosure we propose to require for contracts with index-linked options, is currently reported in structured data format.²⁶¹ Requiring census-type information about contracts with index-linked options to be tagged in Inline XBRL would help the Commission and staff identify trends in insurance companies' offerings of the contracts, similar to the tools the Commission and staff currently have to identify trends in

the offering of variable annuity contracts. An Inline XBRL requirement also would facilitate other analytical benefits, such as more easily extracting and searching disclosures about annuities, and automatically comparing these disclosures against prior periods.

We are proposing to require RILA issuers to submit Interactive Data Files as follows, consistent with the approach for issuers of variable annuities registered on Form N-4:

- For most post-effective amendments, Interactive Data Files would have to be filed either concurrently with the filing, or in a subsequent amendment that is filed on or before the date that the post-effective amendment that contains the related information becomes effective;²⁶²
- For initial registration statements (and post-effective amendments other than as described in the bullet immediately above), Interactive Data Files would have to be filed in a subsequent amendment on or before the date the registration statement or post-effective amendment that contains the related information becomes effective;²⁶³ and
- For any form of prospectus filed pursuant to rule 497(c) or (e), Interactive Data Files would have to be submitted concurrently with the filing.²⁶⁴

We anticipate that this approach would facilitate the timely availability of important information in a structured format for investors, investment professionals, and other data users yielding substantial benefits. For data aggregators responding to investor demand for the data, the availability of the required disclosures in the Inline XBRL format concurrent with filing or before the date of effectiveness would allow them to quickly process and share the data and related analysis with investors.

Like other issuers, RILA issuers could request temporary and continuing hardship exemptions for the inability to timely file electronically the Interactive Data File.²⁶⁵

Request for Comments

We request comment generally on the proposed amendments to require the

²⁶² See proposed General Instruction C.3(h)(i)(B) of Form N-4. This instruction relates to post-effective amendments filed pursuant to paragraph (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485.

²⁶³ See proposed General Instruction C.3(h)(i)(A) of Form N-4. This instruction relates to initial registration statements and post-effective amendments other than those filed pursuant to paragraph (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485.

²⁶⁴ See proposed General Instruction C.3(h)(ii) of Form N-4.

²⁶⁵ See rule 201 Regulation S-T (temporary hardship exemption) and rule 202 of Regulation S-T (continuing hardship exemption).

use of Inline XBRL, and specifically on the following issues:

97. Should we adopt rules that make the submission of structured data in the Inline XBRL format mandatory for RILA issuers?

98. Is it appropriate that RILA issuers would have to tag the same disclosure items that variable annuity issuers tag? Why or why not? If RILA issuers were to be required to tag other disclosure items that are also applicable to variable annuities, should variable annuity issuers also be required to tag these same items?

99. Is it appropriate that all Form N-4 filers would have to tag certain of the new disclosure items that we are proposing to add to Form N-4, in particular, proposed Items 2(b)(2), 2(d), 6(a) (instruction), 6(c)(1), 6(d), 6(e), 26(c), and 31A of Form N-4? Should insurance companies *not* be required to tag any of these items, and if so, why not? Are there other proposed disclosure items that we should also require insurance companies to tag? If so, why?

100. Is it appropriate that the approach for RILA issuers to submit Interactive Data Files be consistent with the current approach for issuers of variable annuities registered on Form N-4, as proposed? If not, what alternative approach would be more appropriate and why? Is it appropriate that, like variable annuities registered on Form N-4, the proposed Inline XBRL requirements for RILA issuers would apply only to contracts being sold to new investors? Do commenters agree that tagging the prospectus disclosure would have less utility for current investors and other market participants?

101. Are any other amendments necessary or appropriate to require the submission of the proposed required information in Inline XBRL? If so, what are they?

C. Option To Use a Summary Prospectus

We are proposing to amend rule 498A to permit RILA issuers, as well as issuers of "combination contracts" offering a combination of index-linked options and variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations.²⁶⁶

²⁶⁶ Section 5(b)(2) of the Securities Act makes it unlawful to carry or cause to be carried a security for purposes of sale or for delivery after sale "unless accompanied or preceded" by a prospectus that meets the requirements of section 10(a) of the Act. See section 10(a) of the Securities Act (generally requiring a prospectus relating to a security to contain the information contained in the registration statement). For purposes of this release, a prospectus meeting the requirements of a section 10(a) prospectus is referred to as a "statutory

²⁵⁹ See VASP Adopting Release at section ILE.

²⁶⁰ See *supra* footnotes 253–255. These primarily include the proposed new disclosure items that are specific to RILAs, as opposed to extant Form N-4 disclosure items to which we are proposing incremental amendments to address RILAs along with variable annuities.

²⁶¹ See *supra* section II.B.I.A.6; see also Item F.14 of Form N-CEN.

Investors would continue to have access to the RILA statutory prospectus and other information about the RILA contract online, with paper or electronic copies of this information upon request.²⁶⁷ This proposed approach would provide parity between RILA issuers and issuers of variable annuities registered on Form N-4, which are permitted to use summary prospectuses to satisfy their prospectus delivery obligations.

RILA Summary Prospectus Overview

The current summary prospectus rule for variable contracts uses a layered disclosure approach designed to provide investors directly with key information relating to the contract's terms, benefits, and risks in a concise and reader-friendly presentation, with more detailed information available elsewhere. We anticipate that the summary prospectus framework would improve investor understanding of RILA contracts, as the Commission similarly expressed when it adopted the summary prospectus rule for variable contracts.²⁶⁸ This proposed approach for RILA contracts builds on the Commission's decades of experience with layered disclosure and rules permitting the use of summary prospectuses.²⁶⁹ The proposal also recognizes investors' expressed preferences for concise and engaging disclosure of key information. Accordingly, we believe the proposed approach is consistent with the RILA

Act's mandate of designing disclosure requirements "with the goal of ensuring that key information is conveyed in terms that a purchaser is able to understand."²⁷⁰

The proposed amendments to rule 498A would broaden the scope of the rule to address RILA contracts.²⁷¹ Under the proposed amendments, the rule's conditions for relying on the rule to satisfy prospectus delivery obligations would be the same for RILA contracts as for variable contracts.²⁷² These conditions include the requirements to send or give a summary prospectus to an investor no later than the time of the "carrying or delivery" of the contract security, as well as: (1) requirements for the contents that must be included in a summary prospectus, (2) limitations on binding a summary prospectus with other materials, and (3) requirements that the summary prospectus, statutory prospectus, and contract statement of additional information must be publicly accessible, free of charge, on a website in the manner that the rule specifies.

The proposed amendments to rule 498A would involve the use of two distinct types of summary prospectuses for RILA contracts, employing the same

approach the rule currently uses for variable contracts. An "initial summary prospectus," covering contracts offered to new investors, would include certain key information about the contract's most salient features, benefits, and risks, presented in plain English in a standardized order. The rule amendments would also require "updating summary prospectuses" to be provided to existing investors in RILA contracts as a condition to relying on the rule. The updating summary prospectus would include a brief description of certain changes to the contract that occurred during the previous year, as well as a subset of the information required to appear in the initial summary prospectus. Certain key information about the index-linked options that the contract offers would be provided in both the initial summary prospectus and updating summary prospectus.²⁷³

As under current rule 498A for variable contracts, the proposed use of summary prospectuses for RILA contracts would be voluntary. This would be appropriate to provide RILA issuers sufficient time to transition to a summary prospectus regime, as well as in recognition of the fact that there could be different relative benefits of using a summary prospectus for certain RILA issuers and investors in these contracts.²⁷⁴ Similar considerations informed the Commission's decision to adopt a voluntary summary prospectus regime for variable contracts.²⁷⁵

Initial Summary Prospectus

As under the current rule 498A, an initial summary prospectus for a RILA

prospectus." For purposes of this section, we refer to RILA contracts and combination contracts together as "RILA contracts."

²⁶⁷ To further effectuate the changes being proposed, we propose to exclude RILA offerings from the provisions of rule 172, which provides that a final prospectus will be deemed to precede or accompany a security for sale for purposes of Securities Act section 5(b)(2) as long as the final prospectus meeting the requirements of Securities Act section 10(a) is filed or the issuer will make a good faith and reasonable effort to file it with the Commission as part of the registration statement within the required rule 424 prospectus filing timeframe. Consistent with registered investment companies and business development companies, RILA offerings would be subject to a separate framework governing communications with investors under the proposal. *See supra* section II.E; *see also* Offering Reform Release at section VI.B.1.b.

²⁶⁸ *See* VASP Adopting Release at n.21 and accompanying text.

²⁶⁹ *See id.*; *see also* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4545 (Jan. 26, 2009)] ("2009 Summary Prospectus Adopting Release"); Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] ("Tailored Shareholder Reports Adopting Release") (adopting rules incorporating a layered disclosure approach to open-end funds' annual and semi-annual reports to shareholders).

²⁷⁰ *See* VASP Adopting Release at n.20 and accompanying text; Tailored Shareholder Reports Adopting Release at nn.10, 11, and 29 and accompanying text; *see also supra* discussion following footnote 7.

²⁷¹ To facilitate this change, and to make the terminology used in rule 498A more consistent with certain terms used in the proposed amendments to Form N-4, we are also proposing a number of amendments to the rule's definitions. Specifically, we would (1) amend the definitions to "Class," "Contract," "Investment Option," "Registrant," "Variable Annuity Contract," and "Variable Life Insurance Contract" to address RILA contracts, and/or to make changes to these definitions that correspond with amendments to certain definitions in Form N-4 (either definitions of these same terms in Form N-4, or definitions of other terms in Form N-4 that would otherwise affect the way these terms are defined in rule 498A); (2) add definitions for "Fixed Option," "Index-Linked Option," "Insurance Company," "Registered Separate Account," "RILA Contract," and "Variable Option" consistent with their counterparts in the proposed Form N-4 amendments; and (3) deleting the definition of "Depositor." These changes are necessary to communicate the provisions of the rule that would be applicable to RILA and combination contracts.

²⁷² *See* proposed rule 498A(f). Rule 498A also provides that a communication relating to an offering registered on Form N-4 that a person sends or gives after the effective date of the registration statement (other than a prospectus that Section 10 of the Securities Act permits or requires) will not be deemed a prospectus under section 2(a)(10) of the Securities Act, under certain conditions. The proposed amendments to rule 498A would extend this provision to RILA contracts. *See* rule 498A(g). Under the proposed amendments, the rule 498A provision addressing information that may be incorporated by reference into a summary prospectus also would apply the same to RILAs as it does to other contracts currently within the scope of the rule. *See* rule 498A(d).

²⁷³ This proposed approach is consistent with the approach for information about variable options in variable contracts' summary prospectuses, in which certain key information about the portfolio companies offered as variable options appears in both the initial summary prospectus and updating summary prospectus. *See* proposed rule 498A(b)(5)(ix); proposed rule 498A(c)(6)(iv).

²⁷⁴ The Commission similarly discussed the relative benefits to variable contract issuers of using a summary prospectus, based on the types of products that these issuers offer and the length of their current prospectuses, as well as the benefit of more concise disclosure to investors, in adopting rule 498A. *See, e.g.*, VASP Adopting Release at section IV.E.1 (discussion in the Economic Analysis section of the release, addressing the Commission's consideration of mandating summary prospectuses for variable contracts).

²⁷⁵ *See* VASP Adopting Release at discussion accompanying nn.41–45; *see also infra* section III.C.1.c (discussing that different issuers and investors could expect to benefit differently from this optional prospectus delivery regime, although we expect a majority of RILA issuers to choose to use summary prospectuses and that therefore the majority of RILA investors will have the option to use both summary prospectuses and statutory prospectuses in their decision-making, in whatever proportion investors think is best for their preferences).

contract may only describe a single contract that the RILA issuer currently offers for sale.²⁷⁶ An initial summary prospectus may describe more than one class of a currently offered contract.²⁷⁷ Aggregating disclosures for multiple contracts, or currently offered and no-longer-offered features and options of a single contract, can hinder investors from distinguishing between contract features and options that apply to them and those that do not. As a result, an initial summary prospectus could simplify and consolidate lengthy and complex disclosures. The content and ordering of items is designed to highlight aspects of a RILA contract that may not be emphasized in marketing materials and other disclosures.

Like other summary prospectuses that rule 498A addresses, we are proposing a standardized presentation for RILA initial summary prospectuses to require certain disclosure items that we believe would be most relevant to investors to appear at the beginning of the initial

summary prospectus, followed by supplemental information.²⁷⁸ The required presentation could also facilitate comparisons of different RILA contracts, as well as comparisons between RILA contracts and variable annuities. An initial summary prospectus must contain the information required by the rule, and only that information, in the order specified by the rule.²⁷⁹ The information would be required to appear in the same order, and under relevant corresponding headings, as the rule specifies.

The chart in Table 6 below outlines the information that we propose to require to appear in an initial summary prospectus for a RILA contract. We would not change these content requirements, with the exception of the ordering of the Overview of the Contract and KIT disclosures, from the current variable annuity requirements. The Commission has historically viewed these items as providing annuity

investors with key information relating to a contract's terms, benefits, and risks in a concise and reader-friendly presentation, and highlighting aspects of the contract that may not be emphasized in marketing materials and other disclosures.²⁸⁰ We preliminarily believe that this rationale is equally true in the context of RILA disclosure. Further, as discussed above, we propose that the Overview of the Contract disclosures (currently Item 3 of Form N-4, but proposed to be re-numbered as Item 2) should precede the KIT (currently Item 2 of Form N-4, but proposed to be re-numbered as Item 3), due to the context that the Overview section provides and based upon our experience with the form [and taking into account the results of investor testing].²⁸¹ This change would be reflected in the requirements of rule 498A.²⁸² Otherwise, the same order of disclosures would be provided as under the current rule.

TABLE 6—OUTLINE OF THE INITIAL SUMMARY PROSPECTUS

Heading in initial summary prospectus	Relevant paragraph in proposed amendments to rule 498A	Item of Form N-4 (as proposed to be amended)	Applicable to RILA contracts?	Applicable to variable annuities registered on Form N-4?
Cover Page:				
Identifying Information (front cover page) ¹	Rule 498A(b)(2)(i) through (iv) ...	.....	✓ .....	✓
Legends (front cover page) ²	Rule 498A(b)(2)(v) .....	.....	✓ .....	✓
EDGAR Contract Identifier (back cover page).	Rule 498A(b)(3) .....	.....	✓ .....	✓
Table of Contents (optional)	Rule 498A(b)(4) .....	.....	✓ .....	✓
Content:				
Overview of the [Contract]	Rule 498A(b)(5)(ii)	2	✓	✓ (each paragraph of Item 2 except (b)(2) and (d), which are generally only applicable to RILA contracts).
Important Information You Should Consider About the [Contract].	Rule 498A(b)(5)(i)	3	✓	✓ (with line items applicable to variable annuities, as specified in instructions to Item 3).
Benefits Available Under the [Contract]	Rule 498A(b)(5)(iv)	10(a)	✓	✓
Buying the [Contract]	Rule 498A(b)(5)(v)	11(a)	✓	✓
Making Withdrawals: Accessing the Money in Your [Contract].	Rule 498A(b)(5)(vii)	12(a)	✓	✓
Additional Information About Fees	Rule 498A(b)(5)(viii)	4	✓	✓

²⁷⁶ See proposed rule 498A(b)(1).

²⁷⁷ The definition of the term “class” in the proposed amendments is the same as the definition in the current rule (that is, as a class of a contract that varies principally with respect to distribution-related fees and expenses). Proposed rule 498A(a).

²⁷⁸ See VASP Adopting Release at paragraph accompanying nn.58–59.

²⁷⁹ Proposed rule 498A(b)(5).

²⁸⁰ See VASP Adopting Release at nn. 47–48 and accompanying text. To the extent that these content requirements are unchanged from the content requirements for variable annuity summary prospectuses, our rationale for these requirements has not changed from the rationale that is discussed throughout the sections of the VASP Adopting Release that address each of the content items discussed in Table 6 below. See VASP Adopting

Release at section II.A.1.c. Further, we provide our reasoning as to why these particular disclosures are important to investors in the RILA context as a general matter in section II.B. *supra*.

²⁸¹ See *supra* section II.B.I.A.2.

²⁸² Currently, rule 498A requires issuers to place “Important Information You Should Consider About the [Contract]” disclosures before “Overview of the [Contract] disclosures.”

TABLE 6—OUTLINE OF THE INITIAL SUMMARY PROSPECTUS—Continued

Heading in initial summary prospectus	Relevant paragraph in proposed amendments to rule 498A	Item of Form N-4 (as proposed to be amended)	Applicable to RILA contracts?	Applicable to variable annuities registered on Form N-4?
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(b)(5)(ix)	17	✓ (Item 17(b) and 17(c), as applicable).	✓ (Item 17(a) and 17(c), as applicable).

Notes to Table 6:

¹ The beginning or front cover page of a RILA contract's initial summary prospectus, like the initial summary prospectus of a variable annuity registered on Form N-4, would need to include the following information: (1) the insurance company's name; (2) the name of the contract, and the class or classes if any, to which the initial summary prospectus relates; (3) a statement identifying the document as a "Summary Prospectus for New Investors"; and (4) the approximate date of the first use of the initial summary prospectus.

² The required legends would be the same for RILA contracts and for variable annuities registered on Form N-4. These legends address the purpose of the summary prospectus, the availability of the statutory prospectus and other information, information regarding the permitted cancellation period for the contract, and a statement that additional information about RILA contracts has been prepared by Commission staff and is available at *investor.gov*. The initial summary prospectuses for RILA contracts as well as variable annuities also would have to include the additional statements that we are proposing to require on the cover page of the prospectus for all Form N-4 issuers. See *supra* section II.B.1; see also proposed Item 1(a)(6)–(8) of Form N-4.

A RILA initial summary prospectus would be permitted to include a table of contents. A table of contents must show the page number of the various sections or subdivisions of the summary prospectus, and immediately follow the cover page in any initial summary prospectus delivered electronically.

The topics of the contents included in an initial summary prospectus—as well as the required headings under which these contents must appear—are the same for a RILA contract summary prospectus as for a summary prospectus of a variable annuity registered on Form N-4.²⁸³ Further, certain of these required contents would vary in substance to reflect the unique aspects of RILA contracts as compared to variable annuities. These are indicated in Table 1 above and include:

- Disclosure provided under the heading "Overview of the Contract" (Item 2 of Form N-4), where disclosure for RILA contracts must include specific information about index-linked options currently offered under the contract, as well as interim value adjustments or market value adjustments that could affect an investor's contract value;
- Disclosure provided under the heading "Important Information You Should Consider About the Contract" (Item 3 of Form N-4), where certain rows in the required table are specific to RILA contracts as opposed to variable annuities;
- Disclosure provided under the heading "Additional Information About Fees" (Item 4 of Form N-4), where the requirements for fee information for RILA contracts differ from the parallel requirements for variable annuities (reflecting that RILA contracts generally do not entail annual contract expenses,

but there are other costs associated with an investment in a RILA contract); and

- Disclosure under the heading "Appendix: Investment Options Available Under the Contract" (Item 17 of Form N-4), where a RILA contract would include a different summary table for index-linked options offered under the contract than the summary table of variable options offered under a variable annuity.

Each of these disclosure items, which would also appear in a RILA statutory prospectus, is discussed in more detail in section II.B above.

Updating Summary Prospectus

As under current rule 498A, RILA issuers would not send an updated initial summary prospectus to investors each year. Instead, any RILA issuers would send an updating summary prospectus, which would provide a brief description of certain changes with respect to the contract that occurred within the prior year.²⁸⁴ This would allow investors to focus their attention on new or updated information relating to the contract. Additionally, the updating summary prospectus would include certain of the items required in the initial summary prospectus that are most likely to entail contract changes and where any such contract changes are most likely to be important to investors because they affect how investors evaluate RILA contracts and are relevant to investors when considering additional investment

²⁸⁴ A RILA issuer, like a variable annuity issuer, could only use an updating summary prospectus if it uses an initial summary prospectus for each currently offered contract described under the contract statutory prospectus to which the updating summary prospectus relates. Proposed rule 498A(c)(1). See also VASP Adopting Release at n.209 and accompanying text.

decisions or otherwise monitoring their contracts. This is consistent with the Commission's approach for variable annuity updating summary prospectuses.²⁸⁵

Because the initial summary prospectus is designed for someone making an initial investment decision, we believe that existing RILA investors would benefit more from receiving a shorter-form document including a brief summary of the changes to the contract, than from receiving the initial summary prospectus year after year.²⁸⁶ This approach also takes into account the cost to maintain and update separate initial summary prospectuses for currently offered contracts and those no longer offered.

Unlike an initial summary prospectus, which could describe only a single contract that a RILA issuer currently offers for sale, an updating summary prospectus for a RILA could describe one or more contracts covered in the statutory prospectus to which the updating summary prospectus relates,

²⁸⁵ See VASP Adopting Release at section II.A.2.a. As discussed above, the policy rationale for content requirements that would be the same among updating summary prospectuses for RILA contracts and variable annuity contracts—as well as the rationale for the location of these contents—is the same as that which the Commission articulated in adopting rule 498A. To the extent that these content requirements are unchanged from the content requirements for variable annuity summary prospectuses, our rationale for these requirements has not changed from the rationale that is discussed throughout the sections of the VASP Adopting Release that address each of the content items discussed in Table 7 below. See VASP Adopting Release at section II.A.2.c. Further, we provide our reasoning as to why these particular disclosures are important to investors in the RILA context as a general matter in section II.B, *supra*.

²⁸⁶ The Commission discussed this rationale when it initially adopted rule 498A. See VASP Adopting Release at section II.A.2.a.

²⁸³ Proposed rule 498A(b)(5).

as under current rule 498A.²⁸⁷ Similar to the initial summary prospectus, an updating summary prospectus could also describe more than one class of a contract.

Updating summary prospectuses for RILA contracts, like initial summary

prospectuses, would include specific disclosure items appearing in a prescribed order, under relevant corresponding headings.²⁸⁸ An updating summary prospectus for a RILA contract would have to contain the information required by the rule, and only that

information, in the order specified by the rule. The chart in Table 7 below outlines the information that we propose to require to appear in an updating summary prospectus for a RILA contract.

TABLE 7—OUTLINE OF THE UPDATING SUMMARY PROSPECTUS

Heading in updating summary prospectus	Relevant paragraph in proposed amendments to Rule 498A	Item of amended Form N-4	Applicable to RILA contracts?	Applicable to variable annuities registered on Form N-4?
Cover Page:				
Identifying Information (front cover page) ¹ .	Rule 498A(c)(3)(i) through (iv) ...	.....	✓ .....	✓
Legends (front cover page) ²	Rule 498A(c)(3)(v) .....	.....	✓ .....	✓
EDGAR Contract Identifier (back cover page).	Rule 498A(c)(4) .....	.....	✓ .....	✓
Table of Contents (optional) ³	Rule 498A(c)(5) .....	.....	✓ .....	✓
Content:				
Updated Information About Your Contract.	Rule 498A(c)(6)(i) through (ii) ...	.....	✓ .....	✓
Important Information You Should Consider About the [Contract].	Rule 498A(c)(6)(iii)	3	✓	✓
			(with line items applicable to RILA contracts, as specified in instructions to Item 3).	(with line items applicable to variable annuities, as specified in instructions to Item 3).
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(c)(6)(iv)	17	✓	✓
			(Item 17(b) and 17(c), as applicable).	(Item 17(a) and 17(c), as applicable).

Notes to Table 7:

¹ The beginning or front cover page of a RILA contract's updating summary prospectus, like the updating summary prospectus of a variable annuity registered on Form N-4, would need to include the following information: (1) the insurance company's name; (2) the name of the contract(s), and the class or classes if any, to which the updating summary prospectus relates; (3) a statement identifying the document as an "Updating Summary Prospectus"; and (4) the approximate date of the first use of the updating summary prospectus.

² The required legends would be the same for RILA contracts and for variable annuities registered on Form N-4. These legends address the purpose of the summary prospectus, the availability of the statutory prospectus and other information, and a statement that additional information about RILA contracts has been prepared by the SEC staff and is available at *investor.gov*. The updating summary prospectuses for RILA contracts as well as variable annuities also would have to include the additional statements that we are proposing to require on the cover page of the prospectus for all Form N-4 issuers. See *supra* section II.B.1; see also proposed Item 1(a)(6) through (8) of Form N-4.

³ The requirements for this optional table of contents would be the same for an updating summary prospectus as for an initial summary prospectus. See proposed rule 498A(b)(4); proposed rule 498A(c)(5).

The updating summary prospectus for a RILA contract would be required to include a concise description of certain changes to the contract made after the date of the most recent updating summary prospectus or statutory prospectus that was sent or given to investors. These changes would appear under the heading "Updated Information About Your Contract," with a required legend following the heading.²⁸⁹ The changes that the rule would require a RILA issuer to describe include those that relate to: (1) the availability of investment options under the contract; (2) the overview of the contract; (3) the KIT; (4) certain information about fees; (5) benefits

available under the contract; (6) purchases and contract value; and (7) surrenders and withdrawals. The updating summary prospectus also could include a concise description of any other changes that the RILA issuer wishes to disclose, provided they occurred within the same time period as the other changes the rule would require the issuer to describe. In providing a concise description of a contract-related change in the updating summary prospectus, RILA issuers would have to provide enough detail to allow investors to understand the change and how it will affect them.²⁹⁰

The topics for which a change would necessitate a description in the updating

summary prospectus would be the same for RILA contracts as for variable annuities registered on Form N-4. We do not anticipate that disclosures addressing these topics in a contract statutory prospectus would change frequently, and thus providing investors with a notice and a brief description of any changes that do occur may be more informative than repeating all the disclosures each year.²⁹¹ Despite the infrequency of changes, investors should be notified of any changes to these items given their importance to the investor's experience of investing in a RILA contract.²⁹²

We are proposing to amend rule 498A to specify that, in the context of a RILA

²⁸⁷ Proposed rule 498A(c)(2); see also VASP Adopting Release at nn.342–343 and accompanying paragraph.

²⁸⁸ Proposed rule 498A(c)(6).

²⁸⁹ The legend would be the same for RILA contracts and variable annuities: "The information in this Updating Summary Prospectus is a summary

of certain [Contract] features that have changed since the Updating Summary Prospectus dated [date]. This may not reflect all of the changes that have occurred since you entered into your [Contract]." Proposed rule 498A(c)(6)(i)(A).

²⁹⁰ Proposed rule 498A(c)(6)(i)(B); see also VASP Adopting Release at paragraph accompanying n.374.

²⁹¹ See VASP Adopting Release at paragraph following n.372.

²⁹² See *id.* at paragraph accompanying nn.365–369.

contract updating summary prospectus, the change of availability of investment options includes a change to any of the features of the index-linked options disclosed in the table that Item 17(b) of Form N-4 requires (that is, the table in the appendix of investment options that will appear in a RILA contract summary prospectus).²⁹³ When the Commission adopted rule 498A, it stated that a change that has affected availability of portfolio companies (or investment options) includes changes in the portfolio companies (or investment options) offered under the contract or available in connection with any optional benefit.²⁹⁴ In the context of index-linked options, any change to the features of the index-linked options that the required table would describe—that is, the index, type of index, crediting period, index crediting methodology, limit on index loss, and/or guaranteed minimum limit on index gain—would meaningfully change the investor's experience of investing in a RILA contract with the index-linked option that investor had previously chosen. For this reason, under the proposed amendments a change to any of these features would represent a change in the availability of the investment options that the RILA contract offers.

The topics of the additional contents included in an updating summary prospectus—as well as the required headings under which these contents must appear—would be the same for RILA contracts and for variable annuities registered on Form N-4.²⁹⁵ Certain of these required contents, however, would vary in substance to reflect the unique aspects of RILA contracts as compared to variable annuities. These are indicated in Table 2 above and include:

- Disclosure provided under the heading “Important Information You Should Consider About the Contract” (Item 3 of Form N-4), where certain rows in the required table are specific to RILA contracts as opposed to variable annuities; and
- Disclosure under the heading “Appendix: Investment Options Available Under the Contract” (Item 17 of Form N-4), where a RILA contract would include a different summary table for index-linked options offered under the contract than the summary table of variable options offered under a variable annuity.

Online Accessibility of Contract Statutory Prospectus and Certain Other Documents Relating to the Contract

Investors who receive a RILA contract initial or updating summary prospectus would have access to more detailed information about the RILA contract, either by reviewing the information online, or by requesting the information to be sent in paper or electronically. In this respect, the proposed amendments would include the same requirements for RILA contracts as for variable contracts. These requirements further the layered disclosure framework that rule 498A creates for variable contracts and would, under the proposed amendments, similarly create for RILA contracts. Those insurance companies that issue RILAs, to the extent that they also issue variable annuity contracts that use summary prospectuses under rule 498A, therefore should be generally familiar with the practice of making this information available online and be able to integrate it with existing processes for variable annuities. Similar to what the Commission expressed in the context of variable annuity summary prospectuses, permitting RILA investors to access the contract statutory prospectus in several ways (online and by physical or electronic delivery) would maximize the accessibility and usability of this information and that investors have historically indicated a preference for both online and paper resources.²⁹⁶

Under the proposed amendments, a RILA issuer relying on rule 498A (like a variable annuity issuer relying on this rule currently), would have to make the contract's current initial summary prospectus, updating summary prospectus, statutory prospectus, and SAI (together, the “required online contract documents”) available online.²⁹⁷ These required online contract documents would be required to be publicly accessible, free of charge, at the website address that the cover page of the summary prospectus specifies, on or before the time that the

person relying on the rule provides the summary prospectus to investors.²⁹⁸ The website address on which the required online contract documents appear must be specific enough to lead investors directly to the documents, although the website could be a central site with prominent links to each document.²⁹⁹ The required online contract documents would have to be presented in a manner that is human-readable and capable of being printed on paper in human-readable format, and persons accessing the documents must be able to permanently retain electronic versions of the documents. The proposed amendments include requirements for linking within the electronic versions of the contract statutory prospectus and SAI that are available online, and also for linking between electronic versions of contract summary and statutory prospectuses that are available online.

Both initial summary prospectuses and updating summary prospectuses for RILA contracts would, like variable annuity summary prospectuses, be required to define any “special terms” elected by the registrant, using any presentation that clearly conveys their meaning to investors.³⁰⁰ In RILA contract summary prospectuses that are available online, the proposed amendments (like the current rule) require that investors be able either to view the definition of each special term upon command, or to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions the summary prospectus includes.

Satisfying each of these requirements regarding online accessibility of contract statutory prospectuses and certain other documents relating to the contract is a condition for a RILA issuer to rely on rule 498A to satisfy prospectus delivery obligations.³⁰¹ Failure to comply with any of these conditions could result in a violation of section 5(b)(2) unless the contract statutory prospectus is delivered by means other than reliance on the rule. We recognize, however, that there may be times when, due to events

²⁹⁶ See VASP Adopting Release at n.417 and accompanying text; and Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, Study Regarding Financial Literacy Among Investors (Aug. 2012), available at <https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf>, at iv, xix. These proposed requirements are unchanged from the requirements for variable annuity summary prospectuses, and our rationale for these requirements has not changed from the Commission's rationale that is discussed throughout the sections of the VASP Adopting Release that discuss online accessibility requirements. See VASP Adopting Release at sections II.A.5 and II.A.6.

²⁹⁷ For proposed requirements relating to the required online contract documents, see generally proposed rule 498A(h).

²⁹⁸ A current version of each of the required online contract documents would have to remain available for at least 90 days following either: (1) the time of the “carrying or delivery” of the contract security if a person is relying on the rule to satisfy its section 5(b)(2) prospectus delivery obligations; or (2) if a person is relying on the rule to send communications that will not be deemed to be prospectuses, the time that the person sends or gives the communication to investors. Proposed rule 498A(h)(1).

²⁹⁹ Proposed rule 498A(b)(2)(v)(B).

³⁰⁰ Proposed rule 498A(e).

³⁰¹ Proposed rule 498A(f)(4); proposed rule 498A(g)(4).

²⁹³ Proposed rule 498A(c)(6)(i).

²⁹⁴ VASP Adopting Release at n.361.

²⁹⁵ Proposed rule 498A(c)(6).

beyond a person's control, the person may temporarily not be in compliance with the rule's conditions regarding the availability of the required online contract documents. The proposed amendments, like the current rule, includes a safe harbor provision addressing temporary noncompliance.³⁰²

Other Requirements for Summary Prospectus and Other Contract Documents

Like current rule 498A, the proposed amendments to rule 498A include additional requirements for RILA contract summary prospectuses.³⁰³ These include:

- Certain requirements relating to the delivery of paper or electronic copies of the required online contract documents upon request;
- The requirement that a contract summary prospectus must be given greater prominence than any materials that accompany the contract summary prospectus;
- Requirements that: (1) the required online documents be presented in a format that is convenient for reading and printing, and (2) a person be able to retain electronic versions of these documents in a format that is convenient for reading and printing; and
- The requirement for any website address that is included in an electronic version of the summary prospectus to be an active hyperlink.

Failure to comply with these additional requirements would not, however, negate a person's ability to rely on the rule to satisfy prospectus delivery obligations.

Request for Comments

We request comment on the proposed amendments to rule 498A, which would permit RILA issuers to use a summary prospectus to satisfy statutory prospectus delivery obligations:

102. Is it appropriate to permit RILA issuers, as well as issuers of "combination contracts," to use a summary prospectus to satisfy statutory

prospectus delivery obligations? Why or why not?

103. Would the current rule 498A framework, which provides for an initial summary prospectus and an updating summary prospectus, be appropriate for RILA contracts?

104. Is it appropriate that the use of summary prospectuses for RILA contracts be voluntary, as proposed? Should the use of summary prospectuses for RILA contracts instead be mandatory?

105. Should an initial summary prospectus for a RILA contract only describe a single contract that the RILA issuer currently offers for sale, as proposed? Instead should we permit an initial summary prospectus to describe more than one contract? Do commenters recommend any other changes to the proposed scope requirements for initial summary prospectuses for RILA contracts?

106. Is the proposed presentation for RILA initial summary prospectuses appropriate, or should we modify the initial summary prospectus presentation requirements in any way?

107. Are the proposed summary prospectus cover page requirements appropriate? For example, is it appropriate that initial (and updating) summary prospectuses for RILA contracts as well as variable annuities also would have to include the additional statements that we are proposing to require on the cover page of the prospectus for all Form N-4 issuers?

108. Do the proposed RILA initial summary prospectus content items represent the disclosure that would best highlight the key terms, benefits, and risks of a RILA contract? Do the proposed content items capture key considerations that a typical contract investor would find salient? Should an initial summary prospectus include additional information an investor would need in order to make an informed investment decision, and if so, what would this information be? For example, is there any information we are proposing to include in Item 6 of Form N-4 that we should include in the summary prospectus? Alternatively, should we exclude or modify any of the proposed initial summary prospectus disclosure requirements? To the extent that commenters suggest changes that would result in different content across initial summary prospectuses for RILA contracts versus variable annuities, why would such changes be appropriate, and how should we address these suggested changes in the context of "combination contracts" offering a combination of

index-linked options and variable options?

109. Under the proposal, would initial summary prospectuses for RILA contracts, on average, be longer, shorter, or about the same length as variable annuity initial summary prospectuses? What would account for any meaningful differences in average length?

110. Is the proposed updating summary prospectus approach appropriate for existing RILA investors? Do commenters agree that existing RILA investors would benefit more from a brief summary of the changes to the contract reflected in the statutory prospectus than from receiving all of the disclosures in the initial summary prospectus? Instead should existing RILA investors receive a summary prospectus akin to the initial summary prospectus year after year?

111. Should we permit, as proposed, an updating summary prospectus for a RILA contract to describe one or more contracts covered in the related statutory prospectus? Do commenters recommend any other changes to the proposed scope requirements for updating summary prospectuses for RILA contracts?

112. We request comment on the proposed requirement to include a brief description of certain contract-related changes in the updating summary prospectus. Would this disclosure requirement be useful to investors? Is the scope of changes that a RILA issuer would be required to discuss appropriate? Are there other topics about which we should require a RILA issuer to describe a change? Should we define a change in the availability of investment options that would require disclosure as a change to any of the features of the index-linked options that the table that Item 17(b) of Form N-4 would require, as proposed? If not, what definition would be more appropriate and why?

113. Do the other proposed RILA contract updating summary prospectus content items represent the disclosure that would be most appropriate and useful for existing investors, for example in considering whether to continue making additional purchase payments or reallocate contract value? If not, what alternative disclosure should we require?

114. Should rule 498A include, as proposed, the same requirements with respect to online accessibility of a RILA contract statutory prospectus and certain other documents relating to the contract as the rule provides for variable annuities (including, as described above, the requirements to make the required online contract documents

³⁰² Proposed rule 498A(h)(4). This provides that the conditions regarding the availability of the required online contract documents will be deemed to be met, even if the required online contract documents are temporarily unavailable, provided that the person has reasonable procedures in place to ensure that those materials are available in the required manner. A person relying on the rule to satisfy prospectus delivery obligations is required to take prompt action to ensure that those materials become available in the manner required as soon as practicable following the earlier of the time when the person knows, or reasonably should have known, that the documents were not available in the manner required.

³⁰³ For these additional proposed requirements, see generally proposed rule 498A(i).

available online, presentation and linking requirements for these documents, and requirements relating to the definitions of “special terms”)? If not, what alternative requirements should we adopt to help ensure that investors who receive a RILA contract summary prospectus have access to more detailed information about the RILA contract if they want it? For example, should the required online contract documents also include information about the current limits on gains for each index-linked option offered under the contract? As another example, should the required online contract documents for issuers of RILAs and variable annuities that rely on rule 498A also include the financial statements of the registrant and/or insurance company, to the extent that these financial statements are not included in the SAI (if, for instance, an insurer’s financial statements are filed on Form N–VPFS or Form 10–K, and are incorporated by reference into the registration statement)? To what extent would using the same approach for both RILAs and variable annuities ease compliance burdens on insurers? Is it appropriate that, as proposed, satisfying each of these proposed online accessibility requirements would be a condition for a RILA issuer to rely on rule 498A to satisfy prospectus delivery obligations? Are there any modifications we should make to the proposed safe harbor provision for temporary noncompliance?

115. Should rule 498A include, as proposed, the same other requirements for summary prospectuses (relating to delivery upon request, prominence of the summary prospectus in relation to accompanying materials, “convenient for reading and printing” formatting, and hyperlinking requirements) as the rule currently requires for variable annuity summary prospectuses? Is it appropriate that, as proposed, satisfying each of these proposed requirements would *not* be a condition for a RILA issuer to rely on rule 498A to satisfy prospectus delivery obligations?

D. Accounting (Items 16 and 26)

We are proposing to permit RILA issuers to provide financial statements on amended Form N–4 in the same way that insurance companies currently do on Form N–4. The principal consequence of this change would be that the financial statements filed in connection with a RILA registration statement could be prepared in SAP to the same extent as currently permitted for insurance companies’ financial statements filed on that form. Instruction 1 to Item 26(b) of Form N–

4 currently permits insurance companies that are the depositors of variable annuity separate accounts to prepare their financial statements for use in a registration statement filed on Form N–4 in accordance with SAP if the depositor would not have to prepare its financial statements in accordance with GAAP except for use in that registration statement or other registration statements filed on Forms N–3, N–4, or N–6 (the forms used to register insurance products that are issued by investment companies).³⁰⁴ The instruction further states that the depositor insurance company’s financial statements must be prepared in accordance with GAAP if it prepares financial information in accordance with GAAP for use by its parent (as defined in Regulation S–X) in any report under sections 13(a) and 15(d) of the Exchange Act or any registration statement filed under the Securities Act.³⁰⁵ In interpreting this instruction the Commission has stated that the insurance product forms do not require the use of GAAP when: (1) GAAP financial statements are not prepared for either the depositor or its parent; or (2) the depositor’s parent prepares GAAP financial statements, but the depositor’s accounts are immaterial to its parent’s consolidated financial statements and, therefore, neither partial GAAP financial statements nor a GAAP reporting package is prepared by the depositor.³⁰⁶

Forms S–1 and S–3 do not include an instruction similar to Instruction 1 of Item 26(b) of Form N–4. Rather RILAs registered on these forms are required to provide their financial statements in accordance with GAAP. The Commission, however, acting through authority delegated to the staff, has permitted insurance companies registering on Form S–1 to include SAP financial statements in RILA registration statements in the circumstances permitted by Form N–4.³⁰⁷ The

³⁰⁴ Similar to insurance products currently filing registration statements on these forms, RILA issuers would also be required, if all of the required financial statements of the insurance company are not in the prospectus, to state in the prospectus, under a separate caption, where the financial statements may be found and to briefly explain how investors may obtain any financial statements not in the SAI. Proposed item 16 of Form N–4.

³⁰⁵ Similar instructions are contained in the other forms used to register insurance products issued by investment companies. See instruction 1 to Item 31(b) of Form N–3 and instruction 1 to Item 28(b) of Form N–6.

³⁰⁶ See Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies, Investment Company Act Release No. 23066 (Mar. 13, 1998) [63 FR 13988 (Mar. 23, 1998)] (discussing the same instruction in Form N–6).

³⁰⁷ See, e.g., F&G Life Letter.

Commission has stated that this approach appropriately recognizes the cost burdens that would be imposed if the Commission were to require GAAP financial statements in cases where the depositor is not otherwise required to prepare financial information in accordance with GAAP.³⁰⁸ We preliminarily believe this is also true for insurance companies that offer RILAs and that it is important to provide for the consistent treatment of financial statements for all insurance companies that meet the circumstances permitted by Form N–4. As a result, permitting RILA issuers to rely on Instruction 1 to Item 26 to provide SAP financial statements to the same extent as issuers registering offerings of variable annuities on Form N–4 would be consistent with investor protection. In addition, SAP financial statements, which focus on an issuer’s ability to meet its obligations under its insurance contracts, as regulated by state law, appear to provide sufficient material information for investors evaluating RILAs.

Another consequence of requiring insurance companies to register offerings of RILAs on Form N–4 is that they will have greater flexibility to update their registration statement without the need to update certain financial statements. Under section 10(a)(3) of the Securities Act, RILA issuers, like variable annuity issuers, generally must file a post-effective amendment annually to update their audited fiscal year-end financial statements. In addition, Regulation S–X requires Form S–1 filers to include unaudited interim financial statements in any new registration statement or post-effective amendment that goes effective later than 134 days after the end of the insurer’s fiscal year.³⁰⁹ Form N–4 filers are not subject to this requirement.³¹⁰ In addition, after the end of an insurer’s fiscal year, RILA issuers must include year-end audited financial statements in any new registration statement or post-effective amendment filed 45 days after the fiscal

³⁰⁸ See Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts That Offer Variable Life Insurance Policies, Investment Company Act Release No. 25522 (Apr. 12, 2002) [67 FR 19848 (Apr. 23, 2002)]; see also VASP Adopting Release at n.813 and accompanying text.

³⁰⁹ 17 CFR 210.3–12(a). RILA issuers that rely on rule 12h–7 are not required to provide periodic Exchange Act reports, including quarterly reports that include interim financial statements. Therefore, they must prepare interim financial statements for Securities Act registration statements, like Form S–1 and Form S–3, even though they do not prepare interim financial statements for other purposes.

³¹⁰ See Instruction 3 to Item 26(b) of Form N–4.

year-end.³¹¹ However, Form N-4 filers instead have a 90-day grace period.³¹² As a result of the proposal to include RILAs on Form N-4, RILA issuers therefore would be able to file and amend their registration statements during certain times of year without the need to update their financial statements, which RILA issuers cannot do today.³¹³ These approaches, in consideration of consistency in treatment among all insurance companies that meet the circumstances permitted by Form N-4, are equally appropriate for RILA filers on Form N-4.

We are also proposing to require RILAs to provide the information relating to changes in and disagreements with accountants on accounting and financial disclosure as detailed in 17 CFR 229.304 (“Item 304 of Regulation S-K”). Further, RILAs would be required to provide as an exhibit any letter from the insurance company’s former independent accountant regarding its concurrence or disagreement with the statements made by the insurance company in the registration statement concerning the resignation or dismissal as the insurance company’s principal accountant. These items are currently provided by RILAs on Forms S-1 and S-3 and are designed to address the practice of “opinion shopping” for an auditor willing to support a proposed accounting treatment designed to help a company achieve its reporting objectives even though that treatment might frustrate reliable reporting.³¹⁴ The proposed amendments would not be required for variable annuities in light of their tiered investment company structure. Variable annuities typically invest indirectly in mutual funds offered as investment options under such contracts, which themselves are subject to similar disclosure obligations relating to

changes in and disagreements with accountants on accounting and financial disclosure.³¹⁵

We request comment on these aspects of the proposal.

116. Is it appropriate, as proposed, to permit RILA issuers to use the same approach with respect to the use of SAP financial statements, for purposes of preparing financial statements that are included on a registration statement on Form N-4, as Form N-4 currently provides for insurance company issuers? Why or why not?

117. Would SAP financials provide sufficient material information for a RILA investor to make an informed investment decision? Why or why not?

118. Why do insurance companies currently provide SAP financials instead of GAAP financials in their Form N-4 registration statements when permitted to do so? Do SAP financials currently provide sufficient material information for a variable annuity investor to make an informed investment decision?

119. Should we require the proposed items relating to changes in accountants for RILAs? If so, should we also require these items for all Form N-4 filers? If the information called for in Item 304 of Regulation S-K is required, is it appropriately placed in the SAI?

E. Filing and Prospectus Delivery Rules

1. Fee Payment Method and Amendments to Form 24F-2

We are proposing to require insurance companies to pay securities registration fees relating to RILA offerings using the same method used for variable annuities.³¹⁶ Specifically, issuers registering the offerings of RILAs on amended Form N-4 would be deemed to be registering an indeterminate amount of securities upon effectiveness of the registration statement.³¹⁷ These

issuers would then be required to pay registration fees annually based on their net sales of these securities, no later than 90 days after the issuer’s fiscal year ends, on the form that is used by registered separate accounts to pay securities registration fees relating to variable annuities (Form 24F-2).³¹⁸ We are further proposing to specify the calculation method for paying securities registration fees for RILA offerings, consistent with the fee calculation methodology that applies to variable annuities.³¹⁹ We are also proposing amendments to Form 24F-2 to specify when issuers can take credits for RILA redemptions that pre-date their use of that form and when expiring annuity contracts are rolled over into a new crediting period, as well as other non-substantive and conforming amendments.³²⁰

456(e) (providing that where the registration statement relates to a RILA offering, RILA issuers would be deemed to have registered an indeterminate amount of securities for purposes of sections 5 and 6(a) of the Securities Act upon the effective date of its registration statement); and 457(u) (providing for RILA issuers to pay registration fees for securities relating to RILA offerings on the same annual net basis as other Form N-4 issuers); *see also* proposed Form 24F-2. *See* section 4(e) of the Exchange Act [15 U.S.C. 78d-4(e)]; section 28 of the Securities Act [15 U.S.C. 77z-3]. We preliminarily believe that these actions are necessary or appropriate in the public interest and consistent with the protection of investors.

³¹⁸ As a general matter, the proposed amendments would provide the same process for registering an indeterminate amount of securities relating to RILA offerings as is currently provided for exchange-traded vehicle securities under rule 456(d) (which, in turn, mirrors of the process for current Form N-4 issuers to register securities) except that (1) this process would be mandatory for RILAs and (2) RILA issuers would pay fees on Form 24F-2 instead of through a prospectus supplement in accordance with rule 424. *See also* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)] (“Closed-End Fund Offering Reform Adopting Release”). For example, the proposed amendments would provide the same mechanics as other Form 24F-2 issuers when addressing interest calculations for late payments.

³¹⁹ All payments of filings fees for RILA registration statements would continue to be made by wire transfer, debit card, or credit card or via an ACH and there would be no refunds. *See* 17 CFR 230.111; proposed instruction A.5 to Form 24F-2.

³²⁰ In addition to conforming changes in proposed Form 24F-2 to effectuate the changes discussed below, in order to improve the form we are proposing to: (1) remove reporting relating to shares paid for prior to Oct. 11, 1997; (2) remove the statement in current Instruction A.3 to consult the EDGAR Filer Manual because the instructions referenced in Instruction A.3 are intended to be removed from the EDGAR Filer Manual; (3) remove current Instruction C.4, which includes EDGAR header tags for Item 5 of the form, as this information is no longer sufficient for filing purposes and current technical specifications are provided through the technical specifications page on the Commission’s web page; (4) revise current Instruction C.9 for Item 5(vii) to correspond to the current instructions for fee filing rates on the

³¹¹ *See* 17 CFR 210.3-01(c).

³¹² *See* Instruction 3 to Item 26(b) of Form N-4.

³¹³ A further consequence of the proposed changes would be that insurance companies would generally be making available their RILA-related financial statements to investors on an annual basis, consistent with the timing of financial statements for variable annuities. Currently, insurance companies relying upon rule 12h-7 provide their RILA-related financials annually, whereas insurance companies not relying on that rule provide financial statements quarterly. Insurance companies not relying on rule 12h-7 will file financial statements more frequently than annually if there are any post-effective amendments to the registration statement that require updated financial statements. *See* Form 10-Q.

³¹⁴ *See* Disclosure Amendments to Regulation S-K, Form 8-K and Schedule 14A Regarding Changes in Accountants and Potential Opinion Shopping Situations, Investment Company Act Release No. 16358 (Apr. 12, 1988) [53 FR 12924 (Apr. 20, 1988)]; *see also* item 11(i) of Form S-1.

³¹⁵ *See* Item 27(b)(4) of Form N-1A.

³¹⁶ To accommodate the changes proposed in this release, EDGAR would be modified to require insurance companies registering RILAs to use a different CIK than that used for their other offerings. One CIK would be utilized to register the offerings of RILAs on Form N-4 and pay registration fees for securities relating to RILA offerings on Form 24F-2. The other would be utilized to register the insurance company’s other offerings of securities as they do currently. As a result, insurance companies would need to utilize separate CIKs for their RILA-related filings. If the issuer only offers RILAs, it should only use one CIK. Further, we are proposing to amend rule 313 of Regulation S-T in order to permit filings relating to RILA offerings to have both an investment company type and contract identifier in order to facilitate RILA issuers’ filing these forms and for ease in identification of particular RILA contracts.

³¹⁷ The proposed rule amendments would apply the same registration fee payment approach to RILAs that is currently provided by rule 24F-2 to current Form N-4 issuers. *See* proposed rules

Currently, insurance companies, like most issuers, register a specific amount of securities when registering RILAs and are required to pay a registration fee for those securities to the Commission at the time of filing a registration statement on Form S-1 or S-3.³²¹ In contrast, the Investment Company Act provides that certain registered investment companies, including the variable annuity separate accounts that file on Form N-4, are deemed to have registered an indefinite amount of securities upon the effective date of their registration statement.³²² Instead of paying registration fees at the time of filing a registration statement, registered separate accounts pay registration fees in arrears based on their net issuance of securities, no later than 90 days after the issuer's fiscal year end, on Form 24F-2.³²³ As a result, RILA issuers must currently ensure that they do not inadvertently sell more securities than they have registered, however this is not a concern in relation to variable annuities. Further, RILA issuers pay fees at effectiveness on Forms S-1 or S-3 for the securities being registered, while registered separate accounts do not pay a fee at effectiveness on Form N-4 but rather pay fees annually on Form 24F-2 on the net sales of securities that year.

Consistent with the other elements of this proposal, these proposed amendments are designed to require insurance companies to use the same framework to pay securities registration fees for RILAs that they do for variable annuities. Insurance companies offer RILAs in a manner substantially similar to variable annuities and would similarly benefit from paying registration fees on an annual net basis and from registering offerings of an indeterminate number of securities. The

proposed amendments would provide registration fee payment parity for an insurance company that may offer one or more related insurance products, including index-linked options offered as part of combination annuity contracts.³²⁴ Requiring insurance companies to pay registration fees for securities relating to RILA offerings on Form 24F-2 would therefore be efficient for insurance companies. This approach would eliminate the risk that a RILA issuer may inadvertently oversell securities with respect to a registration statement on Form N-4, and the payment of fees on an annual net basis furthermore should lead to a reduction in overall filing fees relating to RILAs.³²⁵ Further, by requiring RILA and variable annuity offerings to use the same form and payment method, this process also would be efficient for the Commission.

The proposed fee calculation method is also consistent with the continuous offering of RILAs to investors. These investors may make additional allocations or other investment decisions over time with respect to an investment in a RILA. One effect of this is that RILA issuers, unlike other Form S-1 or S-3 issuers, may have increased difficulty in using the filing fees associated with unsold securities of a particular RILA offering to offset the filing fees due for a subsequent registration statement. This is because many RILA issuers are not easily able to terminate a RILA offering, a necessary step to recoup fees paid on unsold securities for use in a separate RILA offering.³²⁶

We are also proposing amendments to Form 24F-2 that would indicate when RILA issuers can take credits for redemptions of securities not claimed in

a prior fiscal year ("non-claimed prior redemptions"). Typically, issuers that file Form 24F-2 can take credit for these redemptions to offset some of the purchases being reported for the current fiscal year. This is only intended to be available for non-claimed prior redemptions that had occurred since the use of the form (and the payment of registration fees on an annual net basis) was available to the issuer.³²⁷ The form, however, includes a legacy instruction for any non-claimed redemptions in a prior fiscal year that ends no earlier than October 11, 1995. This specific date is related to the timing of open-end funds' and unit investment trusts' transition to Form 24F-2.³²⁸ With the addition of RILAs to this form, we are removing the reference to October 11, 1995 in Item 5(iii) of Form 24F-2 and amending the related instructions so that it is clear that issuers will only be able to take credit for non-claimed prior redemptions that occur on or after the date the issuer became eligible to use the form, which for RILA issuers would be the effective date of the proposed amendments, if adopted.³²⁹

We request comment on the proposed fee payment methodology for RILAs and the proposed amendments to Form 24F-2.

120. Is it appropriate to require RILA issuers to pay registration fees in arrears for the registration of securities? Would the process be more efficient for insurance companies than the current registration fee processes used by RILA issuers? If not, what is the appropriate manner in which RILA issuers should pay registration fees? For example, should we instead amend Form N-4 to permit or require the payment of fees on that form for RILA issuers at the time the issuer files the registration statement, consistent with insurance companies' current practices when paying registration fees for securities offerings registered on Forms S-1 and S-3?

121. Instead of *requiring* RILA issuers to pay registration fees in arrears as proposed, should we *permit* RILA issuers to choose whether to take this treatment or use some other registration fee system?

Commission's website; (5) correct the website linked in current Instruction D.1; and (6) remove the estimated Paperwork Reduction Act burden cited in current Instruction F as extraneous in light of the OMB approval box that contains information on this topic.

³²¹ In general, issuers today—including insurance companies issuing securities relating to RILA offerings—are required under the Securities Act to pay a registration fee to the Commission at the time of filing a registration statement. See sections 6(b)(1) (requiring applicants to pay a fee to the Commission at the time of filing a registration statement) and (c) (providing that a registration statement shall not be deemed to have taken place without payment of a registration fee) of the Securities Act [15 U.S.C. 77f(b)(1) and (c)]. This means they pay registration fees at the time they register the offering of securities, regardless of when (or if) they sell them. In addition, although well-known seasoned issuers have additional flexibility in paying filing fees, none of the insurance companies that issue securities relating to RILA offerings currently claim status as a well-known seasoned issuer. See *supra* footnote 21.

³²² See 15 U.S.C. 80a-24(f).

³²³ See *id.*; Form 24F-2.

³²⁴ For combination products, each issuer of securities under the product (e.g., the separate account for the variable option and the insurance company for the index-linked option) would file a separate Form 24F-2 relating to the payment of registration fees for its respective securities offered under the product.

³²⁵ As part of the proposed amendments to Form 24F-2, RILA issuers would be required to include the value of any expiring annuity contract or index-linked option that is rolled over into a new crediting period in its calculation of the aggregate sale price of securities sold during the fiscal year. RILA issuers further would be required to report such contracts or options as a redemption. This would result in zero net sales being reported in this situation. See proposed instruction C.4 to Form 24F-2.

³²⁶ See 17 CFR 230.457(p). To facilitate the transition to calculating fees on an annual net basis and filing Form 24F-2, a RILA's fee calculation should exclude excess securities that were registered under its last registration statement that remain unsold prior to the effectiveness of any final rule. See proposed instruction C.5 to Form 24F-2. This would be so that a filing fee is not charged twice for the same securities being registered.

³²⁷ See generally Closed-End Fund Offering Reform Adopting Release at n.348.

³²⁸ See Registration Under the Securities Act of 1933 of Certain Investment Company Securities, Investment Company Act Release No. 22815 (Sep. 10, 1997) [62 FR 47934 (Sep. 12, 1997)] at n.9.

³²⁹ In addition to RILA issuers, interval funds have been able to use Form 24F-2 since Aug. 1, 2021 (the effective date of rule 24F-2 as applied to interval funds), so these funds likewise would only be able to take credit for non-claimed prior redemptions since that date.

122. Is the proposed calculation methodology appropriate for RILAs? If not, what aspects of the methodology should be changed and why?

123. Is it appropriate to have RILA issuers file Form 24F-2 for this purpose, or should we instead have RILA issuers file a prospectus pursuant to rule 424(i), consistent with the treatment of exchange-traded vehicle securities under rule 456(d)?

124. Are the proposed amendments to Form 24F-2 appropriate? Should we tailor Form 24F-2 to RILAs in other ways? Are the proposed amendments clear as to how a RILA issuer would use that form? Are there any other clarifications we should offer?

125. Should we, as proposed, require separate Form 24F-2 filings for index-linked options and variable options that are offered as investment options in combination contracts? If not, how can we amend Form 24F-2 and rules 456 and 457 to accommodate combination contracts, given different legal entities are issuing the securities associated with different types of investment options?

126. Are the proposed amendments to rule 456 and 457 sufficiently clear as to how RILA issuers should calculate and pay the registration fees for securities relating to RILA offerings? Should we amend the rules further to provide more clarity?

127. The proposed amendments to rule 456 and Form 24F-2 provide procedures for how to address a merger or the cessation of operations of the issuer, which in the RILA context is the insurance company issuing the RILA. Are these provisions necessary for RILA issuers? Should these instructions instead address the cessation or merger of the particular RILA being reported?

128. Do commenters agree with the proposed requirements for how to address non-claimed prior redemptions? Why or why not?

129. Are there any other considerations or changes we should make to facilitate requiring RILA issuers to pay registration fees in arrears, either regarding securities already registered by RILA issuers or for some other reason?

2. Post-Effective Amendments and Prospectus Supplements

To facilitate the registration of RILA offerings on Form N-4 and consistent with the other elements of this proposal, we are proposing amendments to require RILA issuers to use the same framework for filing post-effective amendments to the registration statement that other issuers on Form N-4 currently use. Specifically, the

proposal would amend rule 485 to require RILA issuers to use that rule when amending RILA registration statements on Form N-4. This change would permit RILA issuers to file post-effective amendments that become automatically effective under rule 485(a) after a specified period of time after the filing or, in certain enumerated circumstances, immediately effective under rule 485(b).³³⁰ In addition, we are also proposing amendments that would require RILA issuers to apply rule 497 under the Securities Act when appropriate to file RILA prospectuses and prospectus supplements with the Commission.³³¹ These amendments are intended to facilitate a uniform post-effective amendment and prospectus filing framework for issuers on Form N-4 and should provide increased efficiencies for RILA issuers and Commission staff by applying consistent procedures for all security offerings registered on Form N-4.

Our rules currently provide different processes for RILA issuers on Forms S-1 and S-3 and current issuers on Form N-4 to update and keep current a registration statement or prospectus. Form N-4 is used by separate accounts that are unit investment trusts that offer variable contracts to register their securities under the Investment Company Act and to register an indefinite amount of continuously-sold securities under the Securities Act. Therefore, these issuers have a system of updating their disclosures that facilitates that structure. Issuers on Form N-4 typically update their registration statements annually through a post-effective amendment filed in accordance with rule 485 in order to, among other things, comply with Securities Act requirements.³³² Rule 485(b) provides for the immediate effectiveness of many of the routine updates that issuers on Form N-4 may make over the course of a continuous, long-term offering, for example, those amendments filed for no purpose other than to bring the financial statements up to date under section 10(a)(3) of the Securities Act.³³³ These issuers also file forms of prospectuses used in their

offerings through rule 497 and can supplement their prospectuses, also known as “stickering,” to reflect certain changes to the information disclosed by making a filing with the Commission in accordance with rule 497.

Conversely, RILA issuers currently follow the processes operating companies use to update their registrations statements. Operating companies that are engaged in a continuous offering of securities, like RILA issuers, are similarly required to update their registration statement each year and may update their registration statement for changes other than to bring the financial statements up to date.³³⁴ For RILAs whose offerings are registered on Form S-1, these updates typically occur through a post-effective amendment.³³⁵ Rule 462 currently provides RILA issuers with a limited set of circumstances, none of which are specific or generally relevant to RILA offerings, in which a post-effective amendment to a registration statement is effective upon filing.³³⁶ Rather, when a RILA issuer seeks to update a RILA registration statement on Form S-1, the issuer must file a post-effective amendment that is typically declared effective by Commission staff acting pursuant to delegated authority.³³⁷

In addition to differences in the post-effective amendment process, RILA issuers also follow different processes to file prospectuses than current Form N-4 filers, relying on rule 424 rather than rule 497. Although these rules provide for similar processes, there are certain differences. For example, rule 424 requires an issuer to file a prospectus only if the issuer makes substantive changes or additions to a previously-filed prospectus, whereas rule 497 requires funds to file every prospectus that varies from any previously-filed prospectus.³³⁸ Accordingly, under the proposed amendments, a RILA issuer

³³⁴ See, e.g., section 10(a)(3) of the Securities Act; rule 415(a); Item 512 of Regulation S-K.

³³⁵ Under Form S-3, the section 10(a)(3) update need not be made through a post-effective amendment. Rather, under this form, the section 10(a)(3) update generally occurs when the issuer files its annual report on Form 10-K containing the issuer's audited financial statements for its most recently completed fiscal year.

³³⁶ See rule 462(d) and (e). For example, this rule provides that a post-effective amendment that seeks only to add exhibits to a registration statement would be effective upon filing. In addition, although a well-known seasoned issuer is permitted to file a post-effective amendment to an automatic shelf registration statement with immediate effectiveness, none of the insurance companies currently offering RILAs currently claims status as a well-known seasoned issuer.

³³⁷ See 15 U.S.C. 77h; 17 CFR 229.501(a); 17 CFR 230.473. See also *supra* footnote 335 (describing the Form S-3 post-effective amendment process).

³³⁸ See rule 424(a); rule 497.

³³⁰ See rule 485(b).

³³¹ Consistent with this change, we are also proposing corresponding changes to (1) rule 424(f) to specify that RILA issuers must use rule 497 rather than rule 424 when filing prospectuses and prospectus supplements, and (2) rule 415(b) to exempt RILA offerings from the requirements of paragraph (a) of that rule consistent with the treatment of variable annuity separate accounts.

³³² See, e.g., section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)].

³³³ See rule 485(b)(1)(i). Material post-effective amendments, however, are not immediately effective. See rule 485(a).

would be required to file every prospectus relating to a RILA offering that varies in form from a previously filed prospectus before it is first used.³³⁹ This approach would provide a publicly accessible, usable database of current RILA prospectuses which would also assist the Commission in conducting its regulatory functions. In addition, rule 424 includes provisions related to continuous or delayed securities offering under rule 415.³⁴⁰ However, in light of the proposed amendments to the RILA registration framework, these provisions would no longer be applicable to RILAs.³⁴¹

Consistent with the other elements of this proposal, the proposed amendments are designed to provide parity between RILAs and other annuities registered on Form N-4. RILAs, like variable annuities, are longer-term investment products that are continuously offered and must maintain a current registration statement and up-to-date prospectus for new investors as well as for existing investors that may be able to make additional contributions or reallocate assets. Accordingly, applying rule 485's simplified post-effective amendment process is a more appropriate framework for RILA registration statements in light of their similarity to variable annuities. RILA registration statements are routinely updated over the course of an offering and may be subject to material and non-material amendments over the long-term nature of the investment product. As such, the proposed amendments addressing the post-effective amendment process for RILA registration statement should provide benefits to current RILA issuers using Form S-1 by reducing administrative complexity when updating financial statements included in a registration statement or when making other changes to a registration statement through rule 485's provisions for automatic and immediate effectiveness.³⁴² Requiring RILA issuers to rely on the simplified post-effective amendment process would enable these issuers to update their disclosures in a manner that complements and facilitates RILAs' offering structure and particularly provide efficiency in the context of combination contracts.

Requiring RILA issuers to rely on rules 485 and 497 also would provide a uniform post-effective amendment and prospectus filing framework for all issuers using Form N-4 and provide

insurance companies that may offer one or more related insurance products, including index-linked options offered as part of combination annuity contracts, consistent filing requirements across related products. This should also result in enhanced efficiencies as these issuers would no longer be required to manage distinct filing processes for related products. In addition, employing the framework provided by rules 485 and 497 would provide Commission staff with an increased degree of administrative efficiency by facilitating the review of amendments containing material changes to RILA registration statements while permitting amendments with non-material changes to become effective immediately.

We request comment on the proposed application of rules 485 and 497 to RILAs.

130. Should we require RILA issuers to file post-effective amendments to registration statements on Form N-4 under rule 485? Are there additional circumstances not currently enumerated in the rule for which we should permit the immediate effectiveness of post-effective amendments?

131. Do commenters agree that the current post-effective amendment process for RILA registration statements on Form S-1 may result in increased uncertainty and costs for RILA issuers than if the same issuers used the proposed post-effective amendment process under proposed rule 485 to amend RILA registration statements? Will using the process required by rule 485 mitigate these concerns?

132. Should we require RILA issuers to file prospectuses and prospectus supplements under rule 497 rather than under rule 424? If not, what is a more appropriate process for RILA issuers to file prospectuses and prospectus supplements given the proposed move of RILA registration statements to Form N-4?

133. How would RILA issuers be affected by the requirement to file the exact form of prospectus under rule 497, given rule 424 only requires filers to file prospectuses that contain substantive changes from or additions to a previously filed prospectus?

134. Are there other filing rules that should be amended to help facilitate the movement of RILA registration statements to Form N-4? Is so, please explain what rules should be amended and the rationale for the suggested changes.

3. Prospectus Delivery

We also propose to prohibit the use of rule 172 in connection with the offering

of a RILA. Under rule 172, a final prospectus is deemed to precede or accompany a security for sale for purposes of Securities Act section 5(b)(2) as long as the final prospectus meeting the requirements of Securities Act section 10(a) is filed or the issuer will make a good faith and reasonable effort to file it with the Commission as part of the registration statement within the required rule 424 prospectus filing timeline.³⁴³

Registered investment companies, including variable annuity separate accounts, are excluded from rule 172 and therefore must deliver a prospectus to investors.³⁴⁴ Therefore, we are excluding RILA offerings from rule 172 to ensure that investors receive a prospectus about these complex investments and because we are proposing to treat offerings of RILAs like offerings of variable annuities in other respects. Moreover, we understand that, as a practical matter, RILA issuers typically do not rely on rule 172 because RILA issuers typically deliver prospectuses to accompany or precede other communications, such as annuity applications, in order to avoid those communications being offers that otherwise would be non-conforming prospectuses that violate section 5 of the Securities Act.³⁴⁵

We request comment on excluding RILA offerings from rule 172.

135. Is our understanding correct that RILA issuers typically deliver prospectuses to investors to accompany or precede other communications, and thus do not rely on rule 172? If not, in what circumstances to RILA issuers typically rely on rule 172? Is there any reason we should permit RILA issuers to rely on rule 172 even though issuers cannot rely on the rule for other offerings registered on Form N-4?

F. Materially Misleading Statements in RILA Sales Literature

We are proposing to amend rule 156 to make its provisions applicable to RILA sales literature. Under the Federal securities laws applicable to all securities (including RILA offerings), it

³³⁹ See Rule 172(b) and (c); see also Offering Reform Release at n.561 and accompanying text.

³⁴⁴ *Id.* at section VI.B.1.b.

³⁴⁵ See section 2(a)(10) of the Securities Act (providing, in part, that a communication sent or given after the effective date of the registration statement shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of section 10(a) was sent or given to the person to whom the communication was made). See also Offering Reform Release at n.561 (stating that a final prospectus only filed as provided in rule 172 will not be considered to be sent or given prior to or with a written offer within the meaning of this clause of section 2(a)(10)).

³³⁹ See proposed rule 497(e).

³⁴⁰ See rule 424(b).

³⁴¹ See proposed rule 415(b).

³⁴² See proposed rule 485.

is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.³⁴⁶ Rule 156 does not prohibit or permit any particular representations or presentation, rather it is an interpretive rule that provides factors to be weighed in considering whether a statement involving a material fact is or might be misleading in the specific context of investment company sales literature for purposes of the Federal securities laws, including sales literature relating to the sale of variable annuities. Applying this rule to RILA sales literature is consistent with the RILA Act in that it would provide RILA issuers guidance on ways to avoid presenting investors with materially misleading advertisements, which should help ensure that investors receive the information necessary to make informed decisions about these products.³⁴⁷

Rule 156 provides guidance on whether a statement involving a material fact is misleading in sales literature, depending on an evaluation of the context in which it is made, with the rule providing four non-exhaustive factors to guide in this determination.³⁴⁸ While these factors have some relevance to the marketing of all securities, similarities between variable annuities and RILAs (as to how and to whom they are marketed), make the extension of rule 156 to RILAs particularly appropriate. Like investment company sales literature generally (and variable annuity marketing materials particularly), RILA advertisements discuss complex investment features, and RILA issuers should benefit from rule 156's contextual analysis in considering whether a particular representation is materially misleading. Thus, the proposed amendments to rule 156 would help address these concerns by focusing attention to specific areas of RILA sales literature that we have identified as being particularly susceptible to misleading statements.³⁴⁹

Commission staff have reviewed RILA advertisements to better understand how insurance companies market these products to investors. As part of this review, and based upon prior

experience reviewing RILA registration statements, the staff identified common RILA marketing approaches that could benefit from rule 156's guidance about advertising statements that could be misleading under the Federal securities laws without appropriate context.

For example, in the sales literature reviewed by the staff, insurance companies typically marketed RILAs as growth products based primarily on the linkage to an underlying index. Current rule 156(b)(1)(ii) provides that a statement could be misleading because of "[t]he absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading." Thus, if rule 156 were applied to RILAs as proposed, rule 156 would assist insurance companies in considering whether representations about a RILA as a growth product would require qualification in light of particular RILA features, such as the existence and extent of any limitations on upside index performance. Representations that highlight downside protections of a RILA could similarly be misleading without the context of the cost or limitation of those protections (e.g., upside limitations). The same analysis would apply to representations that tout customization without discussing the trade-offs associated with that customization (e.g., long lock-up periods to get the best rates or having to experience a contract adjustment when making a change), or fail to explain that the insurance company has reserved the right to change or remove key features of the contract while surrender charges still apply. If RILA sales literature discussed these aspects of the contract without adequately explaining these limitations or the insurer's discretion to alter key features, that omission could make the advertisement misleading. Accordingly, the application of rule 156(b)(1)(ii) to RILA sales literature would require an insurance company to consider whether an advertisement would be materially misleading if it suggests a given RILA is a loss-avoidance vehicle or a customizable product in the absence of qualifying explanations or statements. Similarly, if sales literature advertises a particular feature of the product's bounded return structure (including, e.g., a specified index; an upside feature such as a particular "cap rate" or "participation rate"; or a downside feature such as a "floor" or "buffer") that is not available for the life of the product or the full term of any surrender charge period, the rule would require consideration of whether the statement is misleading

without providing additional context as to the insurer's discretion.

As another example, current rule 156(b)(4) provides that "[r]epresentations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading." While RILA investors are not typically charged direct ongoing fees or expenses, RILAs do typically limit an investor's ability to participate in upside performance, and charges like contract adjustments can impose costs upon highlighted features such as guaranteed benefits. In the context of RILA sales literature, the proposed application of this provision of rule 156 to RILA advertisements would require consideration about whether representations or portrayals either of a RILA's costs or charges (e.g., advertising implying that a RILA had low costs or no ongoing charges), or optional benefits that are subject to a contract adjustment, would necessitate qualifying statements or explanations regarding the costs or tradeoffs to the investor to receive an advertised benefit or those generally associated with the RILA.³⁵⁰

Lastly, current rule 156(b)(2)(i) states that "[r]epresentations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where: [p]ortrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading." In the context of RILA advertising, the

³⁴⁶ See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b-5.

³⁴⁷ See Mutual Fund Sales Literature Interpretive Rule, Investment Company Act Release No. 10915 (Oct. 26, 1979); [44 FR 64070 (Nov. 6, 1979)] ("Rule 156 Release").

³⁴⁸ See rule 156(b).

³⁴⁹ See, e.g., Rule 156 Release (Rule 156 is "intended to highlight general areas which, based on the Commission's regulatory experience with investment company sales literature, had proven to be particularly susceptible to misleading statements").

³⁵⁰ Insurance companies may apply a contract adjustment to the investors' account when an investor annuitizes or takes advantage of benefits like "free withdrawal" provisions (that typically permit investors to withdraw up to 10% of the contract value each year without paying a surrender charge), death benefits, systemic withdrawals, and guaranteed benefits. See The Design and Regulatory Framework of Registered Index-Linked Annuities, ALI CLE Conference on Life Insurance Products 2022 ("It is important to note that interim value adjustments may apply to surrenders and all types of 'withdrawals,' such as free look payments; annuitization; death benefit payments; deductions for third party advisory fees; systemic withdrawals; and even income payments under guaranteed benefit riders.")

proposed provision would require consideration of whether illustrations about the operation of a RILA or its features could be misleading because, for example, they use assumptions (such as limits on gains or index performance that includes dividends whereas the RILA's index does not include dividends) that are not currently offered or exceed what could be reasonably anticipated or use "cherry picked" data. Including historical index performance in an advertisement also would mislead investors if, for example, it suggested that the performance shown is predictive of future performance of the index or a RILA. On the other hand, using the index's historical performance to illustrate how a RILA works *in a fair and balanced way* (e.g., by showing index performance relative to representative limits on gains and losses, as some RILA advertisements currently do) would be consistent with the proposed extension of rule 156 to RILA advertisements, assuming those advertisements otherwise include appropriate caveats to ensure that the illustrations are not misleading.³⁵¹ Moreover, our preliminary view is that purporting to show the historical *performance of the RILA or any particular index-linked option itself* would generally be materially misleading. This is because the terms of a RILA investment, such as limits on gains, change frequently, making past performance irrelevant to current investors who are not able to utilize those past rates in current market conditions. In addition, to the extent that a RILA is using a point-to-point crediting method, that RILA's return to an investor would be particularly sensitive to the specific date the investor purchased the RILA and when the crediting period ends for the index-linked option chosen by the investor.³⁵² This further increases the likelihood of a current investor's investment experience deviating from the historical performance of a given RILA, even when that RILA had similar terms to those currently offered. Our understanding is that insurance companies do not currently advertise the historical performance of the RILA or any particular index-linked option itself.

³⁵¹ See rule 156(b)(1)(ii) (statement can be misleading because of "absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading").

³⁵² See, e.g., OIAD Report at Section 3, Comparing RILA Features, Variations in Term Length and Simulated Returns; Section 7, Conclusions, Implications of the Research: The Economics of RILAs.

In addition to rule 156, advertisements and sales literature for existing N-4 issuers is subject to 17 CFR 230.482 ("rule 482"). Rule 482 requires, among other things, enhanced disclosures in investment company and business development company advertisements designed to convey balanced information to prospective investors, particularly with respect to standardizing representations of a fund's past performance.³⁵³ These provisions were introduced as a result of the Commission's experience with fund advertisements that were creating unrealistic or misleading expectations through representations regarding past performance.³⁵⁴ Accordingly, rule 482 now permits funds to use performance data in their advertisements, but only according to standardized methodologies set forth in the rule. Unlike the rules applicable to most RILAs, rule 482 also permits registered investment companies and business development companies to provide advertisements and sales literature to investors without it being accompanied or preceded by a statutory prospectus.³⁵⁵

While not required by the RILA Act, we nevertheless considered whether RILA advertising might raise similar concerns that would justify amending rule 482 to include RILAs. As explained below, we have not yet seen sufficient evidence to support an expansion of rule 482 to RILAs at this time, though we acknowledge such concerns may develop in the future.³⁵⁶ This conclusion largely follows from the rule's standardized performance data requirements, which do not align with current practices in RILA advertisements. While variable annuity marketing materials frequently utilize standardized performance returns, this is not the case with RILA advertisements. Rather than relying on past performance, insurance companies typically market RILAs on other bases that are less amenable to standardized performance metrics, for example highlighting that these are flexible products whose features can be customized to fit a particular investor's needs. RILA advertising also typically does not attempt to utilize past

³⁵³ See Amendments to Investment Company Advertising Rules, Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)] ("482 Amendment Release").

³⁵⁴ See *id.*

³⁵⁵ See 17 CFR 230.433(b)(2).

³⁵⁶ As a result, RILA sales literature, as "free writing" prospectuses, would continue to be subject to 17 CFR 230.164 and 17 CFR 230.433, as well as any other applicable rule that permits a communication notwithstanding the "gun jumping" provisions of the Securities Act.

performance, suggesting there is neither a need for rules prescribing RILA-specific past performance metrics, nor sufficient experience to inform the development of such metrics. For these reasons, we would not change rule 482 to include RILAs.

We request comment on the proposed application of rule 156 to RILAs and our proposal not to amend rule 482 to include RILAs.

136. Would the application of rule 156 to RILA sales literature help to prevent or address material misstatements in those communications? Is there any other action we should take to address this concern?

137. Are there differences between variable annuities and RILAs that would justify not extending rule 156 to RILA sales literature as proposed?

138. Instead of extending rule 156 to RILAs, should we create a new rule that specifically and solely deals with materially misleading information in RILA sales literature? If so, what is it about RILAs that necessitates a RILA-specific rule about materially misleading sales literature, and what particular areas or topics should we address in a RILA-specific sales literature rule?

139. Do commenters agree with the contextual concerns highlighted above with regards to the representations typically used in RILA sales literature? Are there other claims or suggestions in RILA sales literature that insurance companies use that we should be concerned about?

140. Do insurance companies currently utilize any performance metrics in RILA advertisements? Why do insurance companies not currently utilize past performance in RILA sales literature to the same extent as variable annuity advertisements? Is there a way to standardize RILA past performance information? Is there a way to view RILA past performance information as other than as materially misleading?

141. Do commenters agree that advertising the historical performance of a RILA or any particular index-linked option would be misleading in light of the customized nature of RILA contracts and the pace at which the RILA features that determine RILA performance are subject to change?

142. Are there benefits to investors in amending rule 482 to include RILA advertising materials? If so, how should it be amended? How would we address past performance metrics for a RILA in light of the customized nature of RILAs and the changing nature of RILA features?

143. Should we permit insurance companies to provide RILA sales literature to investors without being accompanied or preceded by a summary or statutory prospectus as variable annuities do? How would insurance companies be able to present such a complex product to investors in a way that they can understand?

G. Existing Commission Letters

Certain Commission letters, or portions thereof, exempting insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection

with the registration of an offering of RILAs on Form S-1 based on the authority provided in 17 CFR 210.3-13 (“3-13 Exemptions”) would be withdrawn or rescinded in connection with any adoption of this proposal in light of the proposed change to permit RILAs to provide SAP financial statements on amended Form N-4 in the same way that other insurance companies are permitted to do so on current Form N-4.³⁵⁷ Following the compliance date of any final rule, some letters, or portions thereof, would be moot, superseded, or otherwise

inconsistent with the final rule and, therefore, would be withdrawn or rescinded. If commenters believe that additional Commission letters or other actions, or portions thereof, should be withdrawn or rescinded, they should identify the letter or guidance, state why it is relevant to the proposal, how it or any specific portion thereof should be treated, and the reason therefor. Based on the proposal, 3-13 Exemptions that would be withdrawn or rescinded would include, but would not necessarily be limited to, all of the 3-13 Exemptions listed below.

TABLE 8—EXISTING COMMISSION LETTERS

Name	Date
Great-West Life & Annuity Insurance Company and Great-West Life & Annuity Insurance Company of New York	9/28/2018
Athene Annuity and Life Company	9/28/2018
Allianz Life Insurance Company of North America and Allianz Life Insurance Company of New York	9/28/2018
MONY Life Insurance Company of America	3/7/2019
Symetra Life Insurance Company and First Symetra National Life Insurance Company of New York	8/8/2019
Forethought Life insurance Company	10/17/2019
Nationwide Life Insurance Company	10/17/2019
Minnesota Life Insurance Co	6/11/2020
MEMBERS Life Insurance Co	11/6/2020
Transamerica Life Insurance Company and Transamerica Financial Life Insurance Company	2/11/2021
Midland National Life Insurance Company	8/12/2021
Protective Life Insurance Company and Protective Life and Annuity Insurance Company	10/14/2022
Everlake Life Insurance Company	10/21/2022
Fidelity & Guaranty Life Insurance Company and Fidelity & Guaranty Life Insurance Company of New York	3/17/2023
Delaware Life Insurance Company and Gainbridge life Insurance Company	4/28/2023

We request comment on the proposed recessions.

144. Are there any other Commission letters or actions that should be rescinded or withdrawn if the proposal is adopted?

145. Are there any staff letters or guidance pieces that would be moot, superseded, or otherwise inconsistent with the final rule?

146. In a future rulemaking, should we consider codification of any 3-13 Exemptions that have been granted to other insurance products? If so, what considerations should the Commission consider in doing so?

H. Registered Market-Value Adjustment Annuities

In addition to RILAs, there are other non-investment company insurance products that are securities under the Federal securities laws. Like RILAs, offerings of these securities are currently registered by insurance companies on Forms S-1 or S-3. For example, some

annuity contracts that offer fixed investment options and apply market-value adjustment annuities (“MVAs”) to amounts withdrawn from such fixed options before the end of the fixed option’s term (e.g., due to contract withdrawals, transfers to other investment options, and annuitization) are required to register the MVA with the Commission (“registered MVAs”).³⁵⁸ For these annuities, fixed options are either offered on their own or in a combination contract with variable options. Like RILAs, a significant feature of a registered MVA is the contract adjustment.

Because RILAs and registered MVAs differ only with respect to the manner in which interest is calculated and credited, many of the disclosures we are proposing for RILAs on Form N-4 would also be appropriate for registered MVAs. This is particularly true of the proposed disclosures relating to the operation of contract adjustments, given

their importance in both a RILA and a registered MVA.

We are not proposing to require insurance companies to register offerings of registered MVAs on Form N-4 at this time because the RILA Act does not address these securities and imposes specific timelines for the Commission both to propose rules and to adopt final rules. We request comment below, however, on whether we should also require insurance companies to register offerings of registered MVAs on Form N-4. To help commenters evaluate these requests for comment, we also have analyzed the changes to Form N-4 we believe would be necessary to accommodate offerings of these securities:

- Adding registered MVAs to the list of permissible uses of Form N-4 on the facing page and general instructions;³⁵⁹
- Adjusting the definition of “Contract Adjustment” in the form to

³⁵⁷ Rule 3-13 provides, in part, that the “Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character.”

We would not be rescinding exemptions provided in any of the letters outlined below provided with respect to non-RILA insurance products because they are not affected by this rulemaking.

³⁵⁸ Registered MVAs are securities because the MVA feature imposes certain investment risks on

purchasers. See Section 3(a)(8) of the Securities Act and 17 CFR 230.151; see also *SEC v. Variable Annuity Life Insurance Co. of America*, 359 U.S. 65, 77 (1959).

³⁵⁹ See, e.g., proposed General Instruction B.1 of Form N-4.

account for investment options beyond index-linked options;

- In the discussion of how interest is calculated for the contract's fixed options in the description of the insurance company, registered separate account, and investment options, requiring: (1) a statement that an investor could lose a significant amount of money due to the contract adjustment if amounts are removed from a fixed option prior to the end of its term, (2) a description of the transactions subject to a contract adjustment with cross-references to the related disclosure in the prospectus, and (3) a prominent statement of the maximum amount of loss, as a percentage, an investor could experience from a negative contract adjustment and that this loss could be greater due to surrender charges and tax consequences;³⁶⁰

- Adjusting the disclosures in the prospectus about contract adjustments in the charges-related disclosures to account for investment options beyond index-linked options having contract adjustments;³⁶¹

- In the appendix of available investment options, in the discussion of fixed options, requiring: (1) a legend stating that if amounts are withdrawn from a fixed option before the end of its term, the insurance company may apply the contract adjustment and that this may result in a significant reduction in contract value; and (2) the provision of appropriate cross-references to the prospectus disclosure relating to contract adjustments;³⁶²

- Requiring registered MVAs to provide the same disclosure proposed for RILAs regarding changes in accountants;³⁶³

- Requiring registered MVAs to provide the same census-type information as we are proposing for RILAs;³⁶⁴ and

- Requiring the same undertakings and exhibits for registered MVAs as we are proposing for RILAs.³⁶⁵

In addition to these changes to Form N-4, if we were to require insurance companies to use Form N-4 to register offerings of registered MVAs, we would

anticipate providing the same functional changes we are proposing for RILAs, that is, the ability to use a summary prospectus and the use of the same filing and marketing rules, for the same reason as we are proposing these changes for RILAs.³⁶⁶ For example, we could create a defined term "registered market value-adjusted annuity" in rule 405 that would be an annuity (1) that is deemed a security; (2) that is offered or sold in a registered offering; (3) that is issued by an insurance company that is subject to the supervision of either the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commissioner; (4) not issued by an investment company; and (5) whose value may reflect a positive or negative adjustment (based on calculations using a predetermined formula, or a change in interest rates, or some other factor or benchmark) if amounts are withdrawn before the end of a specified period. We could then use this definition to apply to registered MVAs those Securities Act rules we propose to apply to RILAs.³⁶⁷ We would also expect to have the same requirements as to the use of Inline XBRL for similar reasons.³⁶⁸

We request comment on whether to require insurance companies to register the offering of registered MVAs on Form N-4.

147. Would it be appropriate to require insurance companies to register the offering of registered MVAs on Form N-4 (as proposed to be as amended in this proposal)? Should all of the changes suggested above apply to registered MVAs?

148. Is the definition of "registered market-value adjusted annuity" included above as an example the correct one?

149. Are there any other disclosures that would be relevant in the registered MVA context?

I. Technical Amendment to Form N-6

The Commission is proposing a technical amendment to Form N-6 to reflect the correct placement of an amendment to this form that the Commission adopted in 2020 in the release titled "Facilitating Capital Formation and Expanding Investment

Opportunities by Improving Access to Capital in Private Markets" (herein referred to as the "Exempt Offering Framework Adopting Release").³⁶⁹ In that release, the Commission adopted, among other amendments, amendments to certain instructions associated with the Exhibits items of Form N-4 and Form N-6. The amendatory instructions in the Exempt Offering Framework Adopting Release erroneously referred to outdated Exhibits items of these forms. That is, the amendatory instructions referred to Items 24 and 26 respectively, instead of Items 27 and 30 respectively (as adopted by the Commission in earlier amendments to Forms N-4 and N-6 in the VASP Adopting Release).³⁷⁰ The amendments we are proposing to Form N-4 correctly reflect the placement of the amendment that the Commission adopted in the Exempt Offering Framework Adopting Release in Item 27 of the form instead of in Item 24. We are also proposing a technical amendment to Item 30 of Form N-6 that correctly reflects the placement of the amendment that the Commission adopted in the Exempt Offering Framework Adopting Release in this item instead of in Item 26.

J. Compliance Period

We are proposing a compliance date one year after publication of final amendments in the **Federal Register**.³⁷¹ All initial registration statements and post-effective amendments that are annual updates to effective registration statements on Form N-4 that are filed after the compliance date would be required to comply with the amendments. This compliance period is designed to give registrants sufficient time to comply with the proposed changes, including to update their registration statements; to prepare to use rules 485 and 497 to update their registration statements and file prospectuses with the Commission; and to begin paying securities registration fees on Form 24F-2.

RILAs that have previously registered offerings of securities on Forms S-1 or S-3 would file a post-effective amendment to their registration statement pursuant to rule 485(a) at the

³⁶⁰ See proposed Item 6(e)(2) of Form N-4.

³⁶¹ See proposed Item 7(e) of Form N-4.

³⁶² See proposed Item 17(c) of Form N-4.

³⁶³ See proposed Item 26(c) of Form N-4. As with RILAs, if insurance companies were required to use Form N-4 for registered MVAs, they would also be permitted to use SAP in registered MVA registration statements to the same degree as other Form N-4 filers. See *supra* section II.D. If we were to do this, 3-13 Exemptions provided in connection with registered MVAs would be withdrawn or rescinded for the reasons discussed in section II.G above.

³⁶⁴ See proposed Item 31A of Form N-4.

³⁶⁵ See proposed Items 27(q) and 34(b) of Form N-4.

³⁶⁶ See *supra* sections II.C, E, and F.

³⁶⁷ This definition mirrors that of "registered index-linked annuity" we are proposing to add to rule 405 for RILAs, other than the last provision which borrows from the definition of "contract adjustment" we are proposing to add to Form N-4. We could also consider creating a defined term in rule 405 that combines both the RILA and registered market-value adjusted annuity definitions for simplicity.

³⁶⁸ See *supra* section II.B.9.

³⁶⁹ Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Investment Company Act Release No. 34082 (Nov. 2, 2020) [86 FR 3496 (Jan. 14, 2021)].

³⁷⁰ See Exempt Offering Framework Adopting Release at amendatory instructions 50 and 51; see also VASP Adopting Release at section II.C.4 (Table 6).

³⁷¹ This compliance period would apply for all of the amendments in this release other than the technical amendment to Form N-6 discussed in section II.I *supra*.

time of their next annual update following the compliance date, using Form N-4.³⁷² In appropriate circumstances, we would consider requests by registrants with respect to existing variable annuity contracts to file post-effective amendments pursuant to Securities Act rule 485(b)(1)(vii) when these post-effective amendments make conforming changes to comply with the proposed amendments to Form N-4.³⁷³

We also are proposing to provide a six-month delayed effective date for all amendments except for the amended Form N-4, amended rule 498A, and technical amendments to Form N-6, such that all other final amendments would be effective six months after publication in the **Federal Register**. Thus, we propose that a registrant would be able to rely on rule 498A to satisfy its obligations to deliver a RILA contract's statutory prospectus beginning on the effective date of the rule amendments, provided that the registrant is also in compliance with the amendments to Form N-4. The delayed effective date for remaining amendments would provide the Commission time to prepare the EDGAR system to accommodate transitioning RILA offerings onto the proposed framework.³⁷⁴

³⁷² A post-effective amendment filed under rule 485(a) [17 CFR 230.485(a)] generally becomes effective either 60 days or 75 days after filing, unless the effective date is accelerated by the Commission. RILA registrants generally should be able to rely on template filing relief, in which case they would not need to file a rule 485(a) filing for each RILA. See proposed amended rule 485(b)(1)(vii). Existing RILA issuers that only issue RILAs and will be using the same CIK would be permitted to transition by filing a 485APOS or 485BPOS in EDGAR. Both of these submission types allow the entity to keep its current Securities Act file number, and both allow the filer to obtain new contract IDs and the needed Form N-4 investment company type designation in EDGAR. RILA issuers that will be acquiring new CIKs for their RILA offerings would need to transition by filing an administrative Form N-4 submission under a newly-issued CIK to obtain a new Securities Act file number, new contract IDs, and the Form N-4 investment company type (which is used for EDGAR purposes only).

³⁷³ A post-effective amendment filed under rule 485(b) may become effective immediately upon filing. A post-effective amendment may be filed under rule 485(b) if it is filed for one or more specified purposes, including to make nonmaterial changes to the registration statement. A post-effective amendment filed for any purpose not specified in rule 485(b) generally must be filed pursuant to rule 485(a). Under rule 485(b)(1)(vii), the Commission may approve the filing of a post-effective amendment to a registration statement under rule 485(b) for a purpose other than those specifically enumerated in the rule. The Commission's staff has been delegated the authority to approve registrants' requests under rule 485(b)(1)(vii). 17 CFR 200.30-5(b-3)(1).

³⁷⁴ There would be no transition period associated with the technical amendment to Form N-6 discussed in section III *supra*.

We are not delaying the effective date of the proposed changes to Form N-4 and rule 498A, however, to allow registrants to begin filing registration statements under the revised form as soon as possible. We believe allowing registrants to use the new form as soon as possible following the Commission's adoption of final amendments is consistent with Congress's intent in directing the Commission to prepare and finalize a new form for RILAs within 18 months of enactment.

We request comment on the proposed compliance period:

150. Would the proposed compliance period provide registrants sufficient time to prepare to comply with the amendments? Would more time be appropriate or, conversely, should we provide a shorter compliance period to ensure that investors receive the benefit of the proposed amendments more quickly?

151. Should we provide a separate compliance period to provide more time for insurance companies to comply with the requirement to structure certain disclosure in Inline XBRL? For example, should we provide an additional year period after the date insurance companies are required to first update their disclosure?

152. Is it appropriate to permit a registrant to rely on rule 498A to satisfy its obligations to deliver a RILA contract's statutory prospectus beginning on the effective date of the rule amendments, provided that the registrant is also in compliance with the amendments to Form N-4?

K. General Request for Comment From Retail Investors

We are requesting input from the retail investor community relating to the experiences of seeking information about, and investing in, a RILA. We understand that RILAs are typically sold to retail investors. This, together with the congressional mandate to design disclosure requirements for RILAs with the goal of ensuring that key information is conveyed in terms a purchaser is able to understand, makes feedback from retail investors particularly relevant as we consider the disclosures that would be required in a RILA registration form.³⁷⁵ Specifically, we invite retail investors seeking to comment on their feedback with annuities generally and RILAs in particular to submit a short Feedback Flyer, available at Appendix D.

³⁷⁵ See *supra* discussion accompanying and following footnote 7.

III. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 3(f) of the Exchange Act, section 2(b) of the Securities Act, and section 2(c) of the Investment Company Act state that when the Commission is engaging in rulemaking under such titles and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, section 23(a)(2) of the Exchange Act requires the Commission to consider, among other matters, the impact such rules would have on competition and states that the Commission shall not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We are proposing amendments to our rules designed to carry out the requirements of Section 101(b) Division AA, Title I of the Consolidated Appropriations Act, 2023, to establish a registration form for RILAs. The Commission is proposing to amend the form currently used by most variable annuity separate accounts, Form N-4, to require issuers of RILAs to register offerings on that form as well. To facilitate this amendment, the Commission is also proposing to amend certain filing rules and make other related amendments. In addition, we are proposing other amendments to Form N-4 that would apply to all issuers that use that form. We are also proposing to apply a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws to RILA advertisements and sales literature.

While the Commission has developed a set of specific registration forms for variable insurance contracts, RILA issuers cannot use those forms because a RILA issuer is not an investment company. Currently, insurance companies register the offerings of RILAs on the Securities Act registration forms that are typically used to register traditional debt or equity offerings, Forms S-1 and S-3. Because Forms S-1 and S-3 are not tailored to the particular characteristics of RILAs (or indeed insurance products more generally), these forms include a number of disclosure requirements that may be less material to investors when

evaluating an insurance product like a RILA and do not include line-item requirements mandating RILA-specific information that is of importance to investors in these products. The inclusion of disclosures that are of little relevance to investors and the omission of information that is of importance to investors limits the usefulness of the information investors currently receive about RILAs and thus their ability to make informed investment decisions. In addition, Forms S-1 and S-3 require the use of GAAP financial statements, rather than the SAP financial statements that the State insurance regulators require. SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, appear to provide sufficient material information for investors evaluating RILAs. Investors may also benefit from the lower cost burdens on issuers provided by the use of SAP financial statements, to the extent that those savings are passed along to investors. The proposed rule would increase the usefulness of the information provided to current and prospective investors in RILAs by:

- Adapting the existing registration and disclosure framework for variable insurance contracts to accommodate RILAs;
- Requiring RILA-specific disclosure requirements in Form N-4, including disclosures specific to the underlying investment options, such as, for each available index-linked option, the index, crediting period, and index crediting methodology;
- Proposing amendments to Form N-4 based on our experience in administering the form and in reaction to our observations of investor testing, which would be applicable to all issuers that use this registration form and which are designed to improve disclosures;
- Switching the order of the Key Information Table and Overview of the Contract items;
- Utilizing a question and answer format for the Key Information Table;
- Removing an instruction that permits registrants to omit additional disclosure in the prospectus that repeats information disclosed in the Overview of the Contract or the Key Information Table; and
- Extending the current rule providing factors to be weighed in

considering whether a statement involving a material fact is or might be misleading in the specific context of investment company sales literature to RILAs, in order to address misleading statements about RILA fees, product features, and certain performance presentations in RILA sales literature.

We have considered the potential costs and benefits that would result from the proposed rules, as well as the potential effects on efficiency, competition, and capital formation. Certain potential economic effects of the proposed rule would stem from the statutory mandate, while others would stem from the discretion we are exercising. We discuss the potential economic effects of the proposed amendments in section III.C. We also consider certain alternatives to our proposed approach to implementing the statutory mandate, as discussed in section III.E. We note that, where possible, we have attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed rule. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate. Nevertheless, as described more fully below, the Commission is providing both a qualitative assessment and quantified estimate of the economic effects, where feasible. The Commission invites commenters to include estimates and data that could help it form useful estimates of the economic effects of the proposed amendments.

B. Baseline

1. Affected Parties

The proposed rule would affect issuers of and investors in RILAs, as well as issuers of and investors in variable annuities that are registered on Form N-4.

a. The Market for Annuity Products

As of January 2023, there were 90 RILAs registered with the Commission issued by 23 insurance companies.³⁷⁶ Among the 90 RILAs, 50 are stand-alone RILA products, while 40 are combination contracts that offer index-linked options as well as variable options. The number of RILAs registered with the SEC on Form S-1 is 52, while the remaining 38 are registered on Form

S-3. A little over half of the registered RILAs (47 RILAs) report SAP financials, with the remainder (43 RILAs) reporting GAAP financials.³⁷⁷

RILA contracts currently offer a variety of index-linked options. Specifically, RILA contracts that are currently registered with the Commission offer index-linked options whose returns are linked, in part, to between two and nine indices with an average among RILAs of 4.3 indices.³⁷⁸ The indices associated with current RILA contracts commonly include the S&P 500, Russell 2000, and NASDAQ-100. RILA contracts offer index-linked options with less well known indices and ETFs as well, but with much less frequency.³⁷⁹

As discussed in Section I, index-linked options whose returns are based, in part, on the same index may nevertheless have different elements that contribute to an investor's returns. Notably, different index-linked options whose returns are linked to the same index may offer different crediting periods (the set length of time for measuring growth of contract value based on the performance of the linked index—for example, one or three years), crediting methodologies, and buffer or floor levels. RILAs that are currently registered with the Commission offer between 4 and 64 index-linked options, with an average of 22.8 index-linked options. Common crediting periods include one, two, three, and six years, with one year being most common. In the past, index-linked options with terms as long as 10 years have been offered, although the longest index-linked option term currently offered is six years. For those “combination” contracts that offer index-linked options and variable options, the number of variable options ranges from 1 to 100, with an average of 10.4 variable options. The most common variable option is a money market fund—in all instances of combination contracts, a money market fund (or, in one case, a similar liquid investment) is offered as a variable option.

Table 9 provides information on the dollar amount of RILA sales from 2016 to 2022.³⁸⁰ RILA sales have increased from \$7.3 billion in 2016 to \$41.1 billion in 2022, which represents a 463% increase between these two years.

³⁷⁶ Based on analysis of Forms S-1, S-3 and POS AM filed by RILA issuers.

³⁷⁷ EDGAR Database. Certain Commission letters, or portions thereof, exempt insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in

connection with the registration of an offering of RILAs on Form S-1. See Section II.G.

³⁷⁸ Data obtained from Forms S-1, S-3 and POS AM filed by RILA issuers.

³⁷⁹ Data obtained from Forms S-1, S-3 and POS AM filed by RILA issuers.

³⁸⁰ Fact Tank: Sales Data, Life Insurance Marketing and Research Association, <https://www.limra.com/en/newsroom/fact-tank/> (using data from the U.S. Individual Annuity Sales surveys for Q4 for each year from 2016 through 2022).

TABLE 9—SALES OF RILAS, 2016–2022

	2016	2017	2018	2019	2020	2021	2022
Sales of RILAs (\$ billions)	7.3	9.0	11.2	17.4	24.1	38.7	41.1

Source: *Fact Tank: Sales Data*, Life Insurance Marketing and Research Association, <https://www.limra.com/en/newsroom/fact-tank/> (using data from the U.S. Individual Annuity Sales surveys for Q4 for each year from 2016 through 2022).

A recent survey of insurers found that 85% of respondents believed in 2021 that RILA sales would increase by 10% or more over the next three years, 10% believed that RILA sales would increase by less than 10%, while 5% believed that RILA sales would remain the same over that time period. No respondents indicated that they believed RILA sales would decrease.³⁸¹ When surveyed about the factors driving the growth in RILA sales, the three most commonly cited reasons were: (1) increased understanding of RILAs among advisers and broker-dealers (85%), (2) the entrance of large, reputable insurers into the RILA market (80%), and (3) increased supply due to the entrance of large issuers and distributors of RILAs (80%).³⁸² Respondents also indicated that they expected to see the largest increases in sales among the following distribution channels: independent agents or broker/dealers, captive insurance agents, regional broker/dealers, and wirehouses.³⁸³ RILAs were also the product most insurers indicated had “tremendous” growth potential over the near term.³⁸⁴

As of 2019, there were a total of 2,396 unique variable annuity products offered by a total of 33 companies.³⁸⁵ Net assets totaled \$2,018.0 billion. Also in 2019, variable annuity sales totaled \$98.3 billion.³⁸⁶ Of the total sales, \$62.8 billion (64% of total sales) were annuities within qualified plans and \$35.5 (36%) were non-qualified annuities.³⁸⁷ Investors purchased annuities across various distribution

channels—captive agents, \$34.5 billion, (35% of total sales); independent financial planners/NASD firms, \$39.2 billion (40%); banks/credit unions, \$9.2 billion (9%); wirehouses/regional broker-dealers, \$12.6 billion (13%); and direct response, \$2.8 billion (3%).³⁸⁸

b. Issuing Insurance Companies

The number of insurance companies currently offering securities registered as RILAs with the Commission is 23, from 19 insurance company complexes. Out of these 23 insurance companies, 15 of them register RILAs on Form S–1, while the remaining 8 use Form S–3.³⁸⁹

Insurance companies offer, on average, 4 RILA contracts, ranging from a maximum of 11 RILAs to a minimum of 1 RILA. The top two issuers offer 21 RILAs in total, or 29% of the number of existing RILA products.³⁹⁰

c. Investors

In 2021 there were an estimated 83 million individuals aged 45–64 and 56 million individuals aged 65 or older in the United States, representing 25 percent and 17 percent of the total population, respectively.³⁹¹ The number of individuals age 65 or older is projected to be 65 million (19 percent of the total projected population) in 2025, 78 million (21 percent of the projected population) in 2035, 83 million (22 percent of the projected population) in 2045, and 90 million (24 percent of the projected population) in 2055.³⁹²

Individuals that are planning for, or are already in, retirement face

increasing challenges with respect to achieving their income goals for retirement. First, people are living longer. Second, traditional defined-benefit retirement systems that provide guaranteed income are being replaced with defined-contribution systems that require people to accumulate their own retirement savings.³⁹³ Evidence suggests that, on average, individuals may not be saving appropriately to meet their retirement goals. For example, one survey found that while 74 percent of individuals are saving for retirement: (1) 51 percent of older individuals have less than \$50,000 saved for retirement, (2) 57 percent of individuals save less than 10 percent of their income, and (3) 33 percent of individuals save less than 5 percent of their income.³⁹⁴ In addition to the finding that individuals may not be saving an appropriate amount for retirement, there is also concern that individuals may not be taking on an appropriate amount of financial risk.³⁹⁵

Investors may not be saving appropriately to meet their retirement goals for several reasons. For example, individuals may face meaningful burdens (e.g., search costs) when trying to identify appropriate investments or savings products. Once identified, investors may face additional burdens (e.g., acquiring and analyzing large amounts of information) to determine which specific investments or saving products among the ones identified allow investors to best meet their savings goals.³⁹⁶ Second, improving

³⁸⁸ *Id.*

³⁸⁹ Data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers.

³⁹⁰ Calculated using data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers.

³⁹¹ Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States: Apr. 1, 2020, to July 1, 2021 (NC–EST2021–AGESEX). We do not have demographic data on RILA investors. A 2013 survey found that 86 percent of individual annuity investors purchased their first annuity before age 65, including 47% who were between the ages of 50 and 64 years old. The average age of investors at first purchase of an annuity is 51. The average current annuity investor age is 70. See The Gallup Organization and Mathew Greenwald & Associates for The Committee of Annuity Insurers, *Survey of Ownership of Individual Annuity Contracts* (2013).

³⁹² Projected Age Groups and Sex Composition of the Population: Main Projections Series for the United States, 2017–2060. U.S. Census Bureau, Population Division: Washington, DC.

³⁹³ John Y. Campbell, *Restoring Rational Choice: The Challenge of Consumer Financial Regulation* (NBER Working Paper No. 22025, 2016), available at <http://www.nber.org/papers/w22025> (“Campbell Paper”).

³⁹⁴ Insured Retirement Institute, *Retirement Readiness Among Older Workers 2021* (2021) (“IRI Survey”), available at https://www.ironline.org/wp-content/uploads/legacy/default-document-library/iri-retirement-readiness-2021_fullreport.pdf.

³⁹⁵ See Campbell Paper. Campbell argues that individuals take too little financial risk and that the willingness to take financial risk varies with wealth—individuals with greater wealth are willing to take on more financial risk than individuals with less wealth.

³⁹⁶ John Y. Campbell, Howell E. Jackson, Brigitte C. Madrian, and Peter Tufano, *Consumer Financial Protection*, 25 J. Econ. Perspectives 91 (2011) (“Campbell et al. Paper”). Campbell et al. note that making decisions about financial products often requires considerable information on terms and

³⁸¹ Cerulli Associates & Insured Retirement Institute, *Custom Key Findings, U.S. Annuity Markets 2021: Acclimating to Industry Trends and Changing Demand* Ex. 1 (2021) (“Cerulli Report”), available at https://www.ironline.org/wp-content/uploads/2022/02/IRI-Key-Findings_2021_Final_12622.pdf.

³⁸² *Id.* at Exhibit 2.

³⁸³ *Id.* at Exhibit 3. Other RILA distribution channels include: brokerage general agencies/independent marketing organizations, registered investment advisers, and direct sales.

³⁸⁴ Cerulli Report at Exhibit 5.

³⁸⁵ See Insured Retirement Institute Retirement Fact Book 2020 (“IRI Fact Book”). In 2018 (the last year for which this information is available in the 2020 edition), the total number of variable annuity contracts in force was 17.9 million, with an average individual contract value of \$113,053.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

technology has permitted the development of more complex and confusing financial products.³⁹⁷ As a result of the burden associated with identifying appropriate investments, as well as the burden of acquiring and analyzing information to choose among the set of appropriate investments, investors may spend less time and effort (*i.e.*, resources) than is required to make appropriate investment decisions.

Investors may not be saving appropriately for other reasons, as well. For example, some investors may not make the appropriate decisions for themselves even if they were presented with all the information that was required to make a decision. Decision making limitations may be particularly problematic in the context of saving for retirement because learning from experience is difficult. Investing in retirement products is only done infrequently and the outcomes from investing decisions are delayed, perhaps for decades, and are subject to large random shocks, so that personal experience is slow to accumulate and is contaminated by noise. Also, financial innovation can reduce the relevance of an investor's prior experiences. For example, prior experience investing in investment vehicles with unbounded returns would be less relevant for investing in RILAs (which have bounded returns) than it would be for investing in variable annuities (which have unbounded returns).³⁹⁸ Another

conditions, particularly for financial decisions that are undertaken only infrequently.

³⁹⁷ See Campbell Paper.

³⁹⁸ See Campbell et al. Paper. The Campbell Paper identifies five aspects of "financial ignorance" that may lead to poor investor decision making. First, investors may lack understanding of basic concepts necessary to make appropriate decisions. For example, investors appear to lack an understanding of diversification and the tradeoff between risk and return. Second, investors may not understand the terms of financial contracts. Third, it appears that, rather than using all available historical data to form views about future returns on alternative strategies, investors rely on their own specific experiences to form an opinion. Fourth, individuals appear to not understand their own difficulties with financial decision making. Finally, investors appear to not understand the incentives faced by other parties and the effect these incentives have on their strategic behavior. Other studies suggest poor investment decisions may result from investor uncertainty and lack of investor familiarity with different assets. For example, individuals may not invest appropriately because individuals are unable, given historical experience, to form precise estimates of how they expect assets to perform in the future. See, *e.g.*, Raymond Kan and Guofu Zhao (2007). Optimal Portfolio Choice with Parameter Uncertainty, *Journal of Financial and Quantitative Analysis*, 27(3), 621–656. Rather than being unable to form precise estimates of how they expect assets to perform in the future, investors may not have, perhaps due to not having the requisite experience, the ability to form any expectation about how they expect an asset to perform in the future. If investors' ambiguity is great enough, they simply may choose

possibility is that investors may have preferences that lead them to favor present consumption over future consumption ("present-biased preferences") and, as a result, they save an inappropriate amount for retirement.³⁹⁹ Finally, many people have a limited financial capacity to save, particularly individuals already burdened with student loans and mortgages.

2. Current Regulatory Requirements

As discussed in section I above, RILAs are securities for purposes of the Securities Act, and public offerings of RILAs, therefore, must be registered with the Commission.⁴⁰⁰ Unlike variable annuity contracts for which the Commission has adopted a specific registration form tailored to those products, insurance companies register RILA offerings on Form S-1 or Form S-3.

Form S-1 is available to any issuer (except foreign governments and issuers of asset-backed securities) to register securities for which no other registration form is authorized or prescribed. A registration statement on Form S-1 contains extensive disclosure about all aspects of the issuer's business and financial condition and consists of two parts: a prospectus (Part I), and additional information not required to be included in the prospectus (Part II), but that is publicly available on the Commission's EDGAR website. Form S-1 allows incorporation by reference only on a very limited basis. The prospectus must contain financial statements meeting the requirements of Regulation S-X, which generally includes audited financial statements prepared in accordance with GAAP.⁴⁰¹ Currently,

not to invest in particular assets. See, *e.g.*, David Easley and Maureen O'Hara (2009). Ambiguity and Nonparticipation: The Role of Regulation, *Review of Financial Studies*, 22(5), 1817–1843. Finally, investors may make poor investment decisions because they choose to overweight investment in assets with which they are familiar, and underweight, or exclude, investment assets with which they are less familiar. See, *e.g.*, Gur Huberman (2001). Familiarity Breeds Investment, *Review of Financial Studies*, 14(3), 659–680 and Massimo Massa and Andrei Simonov (2006). Hedging, Familiarity, and Portfolio Choice, *Review of Financial Studies*, 19(2), 633–685.

³⁹⁹ See Campbell et al. Paper. Campbell et al. note that individuals with present-biased preferences favor present consumption which can lead an individual to make decisions today that reduce their future welfare in a way that the individual later regrets.

⁴⁰⁰ See *supra* footnote 5 and accompanying text.

⁴⁰¹ Certain Commission letters, or portions thereof, exempt insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of RILAs on Form S-1. As discussed in Section III.B.1.a, 47 RILAs report SAP financials.

disclosures about RILA offerings are largely unstructured. The audited financial statements in the prospectus, if prepared in accordance with GAAP, must be tagged in Inline XBRL if the Form S-1 contains a price or a price range.⁴⁰² Form S-1 must be declared effective by the Commission before any sales of the registered securities may be made. The time required for Commission review will depend on the number and complexity of Commission comments and the issuer's ability to adequately address those comments. The issuer must pay the Commission registration fee before it files a Form S-1. The amount of the fee is based on the proposed maximum aggregate offering price.⁴⁰³ The issuer must indicate the amount of each type of security being registered and calculate the fee payable for each security.

Form S-3 is a "short-form" registration statement under the Securities Act that can be used by companies that have been subject to reporting obligations under the Exchange Act for at least one year and that satisfy certain other requirements.⁴⁰⁴ Reporting obligations under the Exchange Act include audited financial statements prepared in

⁴⁰² See 17 CFR 229.601(b)(101)(i)(B).

⁴⁰³ Generally, Form S-1 (or S-3) fees paid for a withdrawn registration statement are available to the issuer for use with its future registration statements. The amount available for use as an offset under rule 429 under the Securities Act equals the portion of the filing fee paid that is associated with any unsold securities of the same class registered on an earlier registration statement. Once a filing fee has been used as an offset, those unsold securities on the earlier registration statement are deemed deregistered. RILAs are continuously offered to investors, who in many cases are long-term investors that may make additional allocations or other investment decisions with respect to an investment in a RILA. Because RILA investors may make additional allocations or other investment decisions with respect to an investment, unless a prior RILA offering is completely unsold, RILA issuers may have increased difficulty in using filing fees associated with unsold securities of a prior offerings.

⁴⁰⁴ The issuer must be either organized under U.S. law with its principal business operations in the United States or a foreign private issuer that reports under the Exchange Act using the domestic reporting forms. The issuer must have a class of securities registered under section 12(b) or 12(g) of the Exchange Act, or be required to file reports under section 15(d) of the Exchange Act. The issuer must have been subject to the reporting requirements of the Exchange Act and have filed all reports and materials required under sections 13, 14, and 15(d) of the Exchange Act for the 12 calendar months preceding the filing of Form S-3, and, with certain exceptions, must have timely filed all such reports and other materials required to be filed during the 12 calendar months and any portion of a month immediately preceding the filing of the registration statement. An issuer that meets all of the requirements of Form S-3 and that has a public float of \$75 million or more (*i.e.*, "seasoned issuers") may use Form S-3 to register any offering of debt or equity for cash.

accordance with GAAP and structured in Inline XBRL. A registration statement on Form S-3 contains extensive disclosure about all aspects of the issuer's business and financial condition and consists of two parts: a prospectus which includes, either directly or incorporated by reference from the issuer's Exchange Act filings, detailed information about the issuer (Part I), and additional information not required to be included in the prospectus (Part II), but that is publicly available on the Commission's EDGAR website.

Registration using Form S-3 offers issuers advantages over registration using Form S-1. First, Form S-3 allows significant incorporation by reference, which allows for shorter prospectuses and makes Form S-3 easier to complete. Also, Form S-3 also allows for forward incorporation by reference, eliminating the need to file post-effective amendments to keep registration statements current.

A Form S-3 filed by a non-WKSI must be declared effective by the Commission. A Form S-3 receives either a full review, a targeted review of one or more sections of the registration statement, or no review. Commonly, a full review takes approximately 30 days with targeted reviews taking less time. The time to resolve any Commission comments will depend on the number and complexity of the Commission's comments. An issuer must pay Commission filing fees before it files Form S-3. The amount of the filing fee is based on the proposed maximum aggregate offering price.

Under the Federal securities laws applicable to all securities (including RILA offerings), it is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.⁴⁰⁵ Rule 156 is an interpretive rule that provides factors to be weighed in considering whether a statement involving a material fact is or might be misleading in the specific context of investment company sales literature, including literature relating to the sale of variable annuities.

As discussed in section I above, in 2022 Congress enacted the RILA Act directing the Commission to adopt a new registration form for RILAs within 18 months of enactment (*i.e.*, the end of June 2024). If the Commission fails to adopt the form by the end of June 2024, the RILA Act provides that issuers can begin registering the offering of RILAs on Form N-4.

3. Market Practice

Annuities can play a role in helping investors save for retirement and receive guaranteed lifetime income during retirement.⁴⁰⁶ There are multiple types of annuities available to help investors who have different financial goals or tolerances for risk save for retirement: fixed annuities, variable annuities, and RILAs. Fixed annuities offer investors preservation of their investment by guaranteeing a minimum rate of return, but with little opportunity for asset growth. During the accumulation phase,⁴⁰⁷ a traditional (*i.e.*, book value) fixed annuity offers investors a fixed rate of return (known in advance) for a given period of time.⁴⁰⁸ A market value adjusted annuity (see section II.H) is similar to a traditional annuity, but the assets are subject to a market value adjustment based on interest rate changes.⁴⁰⁹ Fixed index annuities guarantee a certain rate of return,⁴¹⁰ but also provide the potential for (limited) additional returns based on the performance of a specified market index.⁴¹¹

Variable annuities accumulate savings based on the performance of the underlying investment options chosen by an investor. Typically, investors are able to choose among investment options that pass on the returns of a wide variety of mutual funds such as equity funds, bond funds, funds that combine equities and bonds, actively managed funds, index funds, domestic

⁴⁰⁶ *Id.* The IRI Fact Book argues that annuities give investors the ability to create their own pensions. The IRI Fact Book also argues that, unlike mutual funds, annuities offer a wide variety of guarantees to protect an investor's investment. For example, death benefits provide principal protection in the event that an investor dies during a market downturn.

⁴⁰⁷ During the accumulation phase, also called the savings phase, capital builds up. In this phase, the investor pays premiums into the contract to accumulate assets. See IRI Fact Book.

⁴⁰⁸ *Id.* The IRI Fact Book also notes that fixed annuities involve less investment risk because they offer a guaranteed minimum rate of interest. The minimum rate is not affected by fluctuations in market interest rates.

⁴⁰⁹ *Id.* The IRI Fact Book contends that fixed index annuities are designed for investors who want to partake in the benefits of a market-linked vehicle with a protected investment floor if there is a downturn in the index.

⁴¹⁰ Currently, insurance companies with a minimum A.M. Best Insurance Ratings of A- offer fixed rate annuities that guarantee between 3.70% and 5.40% for a three-year period, and between 3.20% and 5.25% for a ten-year period. *Multi-Year Guarantee Annuities (MYGA), ANNUITY ADVANTAGE* (accessed Aug. 17, 2023, and filtered by "State" of "- All"; "Min AM Best" of "A-"; "Years" of "10"; and "Range" of "Exact"), https://www.annuityadvantage.com/annuity-rates-quotes/multi-year-guarantee-annuities/?rating=4&years=10&pos=300&sort=guarantee_period_yield&limit=all.

⁴¹¹ IRI Fact Book.

funds, and international funds.⁴¹² Depending on the investment options chosen, variable annuities can offer investors the greatest opportunity for asset growth, but they also can involve the greatest amount of investment-based risk, compared to other types of annuities.⁴¹³

RILAs are an index-linked product that can be purchased by individual investors as part of both qualified and non-qualified retirement accounts.⁴¹⁴ RILAs combine features of fixed-index annuities and variable annuities. RILAs limit or reduce downside risk in return for an investor accepting limited upside performance. In exchange for giving up the complete protection of principal offered by fixed annuities, a RILA investor is potentially afforded greater upside potential than that provided by fixed annuities, though typically less than the potential upside of investing in the same index within a variable annuity.⁴¹⁵ RILAs allow investors some ability to customize a level of risk with which they are comfortable.⁴¹⁶ Like other annuities, RILAs have an accumulation phase followed by a payout phase. The accumulation phase is divided into one or more crediting periods.⁴¹⁷ Also like other annuities, after a "surrender charge" period (generally, 3 to 10 years following an investor's last premium payment), investors can usually surrender their contract at the end of any crediting period and receive full account value.⁴¹⁸ Investors, however, may lose money if they withdraw early from an investment option or from the contract, as explained in section I.A above.

At the end of a crediting period, the issuer credits a RILA investor's contract value with "interest" (which can be either positive or negative) that is based on the performance of a specified index,

⁴¹² *Id.*

⁴¹³ Additionally, variable annuities often involve direct fees, such as insurance charges, and indirect expenses, including management and other fees and expenses associated with the underlying mutual funds in which the variable annuity subaccounts invest. See IRI Fact Book.

⁴¹⁴ Thorsten Moenig, *It's RILA Time: An Introduction to Registered Index-Linked Annuities*, 89 J. Risk & Ins. 339 (2022) ("Moenig Paper").

⁴¹⁵ See IRI Fact Book.

⁴¹⁶ *Id.* The IRI Fact Book also contends that historically investors generally fell into one of two camps: those willing to exchange safety of principal for modest returns, and those able to tolerate the higher risk of being invested in securities in exchange for greater upside potential. RILAs address a developing demand for products that allow investors some ability to customize a level of risk with which they are comfortable. Structured annuities (*i.e.*, RILAs) meet the needs of the in-between investor who wants some degree of certainty but also desires some upside potential.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴⁰⁵ See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b-5.

subject to restrictions on the upside, through a cap and/or “participation rate,” as well as some form of downside protection.⁴¹⁹ If the index declines, the credited loss is lessened by either a floor (a maximum loss percentage), a buffer (index losses are credited to the RILA investor’s contract value only when they exceed a certain threshold), or a downside participation rate (the loss credited to contract value is a certain percentage of the index loss).⁴²⁰ RILA downside protection mechanisms typically do not change over time, whereas issuers may, and likely will, change upside limits on gains for both new contracts as well as existing contracts to reflect changing market conditions.⁴²¹ If a RILA contract offers downside protection in the form of a floor, then the increased volatility would expose the issuer to greater downside risk. To offset the increased downside risk, an issuer might choose to reduce its upside risk by lowering cap rates.⁴²² If the RILA contract offers downside protection in the form of a buffer, then increased volatility would expose the issuer to reduced downside risk. The reduced downside risk might cause issuers to increase cap rates.⁴²³

Also, unlike variable annuities, most RILAs do not include any direct ongoing fees or charges to the investor. Insurance companies, however, can benefit from offering RILAs in at least three ways.

First, insurance companies can benefit from a favorable imbalance between the downside protections that a RILA contract offers, and the upside limits the contract offers.⁴²⁴ That is, insurance companies set the level of upside limits such that their value (to the issuer) exceeds the cost of providing the downside protection mechanism to investors.⁴²⁵ One study estimates an average annual cost to investors from the imbalance between the downside protections that a RILA contract offers and the upside limits is approximately 0.17% of the RILA investment amount.⁴²⁶ To assess if the findings of the study continue to be relevant for the current RILA market, the staff conducted an independent analysis of RILA contract terms. Specifically, staff examined 24 one-year term rates linked to the S&P 500 index, Nasdaq 100 index, Russell 2000 index, and MSCI EAFE.⁴²⁷ These rates were offered by three insurance companies across a two-week interval.⁴²⁸ In particular, staff calculated the fair value of the portfolio, composed of a risk-free zero-coupon bond with one-year maturity and a collection of hypothetical index options with one-year expiration that would replicate the promised payoff for each contract.⁴²⁹ Staff used the Black-Scholes formula for European options to derive fair prices of these hypothetical index options. In

estimating the implied volatility for each specific strike price, staff utilized an estimated one-year volatility surface.⁴³⁰ The volatility surface estimates the values for implied volatility across a range of standardized options with varying implied strike prices, including both calls and puts. Staff then linearly interpolated between the implied volatilities with implied strikes adjacent to the strike price of each hypothetical option to obtain the implied volatility. This implied volatility is used as an input in the Black-Scholes formula to derive the fair values of the options.⁴³¹ Staff assumed that the options expire in exactly one year. The annual cost of each contract is defined as the difference between the par value and the calculated risk-neutral fair price of the contract, divided by the par value.⁴³²

Table 10 presents the mean and median annual costs for each of the twenty-four contracts during the sample period. The annual costs hover around zero for all contracts. The mean annual costs are positive for nearly all of the contracts, ranging from 0.04% for contract 22 and 0.93% for contract 20, but negative for others, such as contract 1, contract 2, contract 3, and contract 16. These results are consistent with the Moenig Paper’s findings of a mean cost of 0.17%.

TABLE 10—PRICING OF TWENTY-FOUR SAMPLE RILA CONTRACTS

	Mean (%)	Median (%)
Contract 1	–0.30	–0.30
Contract 2	–0.64	–0.64

⁴¹⁹ *Id.*

⁴²⁰ *Id.* The Moenig Paper argues that RILAs are structurally similar to fixed-index annuities except that RILAs may credit negative returns. A fixed-index annuity can be viewed as a special case of a RILA with a floor of 0%. The insurer provides full protection on the index return in exchange for a low cap rate (commonly between 2% and 4%).

⁴²¹ See Moenig Paper.

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ We understand that for shorter crediting periods and for common indexes such as the S&P 500, insurance companies are able to use exchange-traded derivative securities to closely approximate the insurer’s liabilities from a RILA contract at the end of each crediting period. For example, for a RILA with both a floor and a cap, the insurance company can hedge its liability by purchasing a call option (with an appropriate strike price given the floor) and selling a call (with a higher strike price that is dependent on the cap). The insurance company can offer a cap such that the proceeds from selling the call with the higher strike price exceed the cost of purchasing the call option with the lower strike price. For a RILA with a downside buffer (as opposed to a floor) and a cap, the process for insurance companies to hedge their liabilities is

similar, but with a different mix of options. In the case of a RILA with a downside buffer and a cap, the insurance company would purchase a call option, sell a call option (with a higher strike price), and selling a put option (with a lower strike price, as appropriate given the downside buffer). In this case, the insurance company can offer a cap such that the proceeds from selling the call and the put exceed the cost of the call option with the lower of the two strike prices.

⁴²⁶ See Moenig Paper; Public Filings on EDGAR.

⁴²⁷ The staff obtained the term rates from *Rates: Current rates for Allianz Index Advantage ADV Variable Annuity*, Allianz, <https://www.allianzlife.com/what-we-offer/Annuities/registered-index-linked-annuities/index-advantage-adv/rates> (visited Sept. 14, 2023); *Variable Annuities, Equitable*, <https://equitable.com/retirement/products/variable-annuities> (click “View Performance Cap Rates”) (visited Sept. 14, 2023); *Nationwide Defender Annuity*, Nationwide (Sept. 1, 2023), (visited Sept. 14, 2023).

⁴²⁸ Each contract designates a distinct set of buffer and cap rates with no additional features. The sample period spans from September 5 to 15, 2023. The Moenig Paper cited an industry survey as a source for the data in its analysis. We understand that the industry survey cited does not contain updated product-level contract-level details beyond

the data cited in the Moenig Paper. We request comment on data sources (e.g., pricing vendors) that should be considered for these calculations. See *infra* section III.F.

⁴²⁹ More specifically, the options position encompasses a long At-the-Money (ATM) call option, coupled with a short Out-the-Money (OTM) call option with strike price equal to the index value increased by a factor of the cap rate and a short OTM put option with strike price equal to the index value decreased by a factor of the buffer rate.

⁴³⁰ The volatility surface data is obtained through IvyDB OptionMetrics.

⁴³¹ The other model inputs—the end-of-day S&P 500 index value and the risk-free interest rate—are obtained through IvyDB OptionMetrics.

⁴³² The staff incorporated any explicit annual product fee charged by the insurance company into the cost calculation. This analysis could be extended to incorporate several additional factors that differentiate the RILA from the replicating strategy that would be priced in a market. For example, it does not consider any effective difference to the investor in liquidity because of early withdrawal charges or penalties, differences in portfolio value prior to maturity, death benefits, or specific crediting methods. We request comment on these aspects of pricing of RILA contracts below. See *infra* section III.F.

TABLE 10—PRICING OF TWENTY-FOUR SAMPLE RILA CONTRACTS—Continued

	Mean (%)	Median (%)
Contract 3	−0.30	−0.29
Contract 4	0.57	0.61
Contract 5	0.34	0.34
Contract 6	0.37	0.50
Contract 7	0.42	0.44
Contract 8	0.39	0.40
Contract 9	0.60	0.58
Contract 10	0.72	0.74
Contract 11	0.51	0.46
Contract 12	0.09	0.09
Contract 13	0.22	0.22
Contract 14	0.24	0.25
Contract 15	0.35	0.36
Contract 16	−0.08	−0.11
Contract 17	0.16	0.11
Contract 18	0.12	0.13
Contract 19	−0.08	−0.22
Contract 20	0.93	0.93
Contract 21	0.63	0.64
Contract 22	0.04	0.04
Contract 23	0.33	0.33
Contract 24	0.38	0.38

Note: The table summarizes the annual costs for each of the twenty-four contracts offered by three insurance companies during a two-week interval. See *Rates: Current rates for Allianz Index Advantage ADV Variable Annuity*, Allianz, <https://www.allianzlife.com/what-we-offer/Annuities/registered-index-linked-annuities/index-advantage-adv/rates> (visited Sept. 14, 2023); *Variable Annuities*, Equitable, <https://equitable.com/retirement/products/variable-annuities> (click “View Performance Cap Rates”) (visited Sept. 14, 2023); *Nationwide Defender Annuity*, Nationwide (Sept. 1, 2023), <https://nationwidefinancial.com/media/pdf/VAM-3629AO.pdf> (visited Sept. 14, 2023). At the end of each business day, we employ a market price approach to compute the fair value of each contract. We then compare the fair value to the par value to derive the annual cost and incorporate any explicit product fee. Subsequently, we compute the mean and median annual costs for each contract over the two-week measurement period.

Also, we understand that, generally, insurance companies can benefit from offering RILAs by investing RILA proceeds into fixed-income securities such as corporate bonds, thereby earning a “credit risk premium.” Further, insurance companies can benefit when a RILA offers index-linked options whose index for measuring performance is a price-based index that does not account for dividend payments. For example, if an investor chooses an index-linked option whose performance is based, in part, on the S&P 500 Price Return Index, the credited return may be based on the point-to-point change in the S&P 500, which does not include the dividend payments of the underlying stocks.⁴³³ The excluded dividends can act as an implicit “fee” on investors with the magnitude of the implicit fee being comparable to average dividend rates among the underlying index stocks.⁴³⁴

While most RILAs do not include any explicit ongoing fees or charges to the investor, RILAs typically have charges for early or mid-term withdrawals. As discussed in section II.B.2.a, charges for early or mid-term withdrawals could include, surrender charges, contract adjustments, and transaction charges (separate from surrender charges).⁴³⁵

RILAs differ from other annuity contracts in other ways as well. Variable annuities involve a direct investment of premiums into subaccount(s) that correspond to one, or more, of many mutual funds. RILA premiums, on the other hand, are not directly invested into the assets of the underlying index, and typically investors can only choose among index-linked options whose returns are based on a small number of mainstream indexes.⁴³⁶ Also, the financial guarantees common to variable annuities are long term and are only applied when the contract terminates, either at maturity or due to the investor’s death, or if the account value reaches zero due to guaranteed withdrawals.⁴³⁷ These factors make variable annuity guarantees difficult to value and hedge due to their long-term

nature (potentially 25 years, or more).⁴³⁸ The guarantees that RILA contracts offer as part of their bounded return structure, on the other hand, are short-term (*i.e.*, they are limited to the crediting period of the index-linked option the investor selects, which is usually one, two, three, or six years) and tied to the performance of a common index, so that issuers can hedge the embedded liabilities accurately through the financial markets.⁴³⁹

Further, guarantees that RILA contracts offer may be much less dependent on investor behavior than variable annuity guarantees. Variable annuity investors may have a strong incentive to surrender or exchange their policy when an embedded guarantee loses its value (*i.e.*, moves “out of the money”).⁴⁴⁰ The guarantees RILA contracts offer reset with the end of the crediting period of the index-linked option the investor selects, so such guarantees are more commonly “at the money” and investors do not have as strong of an incentive to surrender or exchange their policies.⁴⁴¹

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ Thorsten Moenig and Nan Zhu (2018). Lapses and Reentry in Variable Annuities, *Journal of Risk and Insurance*, 85(4), 911–938 (“Moenig and Zhu Paper”).

⁴⁴¹ See Moenig Paper.

⁴³³ See *supra* footnote 431.

⁴³⁴ *Id.* The Moenig Paper provides the following example. If stock prices rise by 7% on average over the crediting period, in addition to paying 2% in dividends, then the RILA account would be credited 7%, even though investors in the underlying stocks would earn a 9% return. Omitting dividend payments benefits insurers by reducing the cost of providing a given amount of downside protection (*e.g.*, through lower option prices).

⁴³⁵ See also *supra* footnote 431.

⁴³⁶ See Moenig Paper.

⁴³⁷ *Id.*

Additionally, RILAs and variable annuities differ with respect to their use of proceeds. As discussed in Section II.B.4, variable annuity proceeds are held in separate accounts and, therefore, insulated from the issuer's creditors. Variable annuity proceeds in unitized sub-accounts must be invested as the investor chooses and returns are credited to the account directly. Like variable annuity proceeds, RILA proceeds are placed into a (non-unitized) separate account. As a result, the proceeds are not insulated from the issuer's creditors. Also, RILA proceeds can be invested as the issuer sees fit.

We understand that for index-linked options offering shorter crediting periods, and whose returns are based on common indexes such as the S&P 500 Index, insurance companies are able to invest RILA proceeds in exchange-traded derivative securities that closely approximate the issuer's liabilities from a RILA contract at the end of each crediting period.⁴⁴² In doing so, insurance companies are able to hedge away their risk at a low cost. Further, we understand that insurance companies can, and do, invest the remaining proceeds into fixed-income securities (e.g., corporate bonds) that allow them to earn a "credit risk premium."⁴⁴³ The credit risk premium can be an important source of benefits to issuers.⁴⁴⁴

C. Benefits and Costs

1. Benefits

a. Use of Form N-4

Unlike variable annuity offerings that are registered on Form N-4, insurance companies register RILA offerings on Forms S-1 or S-3. These forms include a number of disclosure requirements that are specific to the insurance company issuing the RILA that the Commission does not require in the registration statements for offerings of variable annuities.

We are proposing that insurance companies use Form N-4 to register the offering of RILAs and we are proposing to adapt Form N-4 for that purpose.⁴⁴⁵ Because it is an existing form, we believe RILA issuers and investors are familiar with Form N-4. As a result of expanding the scope of Form N-4 to address RILAs, RILA offerings would be registered on the same form as variable annuities. Requiring that insurance companies register RILA offerings on

Form N-4 would leverage insurance-product specific disclosure requirements reflected in the form and also would permit the summary prospectus layered disclosure framework the Commission adopted in 2020 for variable annuities.

The following sections discuss the specific benefits deriving from the contents and requirements of the form in detail. In addition to these benefits, expanding the scope of Form N-4 to include RILAs would benefit investors by making it easier for them to evaluate and compare RILAs, and also to compare other annuity products with RILAs. For example, investors may require less effort to evaluate and compare annuity products that register using the same form. To the extent that investors require less effort to evaluate and compare these annuity products, investors may be more likely to make decisions that better align with their investment goals.

b. Contents of Form N-4

The proposal is designed to facilitate the Commission's goal it sought to achieve in adopting Form N-4, namely to help investors make an informed investment decision regarding the annuity products that are registered on that form. The registration process on Form N-4 uses a layered disclosure approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a concise and more reader-friendly presentation, with access to more detailed information for those investors who want it. Providing investors with key information is particularly important in the context of annuity contracts since their structure is typically more complex than other types of investment products commonly sold to retail investors.

Specifically, the proposal would update the contents of Form N-4 to specifically address RILAs, including by: (1) amending the form's general instructions; (2) amending the requirements for front and back cover pages; (3) updating the Key Information Table; (4) providing new principal disclosures regarding RILA investment options; and (5) providing for new contract adjustment and fee disclosures. The proposal would also include certain other technical and conforming amendments to Form N-4 and related rules designed to accommodate the inclusion of RILA offerings on that form as well as requiring the insurance company to provide disclosure in response to the remaining items on Form N-4 to the extent applicable.

(1) General Instructions

The proposal would require RILA offerings registered on Form N-4 to comply with the general instructions of that form, including requirements related to: (1) using document design techniques that promote effective communication, (2) organizing information to make it easier for investors to understand, (3) including information in the prospectus or SAI not otherwise required so long as the additional information is not incomplete, inaccurate, or misleading, and does not obscure or impede understanding of the information that is required, (4) requiring Form N-4 filers to define special terms used in the prospectus in any presentation that clearly conveys meaning to investors, (5) allowing insurance companies to describe multiple contracts that are essentially identical in a single prospectus, (6) making available the dates of both the prospectus and SAI, (7) providing an interactive data file related to certain information on the form, (8) requiring insurance companies to include active hyperlinks, or other means of facilitating access that leads directly to the relevant website, for an electronic version of the prospectus, and (9) the use of incorporation by reference. The general instructions are designed to require clear and consistent disclosure to investors about annuity contracts currently registered on the form and to make clear how filers must prepare and file their registration statements.

We believe clear disclosure benefits investors by making it easier for investors to evaluate and compare offerings. Concise and decision-useful disclosures can help facilitate the investment decision-making process. Also, the presentation of information in a consistent manner could facilitate not only the evaluation and comparison among RILA offerings, but also could facilitate the comparison of RILAs to other annuity products.⁴⁴⁶ Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs as an investment option. Presentation of information in a consistent manner on Form N-4 could increase investor awareness of RILAs as an investment option.

(2) Front and Back Cover Pages

The proposal would make certain changes to information currently required on the front and back pages of

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ See proposed General Instruction B.1 of Form N-4.

⁴⁴⁶ The consistent presentation of information also could facilitate information collection by third parties such as investment advisers and data aggregators who could then, in turn, provide information to investors.

a prospectus for all registrants on Form N-4. Like variable annuities registered on Form N-4, RILAs would be required to present certain information on the front and back cover pages of the prospectus. The proposal would require several new cover page disclosures for all Form N-4 issuers. One of these would provide additional information distinguishing among the investment options available in the annuities registering on Form N-4 and cross-reference the prospectus appendix that provides additional information about each option. These changes could help investors better understand what investment options are available under the contract, in an easily identifiable location. Also, the proposal would require the inclusion of three new legends that highlight risks that are particularly prevalent in RILAs. The new legends that highlight risk that are particularly prevalent in RILAs should benefit investors by putting them on notice of these key considerations at the outset, helping the investor make informed decisions.

(3) Key Information Table

As required for current Form N-4 issuers, the proposal would require RILA issuers to provide a Key Information Table in their registration statements. The KIT includes a summary of five areas: (1) fees and expenses, (2) risks, (3) restrictions, (4) taxes, and (5) conflicts of interest. The KIT is important summary disclosure for investors that is included in the prospectus, and the proposed amendments to the KIT requirements are intended to highlight important considerations related to RILAs, including certain unique and/or opaque aspects of RILAs.⁴⁴⁷ Consistent with our layered disclosure approach for variable annuities registered on Form N-4, RILA issuers would be required to provide cross-references in the KIT to the location in the statutory prospectus where the subject matter is described in greater detail. Certain of the amended KIT requirements would apply to all Form N-4 issuers. In particular, in a

change from the current KIT requirements for Form N-4 issuers, the amendments would require that responses in an item be presented in a Q&A format.⁴⁴⁸ In a change for all Form N-4 issuers, the proposal also would change the order in which the KIT appears relative to the Overview of the Contract disclosures in the prospectus.

Overall, the proposed KIT requirements (like the current KIT requirements for variable annuities) are designed to provide a brief description of key facts about a RILA in a specific sequence and in a standardized presentation that is designed to be easy to read and navigate. We believe that a standardized presentation that is designed to be easy to read and navigate benefits investors by making it easier for investors to evaluate and compare RILA offerings. Also, the standardized presentation of information could facilitate not only the evaluation and comparison among RILA offerings, but also could facilitate the comparison of RILAs to other annuity products.

(4) Principal Disclosure Regarding RILA Offerings

The proposal would amend Form N-4 to require disclosure that would provide investors with information about all annuities whose offerings are registered on Form N-4 as well as with specific information about RILAs and the index-linked options available under the RILA contracts. With regard to Form N-4 issuers generally, the proposal would require registrants to disclose investment option risk, early withdrawal risk, contract benefits risk, insurance company risk, and the risk of contract changes. With regard to specific information about RILAs, the proposal includes requirements related to: (1) information about RILAs generally and an overview of certain key elements of any index-linked option offered under the contract; (2) a more in-depth description of index-linked investment options available under the contract; (3) the inclusion of an appendix that consolidates certain summary information related to index-linked options and fixed options available under the contract (which would accompany similar information about variable options offered under a “combination” contract); and (4) certain principal risk disclosures relating to investing in the RILA contract that the prospectus describes.

The proposed disclosure requirements are designed to provide additional

information regarding the risk of investing in Form N-4 issuers generally, as well as the unique aspects of RILAs and certain summary and detailed information about index-linked options available under a RILA contract. The information could benefit investors by making it easier for investors to evaluate and compare variable annuity products registered on Form N-4. The required disclosure relating to index-linked and fixed options available under a contract could benefit investors by facilitating the comparison of these investment options to other investment options available under the contract, as well as to investment options that other RILA contracts offer.

(5) Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures

RILA investors have the ability to take a withdrawal or transfer out their money before the end of a crediting period. If amounts are removed from an investment option before the end of a crediting period, typically an insurance company will apply an interim value adjustment to the investor's contract value. The IVA, which will adjust the contract value based on a formula, can move up and down as market conditions change throughout the crediting period and may adjust daily. The IVA is irrelevant if the investor does not move money from an investment option until the end of the crediting period, but it becomes relevant if the investor withdraws or transfer the money before the end of a crediting period. Similarly, a positive or negative market value adjustment could apply if amounts are partially or fully withdrawn from the contract before the end of a specified period. These contract adjustments, whose calculation varies by insurance company, may have a positive or negative effect on the value of the contract.

We propose amendments to Form N-4 to require specific disclosures with respect to contract adjustments. Currently, Form N-4 requires variable annuity registrants to provide comprehensive information on the fees and expenses that investors will pay when buying, owning, and surrendering a contract, including expenses paid each year during the time the investor owns the contract. Although RILAs typically do not charge the explicit fees and expenses common to variable annuities, they do typically utilize contract adjustments. Since negative adjustments may result in substantial costs to investors, we believe that it is important to include a detailed description of

⁴⁴⁷ Many of the summary points presented in the KIT are discussed in greater detail in other parts of the form. In this way, the KIT is an integral part of the layered disclosure approach the Commission traditionally has taken with annuity products. To ensure that the KIT serves this function effectively, we also are proposing to delete Form N-4's general instruction stating that where the discussion of information required by the Overview of the Contract (currently Item 3) or KIT (currently Item 2) also responds to the disclosure requirements in other items of the prospectus, registrants need not include additional disclosure in the prospectus that repeats the information disclosed in the Overview of the Contract or the KIT. See *infra* footnote 84 and accompanying text.

⁴⁴⁸ Currently, such format is suggested but not required. See General Instruction C.3.(c) of Form N-4.

contract adjustments in the registration statement.

Specifically, we are proposing to expand current disclosure requirements to address contract adjustments that could affect investors' contract value when buying, owning, and surrendering or making withdrawals from an investment option. We are also proposing certain other specific disclosures about contract adjustments, such as requiring disclosures about the maximum potential loss that an investor could experience in connection with a negative contract adjustment.

We believe that these disclosures would benefit investors since they would be able to better evaluate the costs of purchasing and owning annuity contracts, including RILAs. In addition, these disclosures can make less-informed investors aware of RILAs' unique characteristics, which could increase investor understanding of RILAs as an investing option.

(6) Other Amendments to Form N-4

The proposal would include certain other amendments to Form N-4 and related rules designed to accommodate the inclusion of RILA offerings on Form N-4. These include amendments to Form N-4's facing sheet, definitions, exhibit list, and required representations, as well as amendments to certain Securities Act rules that help to implement the proposal. Because these other amendments to Form N-4 and related rules are designed to accommodate the inclusion of RILA offerings on Form N-4, the benefits that could accrue as a result of these other amendments are those that result from RILA issuers registering offerings on Form N-4 rather than Form S-1 or Form S-3.

The proposal would also amend Form N-4's required exhibits list to add new Item 27(p) for all issuers, which would require the filing of any power of attorney included pursuant to rule 483(b). While this exhibit is already required to be filed with a Form N-4 registration statement under rule 483(b), practices differ in regard to the placement of a required power of attorney exhibit within the exhibit list. This amendment would benefit investors in comparing these exhibits for all annuity products whose offerings are registered using Form N-4 by standardizing the location of these exhibits in the registration statement. Facilitating the comparison of annuity products could benefit investors by helping them to invest in RILAs in a manner that is consistent with their overall financial needs and objectives.

We are also proposing to add new Item 31A in Form N-4 to require census-type information on RILAs offered in connection with the applicable registration statement. Under this proposed new item, an insurance company would have to provide information regarding any RILA offered through the registration statement, as of the most recent calendar year-end, including (1) the name of each contract; (2) the number of contracts outstanding; (3) the total value of investor allocations attributable to index-linked options; (4) the number of contracts sold during the prior calendar year; (5) the gross premiums received during the prior calendar year; (6) the amount of contract value redeemed during the prior calendar year; and (7) whether the contract is a combination contract. The information in new Item 31A would help the Commission and staff in identifying trends in insurance companies' offerings of RILAs and have a more complete understanding of the marketplace for annuity securities.

We also propose amendments to Item 34 of Form N-4 to require RILA issuers to include two specific undertakings in their registration statements on Form N-4: (1) to file, during any period in which offers or sales are made, through a post-effective amendment to its registration statement, any prospectus required by section 10(a)(3) of the Securities Act and, (2) that, for the purposes of determining liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. These proposed undertakings are the same as two undertakings RILA issuers currently provide in registration statements. We believe that it remains appropriate for RILA issuers to continue to furnish these representations concerning post-effective amendments to a registration statement as, under the proposed amendments, RILAs may be continuously offered on a registration statement for an indefinite amount of time.

(7) Remaining Items

The proposal would require RILA issuers to provide disclosure in response to the remaining items on Form N-4 to the extent applicable. These are items that we have previously determined are relevant in the context of variable annuity offerings. Requiring RILA filers to provide disclosure in response to the remaining items on Form N-4 to the extent applicable

would help ensure that comparable information is provided in a standardized, consistent manner for all filers using Form N-4.

We believe standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare RILA offerings. Also, the presentation of information in a standardized, consistent manner across all filers using Form N-4 could facilitate not only the evaluation and comparison among RILA offerings, but also could facilitate the comparison of RILAs to variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs as an investment option. Presentation of information in a standardized, consistent manner on Form N-4 could increase investor awareness of RILAs as an investing option. Facilitating the comparison of annuity products could benefit investors by helping them to invest in RILAs in a manner that is consistent with their overall financial needs and objectives.

(8) Inline XBRL

The proposal would require many of the newly added disclosures on Form N-4 to be structured (*i.e.*, tagged) in Inline XBRL, a structured, machine-readable data language.⁴⁴⁹ In addition, RILA issuers would have to tag those prospectus disclosures that Form N-4 currently requires to be tagged.

Currently, disclosures about RILA offerings are largely unstructured; only the insurance company's financial statements, if reported in GAAP and included in a registration statement that includes a price or price range, are required to be tagged in Inline XBRL.⁴⁵⁰ Certain of the existing disclosures on Form N-4 are required to be tagged in Inline XBRL.⁴⁵¹

The proposed tagging requirements are designed to make the tagged disclosures more readily accessible for aggregation, comparison, filtering, and other analysis. As a point of comparison, XBRL requirements for public operating company financial statement disclosures have been observed to improve investor understanding of the disclosed

⁴⁴⁹ See *supra* section II.B.9.

⁴⁵⁰ See *supra* footnote 402.

⁴⁵¹ Currently tagged disclosures include: Item 2 (Key Information), Item 4 (Fee Table), Item 5 (Principal Risks of Investing in the Contract), Item 10 (Benefits Available under the Contract), and Item 17 (Portfolio Companies under the Contract). See Instruction C.3.h of Form N-4; 17 CFR 232.405(b)(2)(iii).

information.⁴⁵² While those observations are specific to operating company financial statement disclosures (including footnotes), and not to disclosures on Form N-4, they indicate that the proposed Inline XBRL requirements would provide investors with increased insight into key features of the contract that is described in the Form N-4 registration statement. For example, the data tagging could allow third parties such as financial data aggregators to efficiently compare and otherwise process the disclosed information into analyses accessible to investors.

c. Option To Use a Summary Prospectus

We are proposing to amend rule 498A to permit RILA issuers, as well as issuers of “combination contracts” offering a combination of index-linked options and variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Investors would continue to have access to the RILA statutory prospectus and other information about the RILA contract online, with paper or electronic copies of this information upon request. The current summary prospectus rule for variable contracts uses a layered disclosure approach designed to provide investors directly with key information relating to the contract’s terms, benefits, and risks in a concise and reader-friendly presentation, with more detailed information available elsewhere. The proposed amendments to rule 498A would broaden the scope of the rule to address RILA contracts.

As discussed in section II.C above, the proposed amendments to rule 498A would involve the use of two distinct types of summary prospectuses for RILA contracts, employing the same approach the rule currently uses for variable contracts. An “initial summary prospectus,” covering contracts offered to new investors, would include certain key information about the contract’s most salient features, benefits, and risks,

presented in plain English in a standardized order. The rule amendments would also require “updating summary prospectuses” to be provided to existing investors in RILA contracts. The updating summary prospectus would include a brief description of certain changes to the contract that occurred during the previous year, as well as a subset of the information required to appear in the initial summary prospectus. Certain key information about the index-linked options that the contract offers as investment options would be provided in both the initial summary prospectus and updating summary prospectus.

The proposed rule would create a choice for insurance companies. They may meet their prospectus delivery obligations by providing the statutory prospectus, or they may satisfy these obligations by providing a summary prospectus and making statutory prospectuses and other required documents available online. Those insurance companies that expect to benefit by providing summary prospectuses would choose to rely on the proposed amendments to meet their prospectus delivery obligations. Those insurance companies that do not expect to benefit from this optional prospectus delivery regime would choose to continue to provide statutory prospectuses to investors.

The presentation proposed for the initial summary prospectus may also reduce the investor effort required to compare RILA contracts, to consider different index-linked options that a RILA offers, or to compare RILA contracts with each other and with variable annuity contracts, when an investor considers a new investment. Information provided in a concise, user-friendly presentation could allow investors to compare information across contracts and as a result, may lead investors to make decisions that better align with their investment goals.⁴⁵³

If insurance companies choose to meet their prospectus delivery obligations by delivering summary prospectuses to investors, with other documents available online, investors would then have a choice as well. Under the layered disclosure framework we are proposing for RILAs, investors would receive information in the form of a summary prospectus, with more detailed information available online if the investor chooses to access it.⁴⁵⁴ Thus, investors can continue to review the statutory prospectuses by accessing them online, or they may request paper or electronic delivery of statutory prospectuses on an ad hoc basis. Alternatively, investors may choose only to consult the summary prospectuses. Further, if investors want to rely on some combination of summary and statutory prospectuses to receive information about the contract, that choice is available to them as well. Given the Commission’s experience administering the optional summary prospectus regime for variable annuities, we expect a majority of RILA issuers would choose to use summary prospectuses. Thus, we expect that the vast majority of investors will have the option to use both summary prospectuses and statutory prospectuses in their decision-making, in whatever proportion investors think is best for their preferences.

Initial Summary Prospectus. Should insurance companies issuing RILAs choose to use summary prospectuses, investors may benefit in a number of ways.⁴⁵⁵ The proposed initial summary prospectus for RILAs would be limited to describing only the contract and features currently available under the statutory prospectus. This focus could make more salient the features and risks of a RILA, thereby facilitating investors’ evaluation of those features and risks.

We are proposing a standardized presentation for RILA initial summary prospectuses to require certain disclosure items that would be most relevant to investors to appear at the beginning of the initial summary prospectus, followed by supplemental

group, and the intervention caused an average decline in predicted consumer cost of about \$100 a year among letter recipients.

⁴⁵⁴ During investor testing, several participants felt they would need information beyond the information contained in the KIT to make a decision about a RILA. See OIAD Report at Section 5, Qualitative Testing, Results from Round 1.

⁴⁵⁵ Some investors may prefer to read statutory prospectuses, and therefore, the advantages associated with summary disclosure, as described in this section, may not apply to those investors. The statutory prospectus would, under the proposed rule, be available online and in paper or electronic format upon request.

⁴⁵² See, e.g., Birt, J., Muthusamy, K. & P. Bir, *XBRL and the Qualitative Characteristics of Useful Financial Information*, 30 Account. Res. J. 107 (2017) (finding “financial information presented with XBRL tagging is significantly more relevant, understandable and comparable to non-professional investors”); Cahan, S.F., Chang, S., Siqueira, W.Z. & K. Tam, *The roles of XBRL and processed XBRL in 10-K readability*, J. Bus. Fin. Account. (2021) (finding 10-K file size reduces readability before XBRL’s adoption since 2012, but increases readability after XBRL adoption, indicating “more XBRL data improves users’ understanding of the financial statements”); Efendi, J., Park, J.D. & C. Subramaniam, *Does the XBRL Reporting Format Provide Incremental Information Value? A Study Using XBRL Disclosures During the Voluntary Filing Program*, 52 Abacus 259 (2016) (finding XBRL filings have larger relative informational value than HTML filings).

⁴⁵³ Research suggests that individuals are generally able to make more efficient decisions when they have comparative information that allows them to assess relevant trade-offs. See, e.g., Christopher K. Hsee, George F. Loewenstein, Sally Blount, Max H. Bazerman (1999). Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis, *Psychological Bulletin*, 125(5), 576–90; see also Jeffrey R. Kling, Sendhil Mullainathan, Eldar Shafir, Lee Vermeulen, Marian V. Wrobel (2012). Comparison Friction: Experimental Evidence from Medicare Drug Plans, *Quarterly Journal of Economics*, 127(1), 199–235. In a randomized field experiment, some senior citizens choosing between Medicare drug plans were randomly selected to receive a letter with personalized, standardized, comparative cost information. Plan switching was 28% in the group that received a letter with personalized, standardized, comparative cost information, but only 17% in the comparison

information. An initial summary prospectus must contain the information required by the rule, and only that information, in the order specified by the rule.⁴⁵⁶ The information would be required to appear in the same order, and under relevant corresponding headings, as the rule specifies. The required presentation could also facilitate comparisons of different RILA contracts, as well as comparisons between RILA contracts and variable annuities.

We believe standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare RILA offerings. Also, the presentation of information in a standardized, consistent manner could facilitate not only the evaluation and comparison among RILA offerings, but also could facilitate the comparison of RILAs to other variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs as an investment option. Presentation of information in a standardized, consistent manner in an initial summary prospectus could increase investor awareness of RILAs as an investing option.

In addition, given the time required to review a statutory prospectus, RILA investors may benefit from summary prospectuses because they offer a shorter alternative to statutory prospectus disclosure. There is evidence that suggests that consumers benefit from summary disclosures.⁴⁵⁷ Within the specific context of investing, there is evidence from related contexts that suggests that summary prospectuses allow investors to spend less time and effort to arrive at the same portfolio decision as if they had relied on a statutory prospectus.⁴⁵⁸ This research is

consistent with the 2012 Financial Literacy Study, which showed that at least certain investors favor a layered approach to disclosure with the use, wherever possible, of summary documents containing key information about an investment product or service.⁴⁵⁹

Also, investors allocate their attention selectively,⁴⁶⁰ and the sheer volume of disclosure in a statutory prospectus may discourage some investors from reading contract statutory prospectuses. The observations of a telephone survey conducted on behalf of the Commission with respect to mutual fund statutory prospectuses (which are typically shorter than variable contract statutory prospectuses, and shorter than RILA statutory prospectuses are expected to be under the proposal) are consistent with the view that the volume of disclosure may discourage investors from reading statutory prospectuses.⁴⁶¹ That survey observed that many mutual fund investors do not read statutory prospectuses because they are long, complicated, and hard to understand. Responses to investor surveys in other contexts, also suggest that shareholders

may be more likely to read more concise shareholder reports.⁴⁶²

To the extent summary prospectuses increase readership of RILA contract disclosures, they could improve the quality and efficiency of portfolio allocations made on the basis of disclosed information for those investors who otherwise would not have read the statutory prospectus.

The presentation proposed for the initial summary prospectus may also reduce the investor effort required to compare RILA contracts, to consider different index-linked options that a RILA offers, or to compare RILA contracts with each other and with variable annuity contracts, when an investor considers a new investment. Information provided in a concise, user-friendly presentation could allow investors to compare information across contracts and as a result, may lead investors to make decisions that better align with their investment goals.⁴⁶³ For example, the proposed amendments would require insurance companies to distill certain key product information into tables, which could facilitate comparison across different products.

Further, the proposed framework for RILA contract summary and statutory prospectuses also includes design elements to facilitate investor use. In particular, the proposed amendments include requirements for linking both within the electronic version of a contract statutory prospectus and between the electronic versions of the contract statutory prospectus and the contract summary prospectus. The linking requirement would permit investors who use the electronic versions of contract prospectuses to quickly navigate between related sections within the contract statutory prospectus and back and forth between related sections of the contract summary prospectus and the contract statutory prospectus. Further, the proposal would also require that investors either be able to view the definition of each special term used in an online summary prospectus upon command, or to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions that the summary prospectus includes. This requirement would facilitate understanding of terms that may be confusing or unfamiliar among investors viewing the documents online.

Updating Summary Prospectus. As under current rule 498A, we are not proposing that RILA issuers send an

75 (David A. Wise ed., 2010) ("Beshears Paper"), available at <https://scholar.harvard.edu/laibson/publications/how-does-simplified-disclosure-affect-individuals-mutual-fund-choices>. We note, however, that while the authors find evidence that investors spend less time making their investment decision when they are able to use summary prospectuses, there is no evidence that the quality of their investment decisions is improved. In particular, "On the positive side, the Summary Prospectus reduces the amount of time spent on the investment decision without adversely affecting portfolio quality. On the negative side, the Summary Prospectus does not change, let alone improve, portfolio choices. Hence, simpler disclosure does not appear to be a useful channel for making mutual fund investors more sophisticated. . . ." *Id.* at 13 (manuscript page).

⁴⁵⁹ See 2012 Financial Literacy Study.

⁴⁶⁰ See George Loewenstein, Cass R. Sunstein & Russell Golman. (2014) *Disclosure Psychology Changes Everything*, 6 Ann. Rev. Econ. 391 (2014).

⁴⁶¹ Prior to the Commission's 2009 adoption of mutual fund summary prospectus rules, the Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. During this process, investors participating in focus groups were asked questions about a hypothetical Summary Prospectus. Investors participating in the telephone survey were asked questions relating to several disclosure documents, including mutual fund prospectuses. See Abt SBI, Inc., *Final Report: Focus Groups on a Summary Mutual Fund Prospectus* (May 2008), available at <https://www.sec.gov/comments/s7-28-07/s72807-142.pdf>. Although the results from the investor testing reflect stated investor preferences, they do not provide us with information with respect to the extent to which RILA investors would actually be more likely to read a RILA summary prospectus relative to a statutory prospectus.

⁴⁵⁶ Proposed rule 498A(b)(5).

⁴⁵⁷ There is evidence that the summarization of key information is useful to consumers. See, e.g., Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney, Johannes Stroebel, *Regulating Consumer Financial Products: Evidence from Credit Cards* (NBER Working Paper No. 19484, rev. 2014), available at <https://www.nber.org/papers/w19484>. The authors find that a series of requirements in the CARD Act, including provisions designed to promote simplified disclosure, has produced decreases in both over-limit and late fees, saving US credit card users \$20.8 billion annually; see also Robert L. Clark, Jennifer A. Maki & Melinda Sandler Morrill, *Can Simple Informational Nudges Increase Employee Participation in a 401(k) Plan?* 80 S. Econ. J. 677 (2014). The authors find that a flyer with simplified information about an employer's 401(k) plan, and about the value of contributions compounding over a career, had a significant effect on participation rates.

⁴⁵⁸ See John Beshears, James J. Choi, David Laibson & Brigitte C. Madrian, *How Does Simplified Disclosure Affect Individuals' Mutual Funds Choices?*, in *Explorations in the Economics of Aging*

⁴⁶² Tailored Shareholder Reports Adopting Release.

⁴⁶³ See *supra* footnote 453.

updated initial summary prospectus to investors each year. Instead, any RILA issuer that relies on rule 498A would send an updating summary prospectus, which would provide a brief description of certain changes with respect to the contract that occurred within the prior year.⁴⁶⁴ The updating summary prospectus would also include certain of the information required in the initial summary prospectus that we consider most relevant to investors when considering additional investment decisions.⁴⁶⁵ Further, updating summary prospectuses for RILA contracts, like initial summary prospectuses, would include specific disclosure items appearing in a prescribed order, under relevant corresponding headings.⁴⁶⁶ An updating summary prospectus for a RILA contract would have to contain the information required by the rule, and only that information, in the order specified by the rule.

The proposed updating summary prospectus for RILAs would have many of the same benefits for investors associated with the initial summary prospectus discussed above, with respect to presenting key information in an easier and less time-consuming manner for investors. Specifically, because many terms of the RILA contract do not change from year-to-year, the contract statutory prospectus may contain large amounts of disclosure that is duplicative of disclosure that the investor has previously received. Those changes that do occur may be important to investors, but the disclosure about these changes could be difficult for the investor to identify given the volume of prospectus disclosure that investors would otherwise receive, and the current lack of a requirement to identify new or changed information.

Under the proposed amendments, the updating summary prospectus would include a concise description of important changes affecting the statutory prospectus disclosure relating to certain topics that occurred within the prior year—namely: (1) the availability of investment options under the contract, (2) the overview of the contract, (3) the KIT, (4) certain information about fees, (5) benefits available under the contract, (6) purchases and contract value, and (7) surrenders and withdrawals. These are topics that are most likely to entail contract changes and, for the reasons previously noted, are the types of

contract changes most likely to be important to investors because they affect how investors evaluate RILA contracts and are relevant to investors when considering whether to continue in the existing option (if available) or transfer funds to a different option. The proposed updating summary prospectus, if used by issuers to satisfy their prospectus delivery obligations, would likely reduce the burden on investors and increase their understanding of their contract by highlighting certain changes to the contract made during the previous year, while foregoing the repetition of most information that had remained unchanged.

d. Use of Statutory Accounting

The proposal would permit RILA issuers to provide financial statements on amended Form N-4 in the same way that insurance companies currently do on Form N-4.⁴⁶⁷ As a result of this change, the financial statements filed in connection with a RILA registration statement could be prepared in SAP to the same extent as currently permitted for insurance companies' financial statements filed on that form. We expect this approach to appropriately recognize the cost burdens if we were to require GAAP financial statements in cases where the insurance company is not otherwise required to prepare financial information in accordance with GAAP. In addition, SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, appear to provide sufficient material information for investors evaluating RILAs. As a result, permitting insurance companies to provide SAP financial statements when registering the offering of a RILA to the same extent as they can in connection with variable annuities on Form N-4 would be consistent with investor protection. Also, investors could benefit to the extent the reduced cost burdens provided by SAP financial statements are passed along to investors.

The proposal also would require RILAs to provide information relating to changes in and disagreements with accountants on accounting and financial disclosure as detailed in 17 CFR 229.304 ("Item 304 of Regulation S-K"). Further, RILAs would be required to provide as

an exhibit any letter from the insurance company's former independent accountant regarding its concurrence or disagreement with the statements made by the insurance company in the registration statement concerning the resignation or dismissal as the insurance company's principal accountant. These items are currently provided by RILAs on Forms S-1 and S-3 and are designed to address the practice of "opinion shopping" for an auditor willing to support a proposed accounting treatment designed to help a company achieve its reporting objectives even though that treatment might frustrate reliable reporting.⁴⁶⁸ Because the requirements for Form N-4 filers under the proposal are the same as for Form S-1 and Form S-3 filers currently, we would not expect any additional benefits from the requirement to provide information relating to changes in and disagreements with accountants on accounting and financial disclosure.

e. Filing Rules

Fee Payment Method and Amendments to Form 24F-2. The proposal would require RILA issuers to pay registration fees for RILAs using the same method that other filers on Form N-4 currently use. Issuers registering the offerings of RILAs on amended Form N-4 would be deemed to be registering an indeterminate amount of RILAs upon effectiveness of the registration statement. These issuers would then be required to pay registration fees annually based on their net sales of these securities, no later than 90 days after the issuer's fiscal year ends, on the form that is used by current Form N-4 filers to pay registration fees (Form 24F-2). The proposal would further specify the calculation method for paying RILA registration fees, consistent with the fee calculation methodology that applies to current Form N-4 filers. The proposal would also indicate when issuers can take credits for RILA redemptions that pre-date their use of that form and when expiring annuity contracts are rolled over into a new crediting period as well as other minor technical amendments.

The proposed filing rules would provide benefits to insurance companies. Rather than registering a specific amount of securities, insurance companies would register an indefinite amount of securities upon the effective date of their registration statement. Registering an indefinite amount of

⁴⁶⁷ Certain Commission letters, or portions thereof, exempt insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of RILAs on Form S-1. As discussed in Section III.B.1.a, among RILA contracts that are currently registered with the Commission, 47 RILAs report SAP financials and 43 RILAs report GAAP financials.

⁴⁶⁸ See Disclosure Amendments to Regulation S-K, Form 8-K and Schedule 14A Regarding Changes in Accountants and Potential Opinion Shopping Situations, Investment Company Act Release No. 16358 (Apr. 12, 1988) [53 FR 12924 (Apr. 20, 1988)]; see also item 11(i) of Form S-1.

⁴⁶⁴ Proposed rule 498A(c)(1).

⁴⁶⁵ See *supra* footnote 285 and accompanying text.

⁴⁶⁶ Proposed rule 498A(c)(6).

securities benefits insurance companies by eliminating the risk that a RILA issuer may inadvertently oversell securities with respect to a registration statement on Form N-4. The payment of fees on an annual net basis furthermore should lead to a reduction in overall filing fees relating to RILAs. To the extent that there are cost savings for issuers, some of those savings may potentially be passed on to investors.

Post-Effective Amendments and Prospectus Supplements. As discussed in section II.E, the proposal would require RILA issuers to use the same framework for filing post-effective amendments to the registration statement as is currently used by other filers on Form N-4. First, the proposal would amend rule 485 under the Securities Act to require RILA issuers to use that rule when amending RILA registration statements on Form N-4. Requiring RILA issuers to use that rule when amending RILA registration statements on Form N-4 would permit RILA issuers to file post-effective amendments that become automatically effective under rule 485(a) after a specified period of time after the filing or, in certain enumerated circumstances, immediately effective under rule 485(b). Issuers may benefit to the extent automatic effectiveness allows issuers to tap favorable windows of opportunity in the RILA market, to structure terms of RILAs on a real-time basis to accommodate investor demand, and to determine or change the plan of distribution in response to changing market conditions.

Second, the proposal would require RILA issuers to apply rule 497 under the Securities Act when appropriate to file RILA prospectuses and prospectus supplements with the Commission. Under the proposed amendments, a RILA issuer would be required to file every prospectus relating to a RILA offering that varies in form from a previously filed prospectus before it is first used. This approach—rather than requiring filing only if the issuer makes substantive changes from or additions to a previously-filed prospectus—may benefit both investors and issuers. The requirement that insurance companies file every prospectus that varies in form from a previously filed prospectus before it is first used could facilitate investor evaluation and comparison by making publicly available the most timely information currently available to investors. We would expect this benefit to be minimal, however, because rule 424 under the Securities Act requires RILA issuers only to file prospectuses that contain substantive changes. Prospectuses required to be

filed under rule 497 that would not be required to file under rule 424, then, would be prospectuses updated with minor, non-substantive changes and likely of limited informational benefit to investors.

As discussed above, certain issuers use a short-form registration statement on Form S-3, which requires less information than Form S-1 and allows for significant incorporation by reference. Certain issuers also can rely on rule 430B under the Securities Act to omit certain information from the “base” prospectus when the registration statement becomes effective and later provide that information in a subsequent Exchange Act report (forward) incorporated by reference, a prospectus supplement, or a post-effective amendment. Issuers registering annuity product offerings on Form N-4, on the other hand, have limited ability to incorporate information by reference into their registration statements and cannot forward incorporate information from subsequently filed Exchange Act reports. Issuers registering annuity product offerings on Form N-4 also cannot rely on rule 430B to omit certain information from the base prospectus. Under the proposal, then, RILA investors would have all the information available in one location rather than needing to separately access the information on a website or request the incorporated materials. As a result, costs to investors for assembling and assimilating necessary information could decrease, with a potentially stronger effect for investors that may not have the technical capabilities or monetary resources to search efficiently through multiple information sources.

Issuers may benefit from applying rule 497 as well. The proposed rule would facilitate a uniform post-effective amendment and prospectus filing framework for all Form N-4 filers, which would provide insurance companies with more consistent filing requirements across similar products. This, in turn, could benefit insurance companies by making it easier to execute such offerings and may decrease compliance costs.

f. Materially Misleading Statements in RILA Sales Literature

The proposal would amend rule 156 to make its provisions applicable to RILA sales literature. Rule 156 is an interpretive rule that provides factors to be weighed in considering whether a statement involving a material fact is or might be misleading in the specific context of investment company sales literature, including literature relating to the sale of variable annuities. Proposed

amendments to rule 156 would indicate that whether a statement involving a material fact is misleading in RILA sales literature would depend on an evaluation of the context in which it is made, with the rule providing non-exhaustive factors to guide in this determination.

For example, rule 156(b)(1)(ii) currently provides that a statement could be misleading because of the absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading. This provision, where made applicable to RILA sales literature, would generally require an insurance company to consider whether an advertisement would be materially misleading if it markets the investment as a growth investment, a loss-avoidance vehicle, or a customizable product in the absence of qualifying explanations or statements. Similarly, if sales literature advertises a particular feature of the product’s bounded return structure that is not available for the life of the product or the full term of any surrender charge period, the provision as made applicable to RILA sales literature would require consideration of whether the statement is misleading without providing additional context as to the issuer’s discretion to make changes.

Further, rule 156(b)(4) currently provides that representations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. We are proposing to amend this provision also to address representations about the fees or expenses associated with a RILA contract. In the context of RILA sales literature, this provision as amended would require consideration about whether representations or portrayals either of a RILA’s costs or charges, or optional benefits that are subject to a contract adjustment, would require qualifying statements or explanations regarding the economic costs to the investor to receive an advertised benefit or those generally associated with the RILA.

Also, rule 156(b)(2)(i) currently states that representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact. This includes situations where

portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. This provision, where made applicable to RILA sales literature, would require consideration of whether illustrations about the operation of a RILA or its features could be misleading because, for example, they use assumptions that are not currently offered or exceed what could be reasonably anticipated or use “cherry picked” data.

By reducing the potential for misleading or fraudulent statements in RILA sales literature, applying rule 156 to RILAs would provide investors with protections and help ensure that investors receive the information necessary to make informed decisions about these products. Ensuring that investors receive the information necessary to make informed decisions could benefit investors by facilitating investor evaluation of RILAs as well as investor comparison of RILAs to other annuity products.

2. Costs

The proposal could lead to certain additional costs for insurance companies. These costs would likely vary across insurance companies, depending on their existing lines of business. Costs may also vary depending on the extent to which insurance companies create prospectuses that vary in form from previously filed prospectuses and the frequency of certain events, such as changes in accountants and disagreements with accountants on accounting and financial disclosure. Generally, the costs would be lower for insurance companies that currently offer products that register on Form N-4, for those insurance companies that do not change or remove key features of RILAs frequently, and for those insurance companies that do not experience changes in, and disagreements with, accountants on accounting and financial disclosure.

We anticipate that the costs to insurance companies would be comprised of both direct compliance costs and indirect costs. Direct costs for insurance companies would consist of internal costs (for compliance attorneys and other non-legal staff, such as computer programmers, to prepare and review the required disclosure) and external costs (including filing fees,

outside legal and accounting fees, as well as any costs associated with outsourcing all or a portion of the Form N-4 filing responsibilities to a filing agent, software consultant, or other third-party service provider).

The proposal could lead to certain costs for investors as well. Any portion of additional costs that is not borne by insurance companies would ultimately be passed on to RILA investors. Investors also may bear costs associated with certain proposed changes such as the proposed change in filing rules as well as an insurance company's option to use a summary prospectus.

a. Direct Costs

Form N-4. We believe that the direct costs associated with the proposed amendments would be most significant for the first Form N-4 registration statement that an insurance company would be required to prepare and file because the insurance company would need to familiarize itself with the new registration form and may need to configure its systems to efficiently gather the required information. In subsequent periods, we anticipate that insurance companies would incur significantly lower costs because much of the work involved in the initial registration statement preparation and filing is non-recurring and because of efficiencies realized from system configuration and reporting automation efforts accounted for in the initial filing period. The costs associated with preparing and filing a new registration statement (on Form N-4 as opposed to Forms S-1/S-3) would be ameliorated to the extent an insurance company currently has experience and systems in place to prepare and file registration statements on Form N-4 (e.g., the insurance company currently offers variable annuities whose offerings are registered on Form N-4). We estimate the aggregate additional annual internal time cost to be \$16,133,834 and the aggregate annual external cost burden to be \$2,914,740.⁴⁶⁹

Insurance companies would also incur compliance costs to tag many of the newly required Form N-4 disclosures (as well as those prospectus disclosures that Form N-4 currently requires to be tagged) in Inline XBRL. Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and investment companies to fulfill their structuring requirements, and some evidence suggests that, for smaller operating companies, XBRL compliance costs have decreased over

time.⁴⁷⁰ We estimate the total aggregate additional annual internal time cost for XBRL compliance would be \$308,560 and the aggregate annual external cost burden to be \$63,000.⁴⁷¹ In addition, 22 of the 23 insurers that issue RILAs also offer variable products registered on Forms N-3, N-4, or N-6, all of which are currently structured, or otherwise have experience tagging registration statements.⁴⁷²

As such, to the extent these companies comply with Inline XBRL requirements internally rather than outsourcing to an external service provider, they may already be familiar with Inline XBRL software and may be able to leverage existing Inline XBRL preparation processes and/or expertise in complying with the new tagging requirements. This would limit the compliance costs arising from the new tagging requirements for these issuers to only those costs related to selecting additional Inline XBRL tags for those new disclosures proposed to be tagged, and reviewing the tags selected for those disclosures. Accordingly, we do not anticipate that the costs associated with Form N-4 tagging would be significant enough to deter insurance companies from entering the market for RILAs. As such, we do not expect that the new and modified tagging requirements in this proposal would decrease competition in the market for RILAs.⁴⁷³

Option to Use a Summary Prospectus. Issuers will benefit from the option to use a summary prospectus to the extent that providing layered disclosure through a summary prospectus regime (including costs of producing and delivering initial summary and updating summary prospectuses and of making statutory prospectuses, and other

⁴⁷⁰ An AICPA survey of 1,032 public operating 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/interareas/frc/accounting/financialreporting/xbrl/downloadabledocuments/xbrl-costs-for-small-companies.pdf>. Note that this survey was limited to small operating companies. Additionally, a NASDAQ survey of 151 listed issuers and other respondents in 2018 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 in XBRL costs per quarter. See Letter from Nasdaq, Inc. (Mar. 21, 2019); Request for Comment on Earnings Releases and Quarterly Reports, Securities Act Release No. 10588 (Dec. 18, 2018) [83 FR 65601 (Dec. 21, 2018)].

⁴⁷¹ See *infra* Table 16.

⁴⁷² Based on analysis of Forms S-1, S-3, and POS AM filed by RILA issuers.

⁴⁷³ See also *infra* section III.D.

⁴⁶⁹ See *infra* Table 13.

documents available online) is less expensive than providing statutory prospectuses to new investors and updated statutory prospectuses to existing investors annually. Insurance companies choosing to provide summary prospectuses would bear a one-time cost of preparing both the initial summary prospectus and the updating summary prospectus, as well as costs associated with preparing updated versions the updating summary prospectus in the future on at least an annual basis. We estimate the average annual burden to prepare initial and updating summary prospectuses to be \$5,000 per registration.⁴⁷⁴

Insurance companies that choose to provide summary prospectuses are required to make statutory prospectuses and other materials available online. We estimate the aggregate cost to comply with the proposed website posting requirements of the rule for documents relating to RILAs to be \$772 per registrant.⁴⁷⁵ However, some of these costs may have already been incurred by issuers of “combination” contracts offering variable options as well as index-linked options.

Insurance companies that rely on rule 498A to use summary prospectuses for variable annuities are also required to include inter- and intra-document linking and special terms definitions. One linking requirement would allow the reader to move back and forth between a table of contents of the contract statutory prospectus or SAI, and the related sections of each document. Although prospectuses and SAIs are not required to have individual headings corresponding to the items in the registration forms, we assume that the sections of a prospectus or SAI would correspond with the item requirements of the forms. We estimate that Form N-4 filers would require 27 back-and-forth internal links. The other linking requirement would allow the reader to move back and forth between each section of the summary prospectus and any related section of the contract statutory prospectus and SAI that provides additional detail. This back-and-forth movement could occur either directly from the summary prospectus to the relevant section of the statutory prospectus or SAI, or indirectly by linking from the summary prospectus to a table of contents in the statutory prospectus or SAI. For our analysis, we assume direct links as those will tend to be more costly when compared with indirect linking through a table of contents.

An initial summary prospectus for a Form N-4 issuer includes eight sections. The Key Information Table has instructions stating that, wherever feasible, a registrant should provide cross-references or links to the location in the statutory prospectus where the subject matter is described in greater detail. There are 12 sections of the Key Information Table. Therefore, we estimate that there would be 18 back-and-forth links between initial summary prospectuses and statutory prospectuses for a Form N-4 issuer.

An updating summary prospectus for a Form N-4 issuer includes three sections, one of which, the Key Information Table, includes 12 sections. One section is the “Updated Information About Your Contract” section. The number of links in this section would depend on the number of updates discussed. For example, assuming discussion of four updates, we estimate the number of back-and-forth links between a Form N-4 issuer’s updating summary prospectus and statutory prospectus to be 16.

The proposed rule amendments would also require that RILA investors either be able to view the definition of each special term used in an online summary prospectus upon command (e.g., by “hovering” the computer’s pointer or mouse over the term), or to move directly back-and-forth between each special term and the corresponding entry in any glossary or list of definitions that the summary prospectus includes. We assume that RILA issuers could replicate links to a glossary or the computer code required to implement access to definitions by “hovering” over a term with little or no burden, but that there would be a burden associated with creating the requisite link or code for each special term. Accordingly, we estimate the cost to comply with the proposed requirement to include inter- and intra-document linking and special terms definitions as described above would include 6 burden hours and a cost of \$800 annually, per registrant.⁴⁷⁶

Filing the Prospectus. As discussed in section II.E, RILA issuers follow different processes to file prospectuses than current Form N-4 filers. For example, a RILA issuer is required to file a prospectus only if the issuer makes substantive changes or additions to a previously-filed prospectus, whereas current Form N-4 filers are required to file every prospectus that varies from any previously-filed prospectus. Accordingly, under the proposed amendments, a RILA issuer would be required to file every

prospectus relating to a RILA offering that varies in form from a previously filed prospectus before it is first used. The proposed requirement could increase the number of prospectuses required to be filed by RILAs which could, in turn, increase costs for issuers.⁴⁷⁷ For each additional prospectus required to be filed by RILAs, we estimate an addition internal cost burden of \$113,659.70 and an external cost burden of \$24,000.⁴⁷⁸

Materially Misleading Statements in RILA Sales Literature. The proposal would amend rule 156 to make its provisions applicable to RILA sales literature. The cost of the proposed amendments would include the direct cost of analyzing advertising materials in light of the guidance rule 156 provides. This may require review and approval of advertisements beyond what occurs currently, particularly because determining whether a statement involving a material fact is misleading in RILA sales literature would depend on an evaluation of the context in which it is made. We expect some of these costs to be borne in the first year after the rule adoption. That is, these costs would be transition costs and not sustained beyond the first year. We estimate that the transition costs associated with the proposed advertising rule amendments would be \$5,715.⁴⁷⁹ Also, ongoing sales literature activity may require internal review and approval of advertisements. We estimate that the costs associated with ongoing sales literature activity would be \$1,905, annually.⁴⁸⁰ These costs would be borne

⁴⁷⁷ The potential increase in cost could be greater for Form S-3 filers than for Form S-1 filers. Form S-3 requires less information than Form S-1. Also, Form S-1 allows incorporation by reference only on a very limited basis. Form S-3 allows for forward incorporation by reference. Form S-3 filers may need to produce incrementally more information to file on Form N-4 than Form S-1 filers. Transitioning to Form N-4 could be more expensive for Form S-3 filers than for Form S-1 filers, as a result.

⁴⁷⁸ See Table 11, Rule 498A PRA Estimates. As discussed in footnote 477, these costs could be greater for Form S-3 filers than for Form S-1 filers. Also, we estimate an additional internal time cost of \$2,436 for each additional prospectus required to be filed by separate account registrants.

⁴⁷⁹ We estimate an initial burden of 15 hours, per advertisement, to review existing advertising materials at a blended cost of \$381 (\$5,715 = 15 × \$381). See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at footnote 744.

⁴⁸⁰ We estimate an initial burden of 5 hours, per advertisement, to review existing advertising materials at a blended cost of \$381 (\$5,715 = 15 × \$381). See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at footnote 745.

⁴⁷⁴ See Table 11, Rule 498A PRA Estimates.

⁴⁷⁵ See Table 11, Rule 498A PRA Estimates.

⁴⁷⁶ See VASP Adopting Release at n.1084.

by issuers and third parties who prepare RILA advertisements.

b. Indirect Costs

Form N-4. While the prospectuses and other registration statement disclosure required by the proposal would likely facilitate investor evaluation and comparison of RILAs, investors could experience certain transition costs under the proposal, and some investors may experience other ongoing costs. Transition costs would include the costs of the inconvenience to some investors of adapting to the new materials and to the changes in the presentation of information. Investors would also bear a one-time cost of the inconvenience of adjusting to the changes in the disclosures they receive. These costs are likely to be relatively lower for investors with less experience investing in RILAs.

Option to Use a Summary Prospectus. While we expect that, should insurance companies opt to use summary prospectuses, the majority of investors would benefit from their disclosures, certain investors may incur costs. For example, although research indicates that investors generally prefer to receive summary disclosures there may be RILA investors who prefer to rely on statutory prospectuses when making investment decisions. While RILA statutory prospectuses would continue to be available online and in paper or electronic copy upon request, access to those statutory prospectuses would require investors to take additional steps, imposing some burden. For example, investors choosing to access the statutory prospectus online rather than requesting a paper copy would need to manually enter a hyperlink from a paper updating summary prospectus or click on a link to a website containing the statutory prospectus. To the extent that internet access and use among RILA investors is not universal, those investors without home internet access might experience a reduction in their ability to quickly and easily access statutory prospectus information.⁴⁸¹

⁴⁸¹ According to the most recent U.S. census data, approximately 85% of U.S. households had some form of broadband internet access in their home in 2018, and 92% had a computer (e.g., desktop, laptop, tablet or smartphone). See Michael Martin, *Computer and internet Usage in the United States: 2018*, U.S. Census Bureau (Apr. 21, 2021), available at <https://www.census.gov/library/publications/2021/acs/acs-49.html>; see also Pew Research Center, *internet/Broadband Fact Sheet* (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> (“Today, 93% of American adults use the internet.”) and “Today, roughly three-quarters of American adults have broadband internet service at home.”); see also Ani Petrosyan, *internet Usage in the United States—Statistics & Facts*, Statista (Aug. 31, 2023),

Even for those investors with home internet access, there may be some resistance to taking the additional step of accessing the statutory prospectus online.

Use of Statutory Accounting Principles. The proposal would permit RILA issuers to provide financial statements on amended Form N-4 in the same way that insurance companies currently do on Form N-4. One consequence of this change would be that the financial statements filed in connection with a RILA registration statement could be prepared in SAP to the same extent as currently permitted for insurance companies’ financial statements filed on that form. The proposed rule would create a choice for certain insurance companies. They may prepare their registration statements in SAP, or they may prepare their registration statements in GAAP. Those insurance companies that expect to benefit from preparing their registration statements in SAP (e.g., through reduced costs) would choose SAP. Those insurance companies that do not expect to benefit from the option to prepare their registration statements in SAP would continue to prepare their registration statements in GAAP. Because the proposed rule would, for certain issuers, create the option, but not the obligation, to prepare their registration statements in SAP, we do not believe this provision of the proposed rule would create additional costs.

Filing and Prospectus Delivery Rules. As discussed in section II.E, when a RILA issuer seeks to amend a RILA registration statement on Form S-1, the issuer must file a post-effective amendment that is typically declared effective by Commission staff acting pursuant to delegated authority on such date as the Commission may determine. To the extent that investors previously benefited from the Commission staff’s review of these filings before they become effective, allowing filings of RILA offerings to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. However, issuers would still face liability under the Federal securities laws for registration statement disclosures (e.g., sections 12 and 17 of the Securities Act and section 10(b) and rule 10b-5 under the Exchange Act), which may ameliorate the potential costs associated with reduced staff review. Moreover, rule 485

available at <https://www.statista.com/topics/2237/internet-usage-in-the-united-states/#topicOverview> (“Today, over 90 percent of Americans have access to the internet”).

only permits updates to become immediately effective in limited, enumerated circumstances, in order to provide an opportunity for staff review for all other changes.

As discussed in section II.E.3, we understand that RILA issuers typically deliver prospectuses to accompany or precede other communications, such as annuity applications. It is possible that providing layered disclosure through a summary contract prospectus regime (including costs of delivering initial summary and updating summary prospectuses and making statutory prospectuses and other documents available online) could result in reduced costs for issuers.⁴⁸²

Materially Misleading Statements in RILA Sales Literature. Issuers and third parties involved in preparing or disseminating investment company advertisements may incur costs to comply with the proposed advertising rule amendments. While reducing the potential for misleading or fraudulent statements in RILA sales literature would provide investors with protections and help ensure that investors receive the information necessary to make informed decisions about these products, investors could bear the costs of these amendments through increased expenses that funds would incur to implement the proposal. Alternatively, if the cost of compliance with these proposed amendments were significant, some RILAs might reduce advertising to lower the extra costs of compliance. If this were to occur, investors who would otherwise rely on advertisements to make investment decisions about RILAs or compare RILAs with other investment products might have less complete information for these purposes.

D. Effects on Efficiency, Competition, and Capital Formation

Efficiency. To investors, the costs of purchasing a RILA are more than just the dollar cost of the contract and include the value of an individual’s time spent evaluating the contract and its various aspects. Further, for those

⁴⁸² See VASP Adopting Release. In the VASP Adopting Release we estimate that printing and mailing expenses are \$0.18 less for initial and updating summary prospectuses than for statutory prospectuses. Because we understand RILA prospectuses to not be as long as variable annuity prospectuses, we would expect savings among RILA issuers to be less than the VASP Adopting Release savings, but we do not have a basis for believing savings for RILA issuers will be of an order of magnitude less than the VASP Adopting Release savings. We therefore believe savings for RILA issuers will be between approximately \$.02 and \$.18. We estimate the internal cost time of online posting of contract documents to be \$772. See *infra*, Table 11.

investors who do not gain a full understanding of the contract, there could be a cost stemming from a potential mismatch between an investor's goals and the purchased contract. Depending on the size of an individual's potential purchase, certain of these additional costs could be considerable in comparison to the monetary costs associated with contract purchase and could discourage investors from considering RILAs even in circumstances where investment in a RILA would be beneficial.

For their part, insurance companies only supply RILAs to the extent they expect the benefits derived from providing the contracts to be greater than the costs of supplying the contract. For issuers, costs include not only those costs associated with producing and servicing RILAs, but also those costs associated with meeting various statutory and regulatory obligations.

These costs borne by both insurance companies and individuals are examples of market "frictions." Market frictions have the effect of reducing the benefits from (*i.e.*, the efficiency of) contracting between market participants.⁴⁸³ Rules that reduce costs for investors, issuers, or both, reduce market frictions and potentially enhance the benefits from contracting between market participants. By facilitating investor evaluation and comparison of RILAs as well as facilitating the comparison of RILAs to other annuity contracts, the proposed rule could reduce frictions for investors. Requiring insurance companies to use a single registration form and filing process for all RILAs as well as all variable annuity separate accounts that are structured as unit investment trusts, as well as allowing RILA issuers to provide financial statements on amended Form N-4 in the same way that insurance companies currently do on Form N-4, may also reduce certain compliance burdens for insurance companies. In addition, requiring RILA issuers to tag certain key information in Inline XBRL would enable investors, third-party information providers, Commission staff, and other data users to capture and analyze that information more quickly and efficiently than is possible when the same information is provided solely in a static, text-based format.

These increases in efficiency could lead investors to save more appropriately to meet their retirement goals. For example, for existing RILA investors the proposal may increase the

likelihood that investors choose to invest more or less money in RILAs in a manner that is consistent with their overall financial needs and objectives—a level that may be higher or lower than current levels. Similarly, the proposal may lead existing investors to choose to allocate their money into different investment options that the RILA offers, or different RILAs (or other insurance products like variable annuities) that best meet their needs. The proposal also may help promote investment in RILAs by investors who currently do not invest in RILAs, to the extent such investments are appropriate for them. Finally, access to clearer information about the contract provisions may reduce the chances that an investor makes mid-crediting period withdrawals or transfers or surrenders a RILA when the costs of doing so does not justify the benefits.

Competition. If the proposed rule increases efficiency of exchange in the RILA market, then we may observe a change in investment in RILAs. For example, if there are individuals who currently do not invest in RILAs (or invest less than they would have) because the costs other than the price of the contract are too high (including the effort to gain sufficient understanding of the product) or they are not aware of RILAs as an investment, then to the extent the proposed rule lowers those costs or makes investor more aware of RILAs, we would expect to observe more investors entering the RILA market. Conversely, there may be RILA investors who, because of the burden, choose not to read statutory prospectuses. To the extent those investors are more likely to read summary prospectuses, those investors may decide, as a result, that other investments or products are better suited to their investment goals. This could result in fewer investments in RILAs. If there are insurance companies who limit their participation in the RILA market as a result of the requirement to register RILA offerings on Form S-1 or Form S-3 or because of the costs of current prospectus delivery requirements, those insurance companies may increase participation in the RILA market. To the extent that competition in a market is related to the size of the market, the net effect of these potential changes in investor demand for, and issuer supply of, RILAs could affect competition in the RILA market.

The proposed rule could also affect competition by requiring that information about RILAs be presented in a concise, user-friendly way, which could allow investors to compare information across products. Requiring RILA issuers to tag certain key

information in Inline XBRL could further facilitate comparisons of information across registrants by making it easier for investors (directly or through third-party data aggregators) to extract and aggregate information through automated means for analysis and comparison, which could increase competition among RILA issuers for investor capital. For example, the proposed rule requires issuers to distill certain key product information into tables. The presentation of this information in a table facilitates evaluation among different RILAs as well as comparison to variable annuities. Greater comparison among different RILAs as well as comparison to variable annuities could lead to greater competition. Furthermore, by reducing the costs associated with aggregating data across RILAs, the proposed Inline XBRL requirement could reduce barriers to entry for third-party data aggregators and induce competition among firms that supply information about RILAs to investors, including other third-party aggregators and sales agents.

The effect on competition between insurance companies could be limited, however, to the extent RILA investors rely on an agent to help them select their RILA contract and the investment options under the contract and do not have access to broad comparisons across different RILAs (or among different investment options that the RILA offers) at the time of sale.⁴⁸⁴ Agents generally only provide their customers with a subset of all RILAs available in the general marketplace. Thus, while the product information in summary prospectuses would facilitate comparison across products offered by the agent, the effect would likely be limited to the agent's set of products rather than to the broader market.

Capital Formation. As discussed in connection with the potential effects of the proposed rule on competition, if the proposed rule increases the efficiency of exchange in the RILA market, then we may observe a change in investment in RILAs. As discussed in section III.B.3, unlike variable annuities that involve a direct investment of premiums into one or more mutual funds, which in turn invest in underlying securities, RILA premiums are not directly invested into the assets of the indexes that are

⁴⁸³ If market frictions are sufficiently large, market frictions could eliminate exchange altogether.

⁴⁸⁴ We do not have data on the extent to which investors rely on agents when purchasing RILAs. In 2019, \$95.5 billion of total variable annuity sales of \$98.3 billion (97%) were through a distribution channel involving an agent. If investors rely on agents when purchasing RILAs to the same extent they do when purchasing variable annuities, then the vast majority of RILA investors rely on agents when purchasing RILAs.

associated with the index-linked options offered under the contract, but are typically invested into fixed-income securities such as corporate bonds. To the extent that an increase or decrease in the demand for RILAs is not driven by investors substituting either away from, or into, variable annuities or other investment vehicles as an alternative, we would not expect changing demand for RILAs to have any effect on the underlying securities. An increase or decrease in the demand for RILAs could, however, increase or decrease the demand for fixed-income securities such as corporate bonds. To the extent the proposed rule would cause investors to either substitute away from, or into, variable annuities or another investment that entail investment in underlying funds (which, in turn, invest in a portfolio of securities), there could be an effect on capital formation. If investors substitute away from variable annuities or other investment vehicles into RILAs, there could be a reduction in the demand for the underlying securities and, by extension, a reduction in capital formation. If investors substitute away from RILAs and into variable annuities or other investment vehicles, there could be an increase in the demand for the underlying securities. To the extent issuers invest RILA proceeds into fixed-income securities such as corporate bonds, there could be an increase in the demand for those securities.

The proposed Inline XBRL requirements could increase the efficiency of capital formation to the extent that making disclosures available in a structured format reduces some of the information barriers that make it costly for RILA issuers to find appropriate sources of new investors. Smaller issuers in particular may benefit more from enhanced exposure to investors. If tagging certain disclosures in a structured format increases the availability, or reduces the cost, of collecting and analyzing key information about RILAs, smaller RILA issuers may benefit from improved coverage by third-party information providers and data aggregators.

E. Reasonable Alternatives

1. Creating an Entirely New Registration Form for RILAs

The proposed rule would require the registration of RILA offerings on Form N-4. Most variable annuities use Form N-4, which has disclosure requirements tailored to these investments that provide investors with key information about a variable annuity's terms, benefits, and risks in a concise and reader-friendly presentation. Currently,

insurance companies register RILA offerings on Forms S-1 or S-3, which allow registering general debt or equity offerings. Forms S-1 and S-3 require issuers to disclose not only information about the offering itself, but also extensive information about the registrant issuing the securities. In addition, registrants must include financial statements prepared in accordance with GAAP, unless an exemption has been granted pursuant to 17 CFR 210.3-13 that permit insurance companies to substitute SAP financials in lieu of GAAP financials. Form N-4, on the other hand, allows insurance companies to file financial statements prepared in accordance with SAP if they do not otherwise prepare GAAP financial statements. As an alternative, we could have required insurance companies to register RILA offerings on an entirely new form.

Form N-4 was designed for investment companies, and RILA issuers are not investment companies. A new form specifically tailored to RILAs could be more beneficial than working to fit them into an existing framework that was designed with a different structure in mind.

A completely new registration form for RILA offerings could negatively affect investors' ability to compare different RILAs with variable annuities that register on Form N-4 (including "combination" contracts that offer index-linked options as well as variable options). Furthermore, given that we are proposing to amend Form N-4 to address those aspects specific to RILAs, but many of the current form requirements are relevant to the registration of RILA offerings, a completely new and separate form for RILAs would not offer much (if any) benefit to investors in terms of new information compared to the proposed amendments to Form N-4. Since most variable annuity issuers already use Form N-4 to register their securities, and many RILA contracts are offered as "combination" contracts, the amended Form N-4 would efficiently provide investors with product-specific information about these combination contracts. As a result, investors would be able to compare annuity products, and the investment options that these products offer, with less time and effort. To the extent that investors use less time and effort to compare annuity products and their underlying investment options, investors may be more likely to make decisions that align better with their investment goals.

We preliminarily believe that requiring RILA offerings to be registered on Form N-4 rather than on an entirely

new form would also be more efficient for insurance companies since they would generally follow the same procedures they already use for the registration of variable annuities. Using Form N-4 to register variable annuities and RILA offerings would also be less costly for insurance companies than using Form N-4 for variable annuities and a completely new form for RILAs since registrants are already familiar with Form N-4. It also would be less costly because, if RILA offerings had to be registered on a form other than Form N-4, combination contracts offering variable options and index-linked options would have to use two separate registration forms.

Commission staff would also benefit from using Form N-4 for RILAs because the disclosure requirements for variable annuities and RILAs would be located in one form only, and registration statements for these products would be subject to the same filing and review processes. This would reduce the use of resources by Commission staff needed to review the registration statements of RILAs and variable annuities.

2. Alternatives to Specific Form N-4 Amendments

The Commission is proposing amendments to Form N-4 so that insurance companies can register RILA offerings using that form. While the substance of many of the requirements in Form N-4 would not change from the current version of the form, we are proposing to update some items to include disclosures specifically tailored to RILAs. In certain limited circumstances, we have changed the disclosure requirements provided on the form for all filers, including those registering variable annuities.

As an alternative, we could have proposed more or less tailoring the form for RILAs. A larger number of amendments tailored to RILAs than the number we propose would be more costly for insurance companies registering RILA offerings because insurance companies that offer combination contracts (or that otherwise register variable annuities on Form N-4) would have to make more changes to their disclosure. For example, we could have required insurance companies to provide a diagram in the KIT to illustrate surrender charges and contract adjustments during different time periods of the contract, or illustrations showing how caps, floors, and/or buffers could affect an investor's returns across different market scenarios.

Also, we could require insurance companies to provide information related to the economic tradeoffs

associated with index-linked options. For example, we could require the insurance company to compare a hypothetical investment in the index-linked option to the value, or cost, of a combination of (i) derivatives that would provide the index-linked option's investment exposure; (ii) a fixed-income component; and (iii) the standard insurance features offered with the index-linked option, similar to the analysis in the Moenig Paper and the analysis conducted by the staff in section III.B.3.⁴⁸⁵ In such a comparison, we could either require that the insurance company should use the hypothetical investment discounted by the rate of interest the insurance company is crediting, or would credit, on fixed annuities with a term equal to the duration of the crediting periods of the index-linked option, or we could require the insurance company to use the value of a risk-free zero-coupon bond with a time to maturity equal to the crediting period of the index-linked option, consistent with our analysis in section III.B.3.⁴⁸⁶ We could also consider requiring additional disclosure related to the setting of early withdrawal charges or penalties and their impact on such a comparison of hypothetical investments. For example, we could require the calculation of a disclosure similar to the analysis in the Moenig Paper and the analysis conducted by the staff in section III.B.3 to explicitly include the impact of early withdrawal charges or penalties on the liquidity of the investment. We could also require more prominent placement of these features on marketing or other materials, or we could require a comparison of these features to potential benefits of the RILA to clarify for investors possible trade-offs.

Conversely, a smaller number of amendments tailored to RILAs than the number we propose would be less costly for insurance companies. Since insurance companies already use Form N-4 to register variable annuities, and most RILA issuers offer variable annuities registered on Form N-4 (including, in many cases, combination contracts), we preliminarily believe that the costs of complying with the disclosure requirements of the amended form would not be substantial.

The amendments to Form N-4 that we propose would promote investor understanding of RILA contracts by presenting information in a clear and concise manner. Proposing a larger number of amendments tailored to RILAs may add too much, or less

relevant, information, which may overwhelm investors who may not have the time or capacity to process all the information.⁴⁸⁷ Proposing only a subset of amendments tailored to RILAs, as compared with the proposed approach, could result in less investor understanding relative to the understanding resulting from the proposed amendments.

3. Require the Use of Form N-4 for Registered MVAs

As discussed above, while we are not proposing to require insurance companies to register offerings of registered MVAs on Form N-4, one alternative would have been requiring insurance companies to register the offering of registered MVAs on Form N-4.⁴⁸⁸ These offerings are currently registered on Forms S-1 or S-3 but differ from RILAs only with respect to the manner in which interest is calculated and credited.⁴⁸⁹ As a result, many of the benefits and costs identified above regarding RILAs would also be true in applying the same registration and disclosure framework to offerings of registered MVAs, including potentially a change to the filing fee process to file on Form 24f-2 and requiring the issuers to follow rule 156. For example, as with RILAs, expanding the scope of Form N-4 to include registered MVAs would benefit investors by making it easier for them to compare registered MVAs, and also compare registered MVAs with other annuity product offerings registered using Form N-4.⁴⁹⁰ In particular, because both RILAs and registered MVAs include contract adjustments, the inclusion of specified disclosures about contract adjustments would benefit investors since they would be able to better evaluate the costs of purchasing and owning annuity contracts, including registered MVAs. Requiring the registration of registered MVAs on Form N-4 also would entail efficiency benefits to insurance companies that offer combination

contracts, for example ones that include both variable annuities registered on Form N-4 and registered MVAs, as the use of the same registration form for all of these products may reduce these companies' compliance burdens.

Conversely, including registered MVAs on Form N-4 would also entail similar costs to those outlined above for the proposed registration and disclosure approach for RILAs. These would include direct costs to the insurance company, for example filing fees, as well as outside legal and account fees. Direct costs also would include costs associated with filing the first Form N-4 registration statement in connection with the registration of a registered MVA offering, where the insurance company would be required to familiarize itself with the new registration form and may need to configure its systems to efficiently gather the required information. Further, investors would bear certain indirect costs, such as the cost of adapting to new materials and the changes in the presentation of information.

Ultimately, we determined not to propose to require insurance companies to register offerings of registered MVAs on Form N-4 at this time, but we request comment on this reasonable alternative.

4. Limiting Scope of Structured Data Requirements

The proposed rule would require many of the newly added disclosures on Form N-4 to be tagged in Inline XBRL, and also would require RILA issuers to tag those prospectus disclosures that Form N-4 currently requires to be tagged. Alternatively, the Commission could have limited the tagging requirement to only those disclosures being added to Items of Form N-4 that are already tagged in Inline XBRL.⁴⁹¹ Under this alternative, disclosures relating to: the overview of the contract; the description of the Insurance company, registered separate account, and investment options; charges; purchases and contract value; purchase of securities being offered; disagreements with and changes to accountants; information about contracts with index-linked options and fixed options subject to a contract adjustment; and fee representations and undertakings would not be tagged.

Limiting the scope of tagging requirements in this manner would result in reduced compliance burdens for insurance companies, which would be required to apply fewer tags to their

⁴⁸⁵ See *supra* section II.B.3.b.

⁴⁸⁶ *Id.*

⁴⁸⁷ See, e.g., Julie R. Agnew and Lisa R. Szykman (2005). Asset Allocation and Information Overload: The Influence of Information Display, Asset Choice, and Investor Experience, *Journal of Behavioral Finance*, 6(2), 57–70, and Alejandro Bernal, Marcela Valenzuela and Ilknur Zer (2023). Effects of Information Overload on Financial Markets: How Much Is Too Much? *International Finance Discussion Papers 1372*, Washington: Board of Governors of the Federal Reserve System.

⁴⁸⁸ See *supra* section II.H.

⁴⁸⁹ Based on internal estimates, there are 45 registered MVAs from 15 different insurance companies. 27 of these registered MVAs are in combination contracts whereas 18 are standalone. 27 of these registered MVAs use Form S-1 and 18 use Form S-3. Lastly, 26 of these registered MVAs use GAAP financials and 19 use SAP.

⁴⁹⁰ See *supra* section III.C.1.

⁴⁹¹ See *supra* footnote 451.

disclosures on Form N-4 filings. However, the alternative would also remove the informational benefits associated with making those disclosures available in a machine-readable manner. Furthermore, because Form N-4 filers already have Inline XBRL tagging obligations with respect to certain of the form's disclosure requirements, the burden reductions resulting from such an alternative would be limited.

F. Request for Comment

Throughout this release, we have discussed the anticipated benefits and costs of the proposed rule and its potential effect on efficiency, competition, and capital formation. While we do not have comprehensive information on all aspects of RILA registration and reporting, we are using the data currently available in considering the effects of the proposed rule. We request and encourage any interested person to submit comments regarding the proposed rule, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request that commenters identify sources of data and information with respect to annuity contracts in general, but also with respect to RILAs in particular, as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules. We are also interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may not have discussed. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

153. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of these amendments?

154. Are the benefits and costs of proposed amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

155. To the extent commenters believe any specific additional data sources would help better quantify the benefits and costs of the proposal, we request that commenters provide this data. In particular, the following data could be particularly informative: historical information about current

limits on index gains associated with the index-linked options offered under a RILA, quantitative data about contract adjustments incurred by investors who make withdrawals from an index-linked option or from a RILA contract before the end of a specified period, and/or data regarding the frequency with which RILA contracts are annuitized.

156. Are the effects on competition, efficiency, and capital formation arising from the proposal accurately characterized? If not, why not?

157. Are there any other reasonable alternatives to the proposed new rule that should be considered? Are there any additional benefits or costs that should be associated with the reasonable alternatives considered?

158. We indicate that insurance companies benefit from the sale of RILAs in at least three ways. First, insurance companies can benefit from a favorable imbalance between the downside protections that a RILA contract offers, and the upside caps the contract offers. Second, insurance companies invest RILA proceeds into fixed-income securities such as corporate bonds, thereby earning a "credit risk premium." Finally, insurance companies can benefit when a RILA offers index-linked options whose index for measuring performance is a price-based index that does not account for dividend payments. Are we correct in our characterization of how insurance companies benefit from the sale of RILAs? In what other ways, if any, do insurance companies benefit from the sale of RILAs?

159. We characterize RILAs as combining features of fixed-index annuities and variable annuities—limiting or reducing downside risk in return for an investor accepting capped upside performance. In exchange for giving up the complete protection of principal offered by fixed annuities, a RILA investor is afforded greater upside potential than that provided by fixed annuities, though typically less than the potential upside of a variable annuity. Is our characterization of RILAs, compared to other annuity products, correct? If not, how do RILAs compare to other annuity products?

160. In Section III.B.3, we analyze the imbalance between the downside protections that a RILA contract offers, and the upside limits the contract offers. Does our analysis reflect a risk-neutral valuation for a RILA with a cap and buffer or floor? What alternative considerations should we include in calculating such a valuation? Do the methodological assumptions (such as generating prices through the linear interpolation of implied volatilities)

create significant bias or other problems for the analysis? How do RILAs set surrender charges or other early withdrawal charges or penalties, and should these charges or penalties be considered when performing this calculation since they reduce the liquidity of the investment? Should we require additional disclosure related to early withdrawal charges, fees, or penalties? For example, should we require more prominent placement of these features on marketing or other materials, or should we require a comparison of these features to potential benefits of the RILA to clarify for investors possible trade-offs? Are there other data sources (e.g., pricing vendors) that should be considered for these calculations? Are there certain time periods or types of contracts that we should consider when doing these or similar calculations? What considerations should be used in assessing whether the cost derived in our analysis is large or small? Also, are other measures related to the economic content of downside protections and upside limits that would be beneficial for investors?

161. We indicate that for shorter crediting periods and for common indexes such as the S&P 500, issuers are able to use exchange traded derivative securities to closely approximate the issuer's liabilities from a RILA contract at the end of each crediting period. Do issuers use exchange derivative securities to approximate the issuer's liabilities from a RILA contract? If not, how do issuers use the proceeds from RILA sales?

162. Under the proposed rule, to what extent would insurance companies choose to meet their disclosure obligation by providing investors with summary prospectuses while making statutory and other documents available on a website? As discussed above, we expect the vast majority of investors will have the option to use both summary prospectuses and statutory prospectuses in their decision-making, in whatever proportion investors think is best for their preferences. To what extent would investors in RILA contracts whose issuers elect to rely on rule 498A request to receive statutory prospectuses in paper or electronically, or seek access to statutory prospectuses online?

163. Would any positive or negative effect of the proposed rule on investors be disproportionately greater for certain investors than for others? If so, which investors would be disproportionately affected, to what extent, and how would such effects manifest? What, if any, additional measures could help mitigate any such disproportionate effects?

Please provide supportive data to the extent available.

164. To what extent might reduced burdens (e.g., using SAP accounting rather than GAAP accounting) borne by issuers be passed on to existing investors? Under what circumstances, and in what form, would insurance companies pass benefits through to existing investors?

165. To what extent would the proposed rule affect the ability of investors to understand the investment risks of RILAs and to efficiently allocate capital? Would investors be more likely to allocate additional capital to RILAs? What would be the effect on issuer competition for investor capital?

166. To what extent would investors realize benefits from Inline XBRL tagging requirements for certain newly added disclosures on Form N-4, as opposed to tagging requirements for only those disclosures within currently tagged Form N-4 Items? How would this approach affect costs for insurance companies? Would there be any cost saving?

167. To what extent would an increase or decrease in the demand for RILAs be driven by investors substituting either away from, or into, variable annuities or other investment vehicles? We assume that if investors do substitute away from, or into, variable annuities or other investment vehicles into RILAs, that the effect on capital formation would be small. Is our assumption correct? If not, why would the effect on capital formation be larger than what we assumed?

IV. Paperwork Reduction Act

We are proposing amendments to several rules and forms that would modify the registration, offering, and communications processes for RILAs under the Securities Act. We are also proposing amendments to Form N-4 and related rules that would apply to all issuers of that form.⁴⁹² The proposed amendments, if adopted, would implement the requirements relating to RILAs in the RILA Act.⁴⁹³ The proposed amendments would have an impact on the current collections of information burdens under the Paperwork Reduction Act of 1995 (“PRA”) of the following rules and forms: Rule 498A, Form N-4,

Investment Company Interactive Data, and Form 24F-2. The titles for the existing collections of information are: (1) “Rule 498A Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts” (OMB Control No. 3235-0765), which we would retitle to “Rule 498A Summary Prospectus for Variable and Index-Linked Annuity and Variable Life Insurance Contracts;” (2) “Form N-4, Registration Statement of Separate Accounts Organized as Unit Investment Trust” (OMB Control No. 3235-0318), which we would retitle to “Form N-4, Registration Statement of Separate Accounts Organized as Unit Investment Trust or of Index-Linked Annuity Contracts;” (3) “Annual Notice of Securities Sold Pursuant to Rule 24f-2.” (OMB Control No. 3235-0456), which we would retitle to “Annual Notice of Securities Sold Pursuant to 17 CFR 270.24f-2 or 230.456(e);” and (4) “Investment Company Interactive Data” (OMB Control No. 3235-0642).

The Commission is submitting these collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The hours and costs associated with preparing and filing 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 respond to, a collection of information unless it displays a currently valid OMB control number. We discuss below the collection of information burdens associated with proposed amendments to rule 498A and Investment Company Interactive Data, as well as Forms N-4 and 24F-2, which are filed with the Commission and are not kept confidential. A description of the proposed amendments, including the need for the information and its proposed 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 proposed amendments can be found in Section III above.

A. Rule 498A

We are proposing to amend rule 498A to permit RILA issuers, as well as issuers of “combination contracts” offering a combination of index-linked

options and variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Consistent with current rule 498A, the proposed use of summary prospectuses for RILAs would be voluntary, but the rule’s requirements would be mandatory for issuers that elect to send or give a summary prospectus in reliance upon proposed rule 498A. We are also proposing to make certain amendments to Form N-4 that would affect the variable annuity summary prospectuses currently provided to investors. The proposed amendments to rule 498A are part of a layered disclosure approach that is designed to provide investors with a summary prospectus to help them make informed investment decisions regarding RILAs, as discussed in more detail above. These amendments would result in a change in our estimate of the burdens associated with this collection of information, specifically to account for these additional requirements for issuers that use rule 498A currently and to add RILAs to the estimates.

The respondents to these collections of information would be RILA issuers and registered variable annuity separate accounts. The information provided under rule 498A will not be kept confidential.

In our most recent Paperwork Reduction Act submission for Rule 498A, we estimated for rule 498A a total aggregate annual hour burden of 14,688 hours, and a total aggregate annual external cost burden of \$11,559,420.⁴⁹⁴ We estimate that 90 RILAs would be registered using Form N-4 if the proposal was adopted and that that there are 419 registrants on current Form N-4 that would be impacted by the proposed amendments.⁴⁹⁵ The summary prospectus is voluntary, so the percentage of RILA issuers that will choose to utilize it is uncertain. Given this uncertainty, we have assumed that insurance companies will choose to use a summary prospectus for 90% of all RILAs, which is the same as our current estimate for variable annuity separate accounts. The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 498A.

⁴⁹² We are proposing amendments rules 485 and 497 of Regulation C (OMB Control No. 3235-0074), which describes the procedures to be followed in preparing and filing registration statements with the Commission, and rule 405 of Regulation S-T (OMB Control No. 3235-0424), which specifies the requirements that govern the electronic submission of documents. The proposed amendments would require RILA issuers to tag specified information in registration statements filed on Form N-4 or post-

effective amendments thereto, as well as in forms of prospectuses filed pursuant to rule 497(c) or 497(e) under the Securities Act that include information that varies from the registration statement using Inline XBRL. These burdens are included in our estimates for the Investment Company Interactive Data collection of information discussed in section IV.D below.

⁴⁹³ See Public Law 117-328; 136 Stat. 4459 (Dec. 29, 2022).

⁴⁹⁴ On Nov. 13, 2020, the Office of Management and Budget approved this collection of information estimate for rule 498A.

⁴⁹⁵ The RILA estimate is based on a review of RILA registration statements filed with the Commission as of May 2023 and the current Form N-4 registrants estimate is based on Form N-CEN reports through Apr. 15, 2023.

TABLE 11—RULE 498A PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
Proposed Estimates					
Separate Account Registrants					
Proposed Amendments	19	16	\$425 (compliance attorney)	\$2,550	.....
Number of registrants ³		× 419		× 419	.....
Total annual burden		2,514		\$1,068,450	.....
Use of summary prospectus		× 90%		× 90%	.....
Total new annual burden for Reliance on Rule 498A		2,262.60		\$961,605	.....
RILA Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus	40	⁴ 24.67	\$313 (blended rate) ⁵	\$7,709.38	⁸ \$5,000
Online Posting of Contract Documents	2	⁶ 2.67	\$289 (webmaster)	\$771.63	.....
Total burden per registrant		27.34		8,481.01	\$5,000
Number of registrants ⁷		× 90		× 90	× 90
Total annual burden		2,460.60		\$763,290.90	\$405,000
Use of summary prospectus		× 90%		× 90%	× 90%
Total new annual burden for Reliance on Rule 498A		2,214.54		\$686,961.81	\$364,500
Estimates for Printing and Mailing by RILA Registrants ⁹					
Initial Summary Prospectus					\$120,000
Updating Summary Prospectus					\$1,048,000
Total annual burden					\$1,168,000
Use of summary prospectus					× 90%
Total new annual burden for Reliance on Rule 498A					\$1,051,200
Total Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	676	14,688		\$3,900,193	\$11,559,420
Aggregate proposed additional annual burden estimates	¹⁰ + 83	+ 4,477.14		+ 1,648,566.81	+ \$1,415,700
Revised aggregate annual burden estimates	= 759	= 19,165.14		= 5,548,759.81	= \$12,975,120

Notes:

¹ Burden estimates also include the burden associated with the proposed amendments for separate account registrants that use a notice document as part of the modernized alternative disclosure framework in connection with discontinued variable annuity contracts. See VASP Adopting Release at section II.E. Internal annual burden hours represents initial burden estimates annualized over a three-year period plus three hours of on-going annual burden hours.

² The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (as adjusted to account for inflation, the "SIFMA Wage Report").

³ Estimate is based on a review of N-CEN reports through Apr. 15, 2023. In its most recently approved PRA submission, the Commission estimated that 426 registrants on Form N-4 would be subject to the information collection burden under current rule 498A. For the estimated burden of the proposed amendments to rule 498A, we have taken into account updated data regarding the number of registrants on Form N-4.

⁴ Represents initial burden estimates annualized over a three-year period plus 11 hours of ongoing annual burden hours.

⁵ Represents a blended wage rate of a compliance attorney (\$425 per hour) and an intermediate accountant (\$200 per hour). \$313 is based on the following calculation: $(\$425 + \$200)/2 = \$313$ rounded to the nearest whole dollar.

⁶ Represents initial burden estimates annualized over a three-year period plus two hours of ongoing annual burden hours.

⁷ This estimate is based on the number of RILAs, as estimated through review of RILA registration statements filed with the Commission as of May 2023.

⁸ We estimate that each insurance company that chooses to rely on rule 498A with regards to a RILA will incur a one-time collective external cost burden of \$10,000 per registration statement to prepare both a new initial summary prospectus and a new updating summary prospectus for offerings on Form N-4. We also estimate an on-going collective burden of \$2,500 per registration statement during each subsequent year to prepare updates to these materials. The three-year average cost of these estimates is \$5,000.

⁹ Costs associated with printing and mailing for separate account registrants are already accounted for in the currently approved burdens for rule 498A. Estimates for RILA issuers printing and mailing costs are based on the currently approved burdens for printing and mailing costs under rule 498A.

¹⁰ The estimated number of new responses is based on the total of the number of RILA responses under the proposed amendments (90 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (426 responses) and the proposed additional annual burden estimates (419 responses). (90 RILA responses subtracted by 7 registered separate account responses).

B. Form N-4

Under the proposed amendments, RILA issuers would register offerings on Form N-4, as amended to address the features and risks of RILAs. We are also proposing other amendments to Form N-4 that would apply to all issuers that use that form. For example, we are proposing to switch the order of the Key Information Table and Overview of the Contract items, require issuers to present information in the KIT in a Q&A

format, and to require more specific principal risk disclosures. These amendments would result in a change in our estimate of the burdens associated with this collection of information, specifically to account for these additional requirements for issuers that use Form N-4 currently and to add RILAs to the estimates.

Form N-4 generally imposes two types of reporting burdens on issuers that use the form: (1) the burden of preparing and filing the initial

registration statement; and (2) the burden of preparing and filing post-effective amendments to a previously effective registration statement. In our most recent Paperwork Reduction Act submission for Form N-4, we estimated for Form N-4 a total aggregate annual hour burden of 292,487 hours, and a total aggregate annual external cost

burden of \$33,348,866.⁴⁹⁶ Compliance with the disclosure requirements of Form N-4 is mandatory, and the responses to the disclosure requirements will not be kept confidential. The respondents to these collections of information would be RILA issuers and registered variable annuity separate accounts. The purpose

of the information collection requirements on Form N-4 are to meet the filing and disclosure requirements of the Securities Act and Investment Company Act, as applicable, and to provide investors with information necessary to evaluate an investment in an offering of securities registered on the form.

We estimate that 90 RILA respondents and 419 separate account registrants would be subject to collection of information requirements under the proposed amendments to Form N-4.⁴⁹⁷ The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form N-4.

TABLE 12—FORM N-4 PRA ESTIMATES FOR INITIAL FILINGS

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
Proposed Estimates³					
Separate Account Registrants					
Proposed amendments	12	¹ 14	\$406 (blended rate for compliance attorney and senior programmer) ³ .	\$5,684	.....
Estimated number of annual responses ⁴ .....	.....	× 42	.....	× 42	.....
Total new annual burden .....	.....	588	.....	\$238,728	.....
RILA Issuers					
Proposed amendments to Form N-4	300	⁵ 390.89	\$406 (blended rate for compliance attorney and senior programmer) ³ .	\$158,701.34	⁸ \$40,000
Website availability requirement ⁶ .....	.....	0.5	\$286 (webmaster)	\$143	.....
Estimated number of annual responses ⁷ .....	.....	× 20	.....	× 20	× 20
Total new annual burden .....	.....	7,827.80	.....	\$3,176,886.80	\$800,000
Total Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	30	8,427	.....	\$2,494,716	\$754,740
Aggregate proposed additional annual burden estimates	⁹ + 32	+ 8,416.80	.....	+ \$3,416,614.80	+ \$800,000
Revised aggregate annual burden estimates	= 62	= 16,843.80	.....	= \$5,911,330.80	= \$1,554,740

Notes:

¹ This estimate includes the initial burden estimates annualized over a three-year period, plus 10 hours of ongoing annual burden hours.

² The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

³ The \$406 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$425) and a senior programmer (\$386). \$406 is based on the following calculation: $(\$425 + \$386)/2 = \$406$ rounded to the nearest whole dollar.

⁴ The estimate of the annual number of registration statements filed on Form N-4 is based on the average annual number of filings received by the Commission over the past three years (Jan. 1, 2020 to Dec. 31, 2022). In its most recently approved PRA submission, the Commission estimated that separate accounts will make approximately 30 initial registration statement filings per year. For the estimated burden of the proposed amendments to Form N-4, we have taken into account updated data regarding the number of initial filings on Form N-4.

⁵ The proposed estimate includes the initial burden estimates annualized over a three-year period, plus 290.89 hours of ongoing annual burden hours. The ongoing annual burden is estimated to be equal to the currently approved ongoing annual burden for initial filings on Form N-4 plus 10 hours of ongoing annual burden hours.

⁶ The proposed amendments would require RILA issuers to separately to include information about current contract limits on gains on their websites. See Item 17 of proposed Form N-4.

⁷ This estimate is based on a review of Morningstar data regarding the number of new RILA product launches that occurred over the prior three calendar years (2020–2022), rounded to the nearest ten. Current RILA registration statements would make their first filing on proposed Form N-4 as a post-effective amendment. See *supra* footnote 195 and accompanying text.

⁸ We estimate that the external cost to prepare and file an initial registration statement on Form N-4 is \$40,000 per filing.

⁹ The estimated number of new responses is based on the total of the number of RILA responses under the proposed amendments (20 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (30 responses) and the proposed additional annual burden estimates (42 responses). (20 RILA responses plus 12 registered separate account responses).

TABLE 13—FORM N-4 PRA ESTIMATES FOR POST-EFFECTIVE AMENDMENT FILINGS

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
Proposed Estimates³					
Separate Account Registrants					
Proposed amendments	12	¹ 6	\$406 (blended rate for compliance attorney and senior programmer) ³ .	\$2,436	.....
Estimated number of annual responses ⁴ .....	.....	× 1,016	.....	× 1,016	.....
Total new annual burden .....	.....	6,096	.....	\$2,474,976	.....

⁴⁹⁶ On Oct. 26, 2021, the Office of Management and Budget approved without change this burden estimate.

⁴⁹⁷ For RILA registrants, this estimate is based on a review of RILA registration statements filed with the Commission as of May 2023. For separate

account registrants, this amount is based on Form N-CEN reports through Apr. 15, 2023.

TABLE 13—FORM N-4 PRA ESTIMATES FOR POST-EFFECTIVE AMENDMENT FILINGS—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
RILA Issuers					
Proposed amendments to Form N-4	210	⁵ 279.95	\$406 (blended rate for compliance attorney and senior programmer) ³	\$113,659.70	⁸ \$24,000
Website availability requirement ⁶		0.5	\$286 (webmaster)	\$143	.....
Estimated number of annual responses ⁷		× 90	.....	× 90	× 90
Total new annual burden		25,240.50	.....	10,242,243	\$2,160,000
Total Burdens					
	Responses	Internal hour estimate	.....	Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	1,366	+ 284,060	.....	\$84,100,454	+ \$32,594,126
Aggregate proposed additional annual burden estimates	⁹ - 260	+ 31,336.50	.....	+ \$12,717,219	+ \$2,160,000
Revised aggregate annual burden estimates	= 1,106	= 315,369.50	.....	= 96,817,673	= \$34,754,126

Notes:

¹ This estimate includes the initial burden estimates annualized over a three-year period, plus two hours of on-going annual burden hours.

² The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

³ The \$406 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$425) and a senior programmer (\$386). \$406 is based on the following calculation: (\$425 + \$386)/2 = \$406 rounded to the nearest whole dollar.

⁴ The estimate of the annual number of post-effective amendments to registration statements on Form N-4 is based on the average annual number of filings received by the Commission over the past three years (Jan. 1, 2020 to Dec. 31, 2022). In its most recently approved PRA submission, the Commission estimated that separate accounts will make approximately 1,366 post-effective amendment filings per year on Form N-4. For the estimated burden of the proposed amendments to Form N-4, we have taken into account updated data regarding the number of post-effective amendment filings on Form N-4.

⁵ The proposed estimate includes the initial burden estimates annualized over a three-year period, plus 207.95 hours of ongoing annual burden hours. The ongoing annual burden is estimated to be equal to the currently approved ongoing annual burden for initial filings on Form N-4 plus an addition 2 hours of ongoing annual burden hours.

⁶ The proposed amendments would require RILA issuers to separately to include information about current contract limits on gains on their websites. See Item 17 of proposed Form N-4.

⁷ This estimate is based on a review of RILA registration statements filed with the Commission as of May 2023.

⁸ We estimate that the external cost to prepare and file a post-effective registration statement on Form N-4 is approximately \$24,000 per filing.

⁹ The estimated number of new responses is based on the total of the number of RILA responses under the proposed amendments (90 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (1,366 responses) and the proposed additional annual burden estimates (1,016 responses). (90 RILA responses subtracted by 350 registered separate account responses).

TABLE 14—TOTAL BURDEN ESTIMATES FOR FORM N-4

	Responses	Internal annual burden hours ¹	Internal time costs	Annual external cost burden
Total Burden Estimates Including Amendments				
Current aggregate annual burden estimates	1,366	292,487	\$86,595,170	\$33,348,866
Aggregate proposed additional annual burden estimates	- 228	+ 39,753.30 +	+ \$16,133,833.80	+ \$2,914,740
Revised aggregate annual burden hours	= 1,168	= 332,240.30	= \$102,729,004	= \$36,263,606

Notes:

¹ This estimate includes the initial burden estimates annualized over a three-year period.

C. Form 24F-2

Under the proposed amendments, insurance companies would be required to pay applicable securities registration fees relating to RILAs in arrears on Form 24F-2. Consistent with the other elements of this proposal, these proposed amendments are designed to require insurance companies to use the same framework to pay securities registration fees for RILAs that they do for variable annuities. Form 24F-2 is the annual notice of securities sold by certain funds that accompanies the

payment of registration fees with respect to the securities sold during the fiscal year, net of securities redeemed or repurchased during the year. Compliance with Form 24F-2 is mandatory. Responses to this form are not kept confidential.

In our most recent Paperwork Reduction Act submission for Form 24F-2, we estimated for Form 24F-2 a total aggregate annual hour burden of 27,176 hours, and a total aggregate annual external cost burden of \$0.⁴⁹⁸ The likely respondents to the proposed amendments would include RILA

issuers and current Form 24F-2 filers, which open-end investment companies, unit investment trusts, registered closed-end investment companies that make periodic repurchase offers under 17 CFR 270.23c-3, and face-amount certificate companies. We estimate that 90 RILA respondents would be subject to these proposed amendments and would file one Form 24F-2 filing each per year.⁴⁹⁹ The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to Form 24F-2.

⁴⁹⁸ On May 14, 2021, the Office of Management and Budget approved this burden estimate.

⁴⁹⁹ This estimate is based on a review of RILA registration statements filed with the Commission

as of May 2023. We do not believe that the proposed amendments to Form 24F-2 will affect the estimated burdens associated with current Form 24F-2 filers. We have not amended the currently

approved burdens for current Form 24F-2 filers with more recent data for the purposes of this PRA estimate.

TABLE 15—FORM 24F-2 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
Proposed Estimates					
Clerical work to file Form 24f-2	3	13	\$82 (compliance clerk)	\$246	\$0
Submission in a structured data format	3	13	\$316 (programmer)	\$948	\$0
Total annual burden per response		6		\$1,194	
Number of annual responses ³		× 90		× 90	× 90
Total new annual burden		540		\$107,460	\$0
Total Estimated Burdens Including Amendments					
	Responses	Internal annual burden hours		Internal time costs	Annual external cost burden
Current aggregate annual burden	6,794	27,176		\$4,633,508	\$0
Aggregate proposed additional annual burden estimates	+ 90	+ 540		+ \$107,460	+ \$0
Revised aggregate burden estimates	= 6,884	= 27,716		= \$4,140,968	= \$0

Notes:

¹ The proposed estimate includes the initial burden estimates annualized over a three-year period, plus 2 hours of ongoing annual burden hours.

² The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

³ This estimate is based on a review of RILA registration statements filed with the Commission as of May 2023.

D. Investment Company Interactive Data

The Investment Company Interactive Data collection of information references current requirements for certain registered investment companies and BDCs to submit to the Commission in Inline XBRL certain information provided in response to specified form and rule requirements included in their registration statements and Exchange Act reports. We are proposing amendments to Form N-4, as well as rule 405 of Regulation S-T, that would require certain new structured data reporting requirements for RILA issuers.⁵⁰⁰ The proposed amendments would require RILA issuers to tag specified information in registration statements filed on Form N-4 or post-effective amendments thereto, as well as in forms of prospectuses filed pursuant to rule 497(c) or 497(e) under the Securities Act that include information that varies from the registration statement using Inline XBRL.⁵⁰¹ The purpose of the information collection is to make information regarding RILAs

easier for investors to analyze and to help automate regulatory filings and business information processing, and to improve consistency across all types of investment products offered on Form N-4 with respect to the accessibility of information they provide to the market.

Insurance companies that use Form N-4 to register variable annuities are currently required to tag certain registration statement disclosure items using Inline XBRL.⁵⁰² For the insurance companies that would now be registering RILAs on Form N-4, our proposed data tagging requirements would represent new burdens. Nevertheless, RILA issuers generally do have prior experience submitting filings to the Commission in Inline XBRL. The vast majority of insurance companies that currently register RILAs on Forms S-1 and S-3 also separately file Form N-4 to register variable annuities and variable life insurance products or currently tag their RILA registration statements and are thus familiar with the current Form N-4 tagging

requirements.⁵⁰³ In addition, insurance companies that register RILAs on Forms S-1 and S-3 that file GAAP financial statements must tag them using Inline XBRL.⁵⁰⁴ Given this prior experience, we do not expect the proposed tagging requirements to be as burdensome to many RILA issuers as it would be for issuers that would be going through the Inline XBRL tagging and submission process for the first time.

In our most recent Paperwork Reduction Act submission for the Investment Company Interactive Data collection of information, we estimated a total annual hour burden of 323,724 hours, and a total annual external cost burden of \$16,041,450.⁵⁰⁵ Compliance with the interactive data requirements is mandatory, and the responses will not be confidential.

The table below summarizes our PRA estimates for the burdens associated with the proposed tagging requirements that would apply to RILAs that file with the Commission on Form N-4.

TABLE 16—INVESTMENT COMPANY INTERACTIVE DATA

	Internal initial burden hours	Internal annual burden hours ¹	Wage rate ²	Internal time costs	Annual external cost burden
Proposed Burdens					
Proposed disclosures for current N-4 filers ³	1	41	\$406 (blended rate for compliance attorney and senior programmer)	\$406	⁵ \$50
Number of current N-4 filers ⁶		× 400		× 400	× 400

⁵⁰⁰ The Investment Company Interactive Data collection of information do not impose any separate burden aside from that described in our discussion of the burden estimates for this collection of information.

⁵⁰¹ See *supra* section II.B.9.

⁵⁰² See General Instruction C.3(h) of current Form N-4. As discussed above, some of the proposed items would also require certain variable annuity

issuers to provide a few additional disclosures, which though relatively minor, would also have to tagged.

⁵⁰³ Based on analysis of Forms S-1, S-3, and POS AM filed by RILA issuers, 22 of the 23 insurance companies that issue RILAs also offer variable products registered on Forms N-3, N-4, or N-6, all of which are currently structured, or otherwise have experience tagging registration statements.

⁵⁰⁴ See Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

⁵⁰⁵ This estimate is based on the last time the PRA renewal for the Investment Company Interactive Data information collection was approved in 2023. See ICR Reference No. 202212-3235-007, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-3235-007.

TABLE 16—INVESTMENT COMPANY INTERACTIVE DATA—Continued

	Internal initial burden hours	Internal annual burden hours ¹	Wage rate ²	Internal time costs	Annual external cost burden
Total new burden estimates for current N–4 filers		400		\$162,400	\$20,000
Proposed Form N–4 disclosures for RILAs ⁷	9	⁸ 4	\$406 (blended rate for compliance attorney and senior programmer).	\$1,624	⁹ \$700
Number of RILAs ¹⁰		× 90		× 90	× 90
Total new burden estimates for RILAs		360		\$146,160	\$63,000
Total new aggregate annual burden		¹¹ 760		¹² \$308,560	¹³ \$63,000
Total Proposed Estimated Burdens Including Amendments					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	14,702	323,724		\$27,066,240	\$16,041,450
Proposed additional annual burdens	+ 90	+ 760		+ \$308,560	+ \$63,000
Revised aggregate annual burden estimates	14,792	324,484		\$27,374,800	\$16,124,450

Notes:¹ Includes initial burden estimates annualized over a 3-year period.² The PRA estimates assume that the types of professionals that will be involved in complying with the new interactive data requirements. The Commission's estimates of the relevant wage rates are based on the SIFMA Wage Report. The \$406 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$425) and a senior programmer (\$386). \$406 is based on the following calculation: (\$425 + \$386)/2 = \$406. This estimate represents the average burden for a filer on Form N–4 that is currently subject to interactive data requirements.³ Estimated incremental burden for a variable annuity Form N–4 filer that is subject to the form's current interactive data requirements.⁴ Includes initial burden estimates annualized over a three-year period, plus 0.67 hour of ongoing annual burden hours. The estimate of 1 hour is based on the following calculation: ((1 initial hour/3) + 0.67 hour of additional ongoing burden hours) = 1 hour.⁵ Estimated incremental external cost for Form N–4 variable annuity registrants that already submit certain information using Inline XBRL.⁶ Based on Form N–CEN filing data for 2022, we estimate that 400 variable annuity registrants file on Form N–4.⁷ Estimated average burden for a RILA that files on Form N–4 that is currently subject to interactive data requirements on other Commission forms.⁸ Includes initial burden estimates annualized over a three-year period, plus 1 hour of ongoing annual burdens. The estimate of 4 hours is based on the following calculation: ((9 initial hours/3) + 1 hour of additional ongoing burden hours) = 4 hours.⁹ We estimate an incremental external cost for RILAs that would be newly filing on Form N–4 of \$700 to reflect one-time compliance and initial set-up costs. Because RILAs are currently subject to Inline XBRL tagging requirements on other forms, we do not estimate any burdens related to one time-costs associated with becoming familiar with structured data requirements (e.g., the acquisition of new software or the services of consultants).¹⁰ Estimated number of RILAs that currently file on Forms S–1 and S–3.¹¹ 760 hours = (400 variable annuity registrants × 1 hour = 400) + (90 RILAs × 4 hours = 360).¹² \$308,560 internal time cost = (400 variable annuity registrants × \$406 = \$162,400) + (90 RILAs × \$1,624 = \$146,160).¹³ \$63,000 annual external cost = (400 variable annuity registrants × \$50 = \$20,000) + (90 RILAs × \$700 = \$63,000).**E. Request for Comment**

We request comment on whether our estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov, and should send a copy to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No.

S7–16–23. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–23, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Regulatory Flexibility Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 (“Regulatory Flexibility Act”) ⁵⁰⁶ requires the Commission, when issuing a rulemaking proposal, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule and form amendments on small entities unless we certify that the rule and form amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. ⁵⁰⁷ Pursuant to 5 U.S.C. 605(b),

⁵⁰⁶ 5 U.S.C. 603(a).⁵⁰⁷ 5 U.S.C. 605(b).

we hereby certify that the proposed amendments to Forms N–4 and 24F–2, rules 313 and 405 of Regulation S–T, and rules 156, 172, 405, 415, 424, 456, 457, 485, 497, and 498A under the Securities Act, would not, if adopted, have a significant economic impact on a substantial number of small entities.

We are proposing amendments to Form N–4 pursuant to the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, and 28 thereof [15 U.S.C. 77f, 77g, 77h, 77j, 77s, and 77z–3], the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 thereof [15 U.S.C. 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78q, 78w, 78ll, and 78mm]; the Investment Company Act, particularly sections 8, 30, and 38 thereof [15 U.S.C. 80a–8, 80a–29, and 80a–37], and the RILA Act, particularly section 101 thereof [Pub. L. 117–328, div. AA, title I, 136 Stat. 4459 (2022)]. Form–N–4 is the registration form currently used by most variable annuity separate accounts. These proposed amendments would implement the requirements relating to RILAs contained in the RILA Act by allowing Form N–4 to also be used for the registration of RILAs.

The proposed amendments would add to Form N–4 new disclosure requirements that specifically address

the features and risks of RILAs. Specifically, the proposal would amend the contents of Form N-4, including the form's general instructions, requirements for front and back cover pages, the key information table, principal disclosures regarding RILA investment options, and contract adjustment and fee disclosures. These amendments would apply only to insurance companies registering RILAs. We are also proposing applying the form's existing disclosure requirements to RILAs where appropriate. For example, we are proposing to permit insurance companies to provide financial statements on amended Form N-4 regarding RILAs in the same way that they do under the current Form N-4 for variable annuities, including permitting the use of SAP to the same extent as variable annuities.

In addition to adding RILAs to Form N-4, we are proposing amendments to the form that would be applicable to all issuers, which are designed to improve disclosures based upon our experience in administering the form and feedback received in investor testing. For example, we are proposing to switch the order of the key information table and overview of the contract items in the prospectus to require more specific principal risk disclosures. All Form N-4 filers would be subject to these proposed amendments.

To facilitate to the inclusion of RILAs on Form N-4, we are proposing amending Form 24F-2, rules 313 and 405 of Regulation S-T, and rules 156, 172, 405, 415, 424, 456, 457, 485, 497, and 498A, pursuant to authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, and 19(a), and 28 thereof [15 U.S.C. 77e, 77f, 77g, 77h, 77j, and 77s, and 77z-3(a)], the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 thereof [15 U.S.C. 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78q, 78w, 78ll, and 78mm]; the Investment Company Act, particularly sections 8, 30, and 38 thereof [15 U.S.C. 80a-8, 80a-29, and 80a-37], and the RILA Act, particularly section 101 thereof [Pub. L. 117-328, div. AA, title I, 136 Stat. 4459 (2022)]. For example, the proposed amendment to rule 498A would permit RILA issuers to use a summary prospectus to satisfy statutory prospectus delivery obligations, and the proposed amendments to rules 485 and 497 would make those rules applicable to RILA issuers when amending RILA registration statements on Form N-4 or when filing prospectuses and prospectus supplements with the

Commission.⁵⁰⁸ The proposed amendments to Form 24F-2, Rule 313 of Reg S-T, and rules 456 and 457 would require insurance companies to pay securities registration fees relating to RILA offerings according to the same method used for variable annuities. Because we propose subjecting RILA offerings to an investor communication framework similar to the framework applicable to variable annuity offerings, the proposed amendments to rule 172 would exclude RILA offerings from that rule's provisions. The proposed amendment of rule 405 of Reg S-T would require inline XBRL tagging of RILA-specific disclosures, while the proposed amendment of rule 405 would add a new defined term for RILAs to facilitate their registration on Form N-4 and to simplify references to RILAs in our proposed rule amendments. The proposed amendments to rule 156 would require RILA issuers to comply with the rule's guidance as to when sales literature is materially misleading under the Federal securities laws.

For purposes of the Securities Act and the Regulatory Flexibility Act, generally, an issuer, other than an investment company, will be considered a small entity if it has net assets of \$5 million or less as of the end of its most recent fiscal year, and the issuer's offering does not exceed \$5 million.⁵⁰⁹ RILA issuers are not investment companies and based on a review of EDGAR filings of existing RILA issuers, we do not expect any RILA issuers will be treated as small entities. The analysis is different for existing N-4 filers (*i.e.*, variable annuity issuers), as the insurance company separate accounts registering variable annuities are deemed to be investment companies. Generally, for purposes of the Investment Company Act and the Regulatory Flexibility Act, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year.⁵¹⁰ Because State law generally treats separate account assets as the property of the sponsoring insurance company, rule 0-

10 aggregates each separate account's assets with the assets of the sponsoring insurance company, together with assets held in other sponsored separate accounts.⁵¹¹ As a result, the Commission expects few, if any, separate account to be treated as small entities.

For this reason, we believe that the proposed amendments would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments on the certification. We solicit comment as to whether the proposed form and rule amendments could have an effect on small entities that has not been considered. We ask that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), the Commission must advise OMB whether a proposed regulation constitutes a 184 "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
 - A major increase in costs or prices for consumers or individual industries; or
 - Significant adverse effects on competition, investment, or innovation.
- We request comment on whether our proposal would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:
- The potential effect on the U.S. economy on an annual basis;
 - Any potential increase in costs or prices for consumers or individual industries; and
 - Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in the Securities Act, particularly sections 6, 7, 8, 10, 19, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly, Sections 8, 30, and 38 thereof, and the

⁵⁰⁸ Relatedly, we propose amending rule 424 to specify that RILA issuers must use rule 497 rather than rule 424 when filing prospectuses and prospectus supplements, and making similar amendments to rule 415 to exempt RILA offerings from its provisions, consistent with the framework applied to existing N-4 issuers.

⁵⁰⁹ 17 CFR 230.157 (defining "small business" or "small organization" under the Securities Act for purposes of the Regulatory Flexibility Act); 15 U.S.C 77c(b)(1) (defining "small entity" to mean "small business," "small organization," or "small governmental jurisdiction").

⁵¹⁰ 17 CFR 270.0-10(a).

⁵¹¹ 17 CFR 270.0-10(b).

RILA Act, particularly section 101 thereof [Pub. L. 117–328, div. AA, title I, 136 Stat. 4459 (2022)].

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For reasons set forth in the preamble, we are proposing to amend title 17, chapter II of the *Code of Federal Regulations* as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

Sec. 230.457 also issued under secs. 6 and 7, 15 U.S.C. 77f and 77g.

* * * * *

■ 2. Revise § 230.156 to read as follows:

§ 230.156 Investment company and registered index-linked annuity sales literature.

(a) Under the Federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and § 240.10b–5 of this chapter (Rule 10b–5) thereunder, it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of registered index-linked annuity (as defined in § 230.405 (Rule 405)) securities or securities issued by

an investment company. Under these provisions, sales literature is materially misleading if it:

(1) Contains an untrue statement of a material fact; or

(2) Omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below.

(1) A statement could be misleading because of:

(i) Other statements being made in connection with the offer of sale or sale of the securities in question;

(ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; or

(iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where:

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and

(ii) Representations, whether express or implied, about future investment performance, including:

(A) Representations, as to security of capital, possible future gains or income, or expenses associated with an investment;

(B) Representations implying that future gains or income may be inferred from or predicted based on past investment performance; or

(C) Portrayals of past performance, made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a material fact about the characteristics or attributes of an investment company or registered index-linked annuity could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of

operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or registered index-linked annuity or an investment in securities issued by such company, services, security of investment or funds, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other investment vehicles or to indexes.

(4) Representations about the fees or expenses associated with an investment in the fund or registered index-linked annuity could be misleading because of statements or omissions made involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund or registered index-linked annuity omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.

(c) For purposes of this section, the term *sales literature* shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of securities of any investment company or registered index-linked annuity. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors in the offer or sale of securities or are designed to be employed in either written or oral form in the offer or sale of securities.

(d) Nothing in this section may be construed to prevent a business development company or a registered closed-end investment company from qualifying for an exemption under § 230.168 or § 230.169.

■ 3. Amend § 230.172 by revising paragraph (d) to read as follows:

§ 230.172 Delivery of prospectuses.

* * * * *

(d) *Exclusions.* This section shall not apply to any:

(1) Offering of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than a registered closed-end investment company;

(2) A business combination transaction as defined in § 230.165(f)(1);

(3) Offering registered on Form S–8 (§ 239.16b of this chapter); or

(4) Offering of any registered index-linked annuity (as defined in § 230.405 (Rule 405)) securities.

■ 4. Amend § 230.405 by adding in alphabetical order definitions for “Form available solely to investment companies registered under the Investment Company Act of 1940” and “Registered index-linked annuity” to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Form available solely to investment companies registered under the Investment Company Act of 1940. A form available solely to investment companies registered under the Investment Company Act of 1940 includes the form used to register the offering of securities of a registered index-linked annuity for purposes of the Securities Act of 1933.

* * * * *

Registered index-linked annuity. The term *registered index-linked annuity* means an annuity or an option available under an annuity:

- (1) That is deemed a security;
- (2) That is offered or sold in a registered offering;
- (3) That is issued by an insurance company that is the subject to the supervision of either the insurance commissioner or bank commissioner of any State or any agency or officer performing like functions as such commissioner;
- (4) That is not issued by an investment company; and
- (5) Whose value, either during the accumulation period or after annuitization or both, will earn positive or negative interest based, in part, on the performance of any index, rate, or benchmark.

* * * * *

■ 5. Amend § 230.415 by revising paragraph (b) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

* * * * *

(b) This section shall not apply to any registration statement pertaining to a registered index-linked annuity (as defined in § 230.405 (Rule 405)), securities issued by a face-amount certificate company, or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

■ 6. Amend § 230.424 by revising paragraph (f) to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(f) This section shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940 (other than a registered closed-end investment company) or prospectuses that pertain to a registered index-linked annuity (as defined in § 230.405 (Rule 405)). References to “form of prospectus” in paragraphs (a), (b), and (c) of this section shall be deemed also to refer to the form of Statement of Additional Information.

* * * * *

■ 7. Amend § 230.456 by adding paragraph (e) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(e)(1) Notwithstanding paragraph (a) of this section, where a registration statement relates to an offering of registered index-linked annuity (as defined in § 230.405 (Rule 405)) securities, an issuer shall be deemed to register an offering of an indeterminate amount of such securities and shall, not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, pay a registration fee to the Commission calculated in accordance with § 230.457(u) (Rule 457(u)) and file Form 24F-2 (referenced in 17 CFR 274.24) with the Commission.

Instruction 1 to paragraph (e)(1): To determine the date on which the registration fee must be paid, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the registration fee is to be paid. If the last day of the 90-day period falls on a Saturday, Sunday, or Federal holiday, the registration fee is due on the first business day thereafter.

(2) When registering an offering of an indeterminate amount of registered index-linked annuity securities pursuant to paragraph (e)(1) of this section, the securities sold will be considered registered, for purposes of section 6(a) of the Act, if the registration fee has been paid and the issuer has filed a Form 24F-2 filing pursuant to paragraph (e)(1) of this section not later than the end of the 90-day period.

(3) A registration statement filed in accordance with the registration fee payment provisions of paragraph (e)(1) of this section will be considered filed as to the securities identified in the registration statement for purposes of this section and section 5 of the Act when it is received by the Commission,

if it complies with all other requirements under the Act, including this part.

(4) For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (“merger”) of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; provided, however, that in the case of a merger of an issuer or a series of an issuer (“Predecessor”) with another issuer or a series of an issuer (“Successor”), the Predecessor will not be deemed to have ceased operations and the Successor will assume the obligations, fees, and redemption credits of the Predecessor incurred pursuant to this section if the Successor:

- (i) Had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;
- (ii) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor; and
- (iii) The merger is not designed to result in the Predecessor merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (e)(4)(i) of this section.

(5) An issuer paying the fee required by paragraph (e)(1) of this section or any portion thereof more than 90 days after the end of the fiscal year of the issuer shall pay to the Commission interest on unpaid amounts, calculated based on the interest rate in effect at the time of the interest payment by reference to the “current value of funds rate” on the Treasury Department’s Bureau of Fiscal Service internet site at <https://fiscal.treasury.gov/>, or by calling (202) 874-6995, and using the following formula: $I = (X)(Y)(Z/365)$, where: I = Amount of interest due; X = Amount of registration fee due; Y = Applicable interest rate, expressed as a fraction; Z = Number of days by which the registration fee payment is late. The payment of interest pursuant to this paragraph (e)(5) shall not preclude the Commission from bringing an action to enforce the requirements of this paragraph (e).

(6) An immaterial or unintentional failure to comply with a requirement of this paragraph (e) will not result in a violation of section 6(a) of the Act (15 U.S.C. 77f(a)), so long as:

(i) A good faith and reasonable effort was made to comply with the requirement; and

(ii) In the case of a late payment of a registration fee, the issuer pays the registration fee and any interest due thereon as soon as practicable after discovery of the failure to pay the registration fee.

■ 8. Amend § 230.457 by revising paragraph (u) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(u) Where an issuer elects or is required to register an offering of an indeterminate amount of exchange-traded vehicle securities in accordance with § 230.456(d) (Rule 456(d)) or registered index-linked annuity securities (as defined in § 230.405 (Rule 405)) in accordance with § 230.456(e) (Rule 456(e)), the registration fee is to be calculated in the following manner:

(1) Determine the aggregate sale price of such securities sold during the fiscal year.

(2) Determine the sum of:

(i) The aggregate redemption or repurchase price of such securities redeemed or repurchased during the fiscal year; and

(ii) The aggregate redemption or repurchase price of such securities redeemed or repurchased during a prior fiscal year that were not used previously to reduce registration fees payable to the Commission, if the prior fiscal year ended no earlier than August 1, 2021 in the case of exchange traded vehicle securities, or [EFFECTIVE DATE OF THE FINAL RULE] in the case of registered index-linked annuity securities.

(3) Subtract the amount in paragraph (u)(2) of this section from the amount in paragraph (u)(1) of this section. If the resulting amount is positive, the amount is the net sales amount. If the resulting amount is negative, it is the amount of redemption credits available for use in future years to offset sales.

(4) The registration fee is calculated by multiplying the net sales amount by the fee payment rate in effect on the date of the fee payment. If the issuer determines that it had net redemptions or repurchases for the fiscal year, no registration fee is due.

■ 9. Amend § 230.485 by revising the section heading and paragraphs (a)(1) and (b) introductory text to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies or issuers offering registered index-linked annuities.

(a) * * *

(1) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or, separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] or to register an offering of a registered index-linked annuity securities (as defined in § 230.405 (Rule 405)) shall become effective on the sixtieth day after the filing thereof, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be no later than eighty days after the date on which the amendment is filed.

* * * * *

(b) *Immediate effectiveness.* Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company, unit investment trust or separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a–2(a)(37)] or to register an offering of a registered index-linked annuity securities shall become effective on the date upon which it is filed with the Commission, or a later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than thirty days after the date on which the amendment is filed, except that a post-effective amendment including a designation of a new effective date pursuant to paragraph (b)(1)(iii) of this section shall become effective on the new effective date designated therein, Provided, that the following conditions are met:

* * * * *

■ 10. Amend § 230.497 by revising the section heading and paragraphs (c) and (e) to read as follows:

§ 230.497 Filing of investment company or registered index-linked annuity prospectuses—number of copies.

* * * * *

(c) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), or an offering of registered index-linked annuities (as defined in Rule 405 (§ 230.405)) being filed on Form N–4, within five days after the effective date of a registration statement or the commencement of a public offering after the effective date of a registration statement, whichever occurs later, 10 copies of each form of prospectus and

form of Statement of Additional Information used after the effective date in connection with such offering shall be filed with the Commission in the exact form in which it was used. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 and issuers of registered index-linked annuities filing on Form N–4 must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, General Instruction C.3.(h) of Form N–3, General Instruction C.3.(h) of Form N–4, or General Instruction C.3.(h) of Form N–6, submit an Interactive Data File (as defined in § 232.11 of this chapter).

* * * * *

(e) For investment companies filing on §§ 239.15A and 274.11A of this chapter (Form N–1A), §§ 239.17a and 274.11b of this chapter (Form N–3), §§ 239.17b and 274.11c of this chapter (Form N–4), or §§ 239.17c and 274.11d of this chapter (Form N–6), or an offering of registered index-linked annuities being filed on Form N–4, after the effective date of a registration statement, no prospectus that purports to comply with Section 10 of the Act (15 U.S.C. 77j) or Statement of Additional Information that varies from any form of prospectus or form of Statement of Additional Information filed pursuant to paragraph (c) of this section shall be used until five copies thereof have been filed with, or mailed for filing to the Commission. Investment companies filing on Forms N–1A, N–3, N–4, or N–6 and issuers of registered index-linked annuities filing on Form N–4 must, if applicable pursuant to General Instruction C.3.(g) of Form N–1A, General Instruction C.3.(h) of Form N–3, General Instruction C.3.(h) of Form N–4, or General Instruction C.3.(h) of Form N–6, submit an Interactive Data File (as defined in § 232.11 of this chapter).

* * * * *

■ 11. Revise § 230.498A to read as follows:

§ 230.498A Summary Prospectuses for separate accounts offering variable annuity and variable life insurance contracts, and contracts offering registered index-linked options.

(a) *Definitions.* For purposes of this section:

Class means a class of a Contract that varies principally with respect to distribution-related fees and expenses.

Contract means a Variable Annuity Contract, a Variable Life Insurance Contract, or a RILA Contract as defined in this section, respectively, as well as any Variable Annuity Contract or RILA Contract that offers a combination of

Index-Linked Options, Variable Options, and/or Fixed Options.

Fixed Option means an Investment Option under a Contract pursuant to which the value of the Contract (for a Form N-3 or Form N-4 Registrant, either during an accumulation period or after annuitization, or both) will earn interest at a rate specified by the Company, subject to a minimum guaranteed rate under the Contract.

Index-Linked Option means an Investment Option offered under a Contract, pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified index, rate, or benchmark (such as a registered exchange-traded fund that tracks an index).

Initial Summary Prospectus means the initial summary prospectus described in paragraph (b) of this section.

Insurance Company means the insurance company issuing the Contract, which company is subject to State supervision. The Insurance Company may also be the depositor or sponsor of any Registered Separate Account in which the Contract participates.

Investment Option means a Fixed Option, an Index-Linked Option, and/or a Variable Option, as applicable.

Portfolio Company means any company in which a Registrant on Form N-4 or Form N-6 invests and which may be selected as a Variable Option by the investor.

Portfolio Company Prospectus means the Statutory Prospectus of a Portfolio Company and a summary prospectus of a Portfolio Company permitted by § 230.498.

Registered Separate Account means a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) that has an effective registration statement on §§ 239.17a and 274.11b of this chapter (Form N-3), §§ 239.17b and 274.11c of this chapter (Form N-4), or §§ 239.17c and 274.11d of this chapter (Form N-6) and that has a current prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

Registrant means, as applicable, a Registered Separate Account or the Insurance Company.

RILA Contract means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company, that offers Index-Linked Options.

Statement of Additional Information means the statement of additional information required by Part B of Form N-1A, Form N-3, Form N-4, or Form N-6.

Statutory Prospectus means a prospectus that satisfies the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)).

Summary Prospectus refers to both the Initial Summary Prospectus and the Updating Summary Prospectus.

Updating Summary Prospectus means the updating summary prospectus described in paragraph (c) of this section.

Variable Annuity Contract means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company, pursuant to which the value of the contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of a Portfolio Company.

Variable Life Insurance Contract means a life insurance contract, issued by an Insurance Company, that provides for death benefits and cash values that may vary with the investment performance of any separate account.

Variable Option means:

(1) In the context of a Registrant on Form N-4 or Form N-6, an Investment Option under any Contract pursuant to which the value of the Contract (for a Form N-4 Registrant, either during an accumulation period or after annuitization, or both) varies according to the investment experience of a Portfolio Company;

(2) In the context of a Registrant on Form N-3, any portfolio of investments in which a Registrant on Form N-3 invests and which may be selected as an option by the investor.

(b) *General Requirements for Initial Summary Prospectus*. An Initial Summary Prospectus that complies with this paragraph (b) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a-24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Scope of Initial Summary Prospectus*. An Initial Summary Prospectus may only describe a single Contract (but may describe more than one Class of the Contract) currently offered by the Registrant under the Statutory Prospectus to which the Initial Summary Prospectus relates.

(2) *Cover Page or Beginning of Initial Summary Prospectus*. Include on the front cover page or the beginning of the Initial Summary Prospectus:

- (i) The Insurance Company's name;
- (ii) The name of the Contract, and the Class or Classes if any, to which the Initial Summary Prospectus relates;
- (iii) A statement identifying the document as a "Summary Prospectus for New Investors";
- (iv) The approximate date of the first use of the Initial Summary Prospectus;
- (v) The following legend, which for Initial Summary Prospectuses of Contracts registered on Form N-4 would be included along with the statements described in Item 1(a)(6) through (8) of Form N-4:

This Summary Prospectus summarizes key features of the [Contract].

Before you invest, you should also review the prospectus for the [Contract], which contains more information about the [Contract's] features, benefits, and risks. You can find this document and other information about the [Contract] online at []. You can also obtain this information at no cost by calling [] or by sending an email request to [].

You may cancel your [Contract] within 10 days of receiving it without paying fees or penalties. In some states, this cancellation period may be longer. Upon cancellation, you will receive either a full refund of the amount you paid with your application or your total contract value. You should review the prospectus, or consult with your investment professional, for additional information about the specific cancellation terms that apply.

Additional information about certain investment products, including [variable annuities/registered index-linked annuities/variable life insurance contracts], has been prepared by the Securities and Exchange Commission's staff and is available at *Investor.gov*.

(A) A Registrant may modify the legend so long as the modified legend contains comparable information.

(B) The legend must provide a website address, other than the address of the Commission's electronic filing system; toll-free telephone number; and email address that investors can use to obtain the Statutory Prospectus and other materials, request other information about the Contract, and make investor inquiries. The website address must be specific enough to lead investors directly to the Statutory Prospectus and other materials that are required to be accessible under paragraph (h)(1) of this section, rather than to the home page or other section of the website on which the materials are posted. The website could be a central site with prominent links to each document. The legend may indicate, if applicable, that the Statutory Prospectus and other information are

available from a financial intermediary (such as a broker-dealer) through which the Contract may be purchased or sold. If a Registered Separate Account that has an effective registration statement on Form N-3 relies on § 270.30e-3 of this chapter to transmit a report, the legend must also include the website address required by § 270.30e-3(c)(1)(iii) of this chapter if different from the website address required by this paragraph (b)(2)(v)(B).

(C) The paragraph of the legend regarding cancellation of the Contract may be omitted if not applicable. If this paragraph is included in the legend, the paragraph must be presented in a manner reasonably calculated to draw investor attention to that paragraph.

(D) The legend may include instructions describing how a shareholder can elect to receive prospectuses or other documents and communications by electronic delivery.

(3) *Back Cover Page or Last Page of Initial Summary Prospectus.*

(i) If a Registrant incorporates any information by reference into the Summary Prospectus, include a legend identifying the type of document (e.g., Statutory Prospectus) from which the information is incorporated and the date of the document. If a Registrant incorporates by reference a part of a document, the legend must clearly identify the part by page, paragraph, caption, or otherwise. If information is incorporated from a source other than the Statutory Prospectus, the legend must explain that the incorporated information may be obtained, free of charge, in the same manner as the Statutory Prospectus.

(ii) Include on the bottom of the back cover page or the last page of the Initial Summary Prospectus the EDGAR contract identifier for the contract in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

(4) *Table of Contents.* An Initial Summary Prospectus may include a table of contents meeting the requirements of § 230.481(c).

(5) *Contents of Initial Summary Prospectus.* An Initial Summary Prospectus must contain the information required by this paragraph (b)(5) with respect to the applicable registration form, and only the information required by this paragraph (b)(5), in the order provided in paragraphs (b)(5)(i) through (ix) of this section, except that, for an Initial Summary Prospectus related to a Contract registered on Form N-4, provide the information provided in paragraph (b)(5)(ii) before the

information provided by paragraph (b)(5)(i).

(i) Under the heading "Important Information You Should Consider About the [Contract]," the information required by Item 2 of Form N-3, Item 3 of Form N-4, or Item 2 of Form N-6.

(ii) Under the heading "Overview of the [Contract]," the information required by Item 3 of Form N-3, Item 2 of Form N-4, or Item 3 of Form N-6.

(iii) Under the heading "Standard Death Benefits," the information required by Item 10(a) of Form N-6.

(iv) Under the heading "Benefits Available Under the [Contract]," the information required by Item 11(a) of Form N-3 or Item 10(a) of Form N-4. Under the heading "Other Benefits Available Under the [Contract]," the information required by Item 11(a) of Form N-6.

(v) Under the heading "Buying the [Contract]," the information required by Item 12(a) of Form N-3, Item 11(a) of Form N-4, or Item 9(a) through (c) of Form N-6.

(vi) Under the heading "How Your [Contract] Can Lapse," the information required by Item 14(a) through (c) of Form N-6.

(vii) Under the heading "Making Withdrawals: Accessing the Money in Your [Contract]," the information required by Item 13(a) of Form N-3, Item 12(a) of Form N-4, or Item 12(a) of Form N-6.

(viii) Under the heading "Additional Information About Fees," the information required by Item 4 of Form N-3, Item 4 of Form N-4, or Item 4 of Form N-6.

(ix) Under the heading "Appendix: [Portfolio Companies] [Investment Options/Portfolio Companies] Available Under the Contract," include as an appendix the information required by Item 18 of Form N-3, Item 17 of Form N-4, or Item 18 of Form N-6. Alternatively, an Initial Summary Prospectus for a Contract registered on Form N-3 may include the information required by Item 19 of Form N-3, under the heading "Additional Information About Investment Options Available Under the Contract."

(c) *General Requirements for Updating Summary Prospectus.* An Updating Summary Prospectus that complies with this paragraph (c) will be deemed to be a prospectus that is authorized under section 10(b) of the Act (15 U.S.C. 77j(b)) and section 24(g) of the Investment Company Act (15 U.S.C. 80a-24(g)) for the purposes of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

(1) *Use of Updating Summary Prospectus.* A Registrant may only use

an Updating Summary Prospectus if the Registrant uses an Initial Summary Prospectus for each currently offered Contract described under the Statutory Prospectus to which the Updating Summary Prospectus relates.

(2) *Scope of Updating Summary Prospectus.* An Updating Summary Prospectus may describe one or more Contracts (and more than one Class) described under the Statutory Prospectus to which the Updating Summary Prospectus relates.

(3) *Cover Page or Beginning of Updating Summary Prospectus.* Include on the front cover page or at the beginning of the Updating Summary Prospectus:

- (i) The Insurance Company's name;
- (ii) The name of the Contract(s) and the Class or Classes, if any, to which the Updating Summary Prospectus relates;
- (iii) A statement identifying the document as an "Updating Summary Prospectus";
- (iv) The approximate date of the first use of the Updating Summary Prospectus; and

(v) The following legend, which must meet the requirements of paragraphs (b)(2)(v)(A), (B), and (D) of this section, as applicable, and for Updating Summary Prospectuses of Contracts registered on Form N-4 would be included along with the statements described in Item 1(a)(6) through (8) of Form N-4:

The prospectus for the [Contract] contains more information about the [Contract], including its features, benefits, and risks. You can find the current prospectus and other information about the [Contract] online at []. You can also obtain this information at no cost by calling [] or by sending an email request to [].

Additional information about certain investment products, including [variable annuities/registered index-linked annuities/variable life insurance contracts], has been prepared by the Securities and Exchange Commission's staff and is available at *Investor.gov*.

(4) *Back Cover Page or Last Page of Updating Summary Prospectus.* Include on the bottom of the back cover page or the last page of the Updating Summary Prospectus:

- (i) The legend required by paragraph (b)(3)(i) of this section; and
- (ii) The EDGAR contract identifier(s) for each contract in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

(5) *Table of Contents.* An Updating Summary Prospectus may include a table of contents meeting the requirements of § 230.481(c).

(6) *Contents of Updating Summary Prospectus.* An Updating Summary Prospectus must contain the information required by this paragraph (c)(6) with respect to the applicable registration form, in the order provided in paragraphs (c)(6)(i) through (iv) of this section.

(i) If any changes have been made with respect to the Contract after the date of the most recent Updating Summary Prospectus or Statutory Prospectus that was sent or given to investors with respect to the availability of Investment Options (for Registrants on Form N-3) or Portfolio Companies (for Registrants on Forms N-4 and N-6) under the Contract (including, for RILA Contracts, a change to any of the features of the Index-Linked Options disclosed in the table that Item 17(b) of Form N-4 requires), or the disclosure that the Registrant included in response to Item 2 (Key Information), Item 3 (Overview of the Contract), Item 4 (Fee Table), Item 11 (Benefits Available Under the Contract), Item 12 (Purchases and Contract Value), or Item 13 (Surrenders and Withdrawals) of Form N-3; Item 2 (Overview of the Contract), Item 3 (Key Information), Item 4 (Fee Table), Item 10 (Benefits Available Under the Contract), Item 11 (Purchases and Contract Value), or Item 12 (Surrenders and Withdrawals) of Form N-4; and Item 2 (Key Information), Item 3 (Overview of the Contract), Item 4 (Fee Table), Item 9 (Premiums), Item 10 (Standard Death Benefits), Item 11 (Other Benefits Available Under the Contract), Item 12 (Surrenders and Withdrawals), or Item 14 (Lapse and Reinstatement) of Form N-6, include the following as applicable, under the heading “Updated Information About Your [Contract]”:

(A) The following legend: “The information in this Updating Summary Prospectus is a summary of certain [Contract] features that have changed since the Updating Summary Prospectus dated [date]. This may not reflect all of the changes that have occurred since you entered into your [Contract].”

(B) As applicable, provide a concise description of each change specified in paragraph (c)(6)(i) of this section. Provide enough detail to allow investors to understand the change and how it will affect investors, including indicating whether the change only applies to certain Contracts described in the Updating Summary Prospectus.

(ii) In addition to the changes specified in paragraph (c)(6)(i) of this section, a Registrant may provide a concise description of any other information relevant to the Contract within the time period that paragraph

(c)(6)(i) of this section specifies, under the heading “Updated Information About Your [Contract].” Any additional information included pursuant to this paragraph (c)(6)(ii) should not, by its nature, quantity, or manner of presentation, obscure or impede understanding of the information that paragraph (c)(6)(i) of this section requires.

(iii) Under the heading “Important Information You Should Consider About the [Contract],” provide the information required by Item 2 of Form N-3, Item 3 of Form N-4, or Item 2 of Form N-6.

(iv) Under the heading “Appendix: [Portfolio Companies/Investment Options/Portfolio Companies] Available Under the [Contract],” include as an appendix the information required by Item 18 of Form N-3, Item 17 of Form N-4, or Item 18 of Form N-6. Alternatively, an Updating Summary Prospectus for a Contract registered on Form N-3 may include, under the heading “Additional Information About [Investment Options] Available Under the [Contract],” the information required by Item 19 of Form N-3.

(d) *Incorporation by Reference into a Summary Prospectus.* (1) Except as provided by paragraph (d)(2) of this section, information may not be incorporated by reference into a Summary Prospectus. Information that is incorporated by reference into a Summary Prospectus in accordance with paragraph (d)(2) of this section need not be sent or given with the Summary Prospectus.

(2) A Registrant may incorporate by reference into a Summary Prospectus any or all of the information contained in the Registrant’s Statutory Prospectus and Statement of Additional Information, and any information from the Registrant’s reports under § 270.30e-1 of this chapter that the Registrant has incorporated by reference into the Registrant’s Statutory Prospectus, provided that:

(i) The conditions of paragraphs (b)(2)(v)(B), (c)(3)(v), and (h) of this section are met;

(ii) A Registrant may not incorporate by reference into a Summary Prospectus information that paragraphs (b) and (c) of this section require to be included in an Initial Summary Prospectus or Updating Summary Prospectus, respectively; and

(iii) Information that is permitted to be incorporated by reference into the Summary Prospectus may be incorporated by reference into the Summary Prospectus only by reference to the specific document that contains the information, not by reference to

another document that incorporates such information by reference.

(3) For purposes of § 230.159, information is conveyed to a person not later than the time that a Summary Prospectus is received by the person if the information is incorporated by reference into the Summary Prospectus in accordance with paragraph (d)(2) of this section.

(e) *Terms used in the Summary Prospectus.* Define special terms used in the Initial Summary Prospectus and Updating Summary Prospectus using any presentation style that clearly conveys their meaning to investors, such as the use of a glossary or list of definitions.

(f) *Transfer of the Contract Security.* Any obligation under section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) to have a Statutory Prospectus precede or accompany the carrying or delivery of a Contract security in an offering registered on Form N-3, Form N-4, or Form N-6 is satisfied if:

(1) A Summary Prospectus is sent or given no later than the time of the carrying or delivery of the Contract security (an Initial Summary Prospectus in the case of a purchase of a new Contract, or an Updating Summary Prospectus in the case of additional purchase payments in an existing Contract);

(2) The Summary Prospectus is not bound together with any materials except Portfolio Company Prospectuses for Portfolio Companies available as Variable Options under the Contract, provided that:

(i) All of the Portfolio Companies are available as investment options to the person to whom such documents are sent or given; and

(ii) A table of contents identifying each Portfolio Company Prospectus that is bound together, and the page number on which each document is found, is included at the beginning or immediately following a cover page of the bound materials.

(3) The Summary Prospectus that is sent or given satisfies the requirements of paragraph (b) or (c) of this section, as applicable, at the time of the carrying or delivery of the Contract security; and

(4) The conditions set forth in paragraph (h) of this section are satisfied.

(g) *Sending Communications.* A communication relating to an offering registered on Form N-3, Form N-4, or Form N-6 sent or given after the effective date of a Contract’s registration statement (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a

prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if:

(1) It is proved that prior to or at the same time with such communication a Summary Prospectus was sent or given to the person to whom the communication was made;

(2) The Summary Prospectus is not bound together with any materials, except as permitted by paragraph (f)(2) of this section;

(3) The Summary Prospectus that was sent or given satisfies the requirements of paragraph (b) or (c) of this section, as applicable, at the time of such communication; and

(4) The conditions set forth in paragraph (h) of this section are satisfied.

(h) Availability of the Statutory Prospectus and Certain Other Documents.

(1) The current Initial Summary Prospectus, Updating Summary Prospectus, Statutory Prospectus, Statement of Additional Information, and in the case of a Registrant on Form N-3, the Registrant's most recent annual and semi-annual reports to shareholders under § 270.30e-1 of this chapter, are publicly accessible, free of charge, at the website address specified on the cover page or beginning of the Summary Prospectuses, on or before the time that the Summary Prospectuses are sent or given and current versions of those documents remain on the website through the date that is at least 90 days after:

(i) In the case of reliance on paragraph (f) of this section, the date that the Contract security is carried or delivered; or

(ii) In the case of reliance on paragraph (g) of this section, the date that the communication is sent or given.

(2) The materials that are accessible in accordance with paragraph (h)(1) of this section must be presented on the website in a format, or formats, that:

(i) Are human-readable and capable of being printed on paper in human-readable format;

(ii) Permit persons accessing the Statutory Prospectus or Statement of Additional Information for the Contract to move directly back and forth between each section heading in a table of contents of such document and the section of the document referenced in that section heading; provided that, in the case of the Statutory Prospectus, the table of contents is either required by § 230.481(c) or contains the same section headings as the table of contents required by § 230.481(c); and

(iii) Permit persons accessing a Summary Prospectus to move directly back and forth between:

(A) Each section of the Summary Prospectus and any section of the Statutory Prospectus and Contract Statement of Additional Information that provides additional detail concerning that section of the Summary Prospectus; or

(B) Links located at both the beginning and end of the Summary Prospectus, or that remain continuously visible to persons accessing the Summary Prospectus, and tables of contents of both the Statutory Prospectus and the Contract Statement of Additional Information that meet the requirements of paragraph (h)(2)(ii) of this section.

(iv) Permit persons accessing the Summary Prospectus to view the definition of each special term used in the Summary Prospectus (as required by paragraph (e) of this section) upon command (e.g., by moving or "hovering" the computer's pointer or mouse over the term, or selecting the term on a mobile device); or permits persons accessing the Contract Summary Prospectus to move directly back and forth between each special term and the corresponding entry in any glossary or list of definitions in the Contract Summary Prospectus (as described in paragraph (e) of this section).

(3) Persons accessing the materials specified in paragraph (h)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet each of the requirements of paragraphs (h)(2)(i) and (ii) of this section.

(4) The conditions set forth in paragraphs (h)(1) through (3) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraph (h)(1) of this section are not available for a time in the manner required by paragraphs (h)(1) through (3) of this section, provided that:

(i) The Registrant has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (h)(1) through (3) of this section; and

(ii) The Registrant takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (h) through (3) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (h)(1) through (3) of this section.

(i) *Other Requirements* (1) *Delivery upon request.* If paragraph (f) or (g) of

this section is relied on with respect to a Contract, the Registrant (or a financial intermediary through which the Contract may be purchased) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of the Contract Statutory Prospectus, Contract Statement of Additional Information, and in the case of a Registrant on Form N-3, the Registrant's most recent annual and semi-annual reports to shareholders under § 270.30e-1 of this chapter, to any person requesting such a copy within three business days after receiving a request for a paper copy. If paragraph (f) or (g) of this section is relied on with respect to a Contract, the Registrant (or a financial intermediary through which Contract may be purchased) must send, at no cost to the requestor, and by email, an electronic copy of any of the documents listed in this paragraph (i)(1) to any person requesting a copy of such document within three business days after receiving a request for an electronic copy. The requirement to send an electronic copy of a document may be satisfied by sending a direct link to the online document; provided that a current version of the document is directly accessible through the link from the time that the email is sent through the date that is six months after the date that the email is sent and the email explains both how long the link will remain useable and that, if the recipient desires to retain a copy of the document, he or she should access and save the document.

(2) *Greater prominence.* If paragraph (f) or (g) of this section is relied on with respect to a Contract, the Summary Prospectus shall be given greater prominence than any materials that accompany the Summary Prospectus.

(3) *Convenient for reading and printing.* If paragraph (f) or (g) of this section is relied on with respect to a Contract:

(i) The materials that are accessible in accordance with paragraph (h)(1) of this section must be presented on the website in a format, or formats, that are convenient for both reading online and printing on paper; and

(ii) Persons accessing the materials that are accessible in accordance with paragraph (h)(1) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that are convenient for both reading online and printing on paper.

(4) *Website addresses.* If paragraph (f) or (g) of this section is relied on with respect to a Contract, any website address that is included in an electronic version of the Summary Prospectus

must include an active hyperlink or provide another means of facilitating access through equivalent methods or technologies that lead directly to the relevant website address. This paragraph (i)(4) does not apply to electronic versions of a Summary Prospectus that are filed on the EDGAR system.

(5) *Compliance with this paragraph (i) not a condition to reliance on paragraph (f) or (g) of this section.* Compliance with this paragraph (i) is not a condition to the ability to rely on paragraph (f) or (g) of this section with respect to a Contract, and failure to comply with this paragraph (i) does not negate the ability to rely on paragraph (f) or (g) of this section.

(j) *Portfolio Company Prospectuses—* (1) *Transfer of the Portfolio Company security.* Any obligation under section 5(b)(2) of the Act to have a Statutory Prospectus precede or accompany the carrying or delivery of a Portfolio Company security is satisfied if, and information contained in the documents referenced in paragraph (j)(1)(ii) of this section is conveyed for purposes of § 230.159 when:

(i) An Initial Summary Prospectus is used for each currently offered Contract described under the related registration statement;

(ii) A summary prospectus is used for the Portfolio Company (if the Portfolio Company is registered on Form N-1A); and

(iii) The current summary prospectus, Statutory Prospectus, Statement of Additional Information, and most recent annual and semi-annual reports to shareholders under § 270.30e-1 of this chapter for the Portfolio Company are publicly accessible, free of charge, at the same website address referenced in paragraph (h)(1) of this section, and are accessible under the conditions set forth in paragraphs (h)(1), (h)(2)(i) and (ii), and (h)(3) and (4) of this section, with respect to the availability of documents relating to the Contract.

(2) *Communications.* Any communication relating to a Portfolio Company (other than a prospectus permitted or required under section 10 of the Act) shall not be deemed a prospectus under section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) if the conditions set forth in paragraph (j)(1) of this section are satisfied.

(3) *Other requirements.* The materials referenced in paragraph (j)(1)(iii) of this section must be delivered upon request, presented, and able to be retained under the conditions set forth in paragraphs (i)(1) and (3) of this section. Compliance with this paragraph (j)(3) is not a condition to the ability to rely on

paragraph (j)(1) or (2) of this section, and failure to comply with this paragraph (j)(3) does not negate the ability to rely on paragraph (j)(1) or (2) of this section.

PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 12. 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), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 80b-4, 80b-6a, 80b-11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 13. Amend § 232.313 by revising paragraphs (a) and (b) to read as follows:

§ 232.313 Identification of investment company type and series and/or class (or contract).

(a) Registered investment companies, business development companies, and offerings of registered index-linked annuities must indicate their investment company type, based on whether the registrant's last effective registration statement or amendment (other than a merger/proxy filing on Form N-14 (§ 239.23 of this chapter) was filed on Form N-1 (§§ 239.15 and 274.11 of this chapter), Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), Form N-5 (§§ 239.24 and 274.5 of this chapter), Form N-6 (§§ 239.17c and 274.11d of this chapter), Form S-1 (§ 239.11 of this chapter), Form S-3 (§ 239.13 of this chapter), or Form S-6 (§ 239.16 of this chapter) in those EDGAR submissions identified in the EDGAR Filer Manual.

(b) Registered investment companies or offerings of registered index-linked annuities whose last effective registration statement or amendment (other than a merger/proxy filing on Form N-14 (§ 239.23 of this chapter) was filed on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), or Form N-6 (§§ 239.17c and 274.11d of this chapter) must, under the procedures set forth in the EDGAR Filer Manual:

(1) Provide electronically, and keep current, information concerning their existing and new series and/or classes (or contracts, in the case of separate accounts), including series and/or class (contract) name and ticker symbol, if

any, and be issued series and/or class (or contract) identification numbers;

(2) Deactivate for EDGAR purposes any series and/or class (or contract, in the case of separate accounts) that are no longer offered, go out of existence, or deregister following the last filing for that series and/or class (or contract, in the case of separate accounts), but the registrant must not deactivate the last remaining series unless the registrant deregisters; and

(3) For those EDGAR submissions identified in the EDGAR Filer Manual, include all series and/or class (or contract) identifiers of each series and/or class (or contract) on behalf of which the filing is made.

* * * * *

■ 14. Amend § 232.405 by revising paragraphs (a)(3)(i) introductory text, (a)(3)(ii), (b)(1) introductory text, (b)(2) introductory text, (b)(2)(iii), and the final sentence of Note 1 to the section to read as follows:

§ 232.405 Interactive Data File Submissions.

* * * * *

(a) * * *

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered index-linked annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 232.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-4), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered index-linked annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 232.405), a business development company as defined in Section 2(a)(48) of the

Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

* * * * *

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a separate account (as defined in Section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, a registered index-linked annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 232.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, a separate account (as defined in Section 2(a)(14) of the Securities Act) registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a registered index-linked annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 232.405), a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for

all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the information set forth in:

* * * * *

(iii) Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(c)(1), 6(d), 7(e), 10, 17, 26(c), and 31A of §§ 239.17b and 274.11c of this chapter (Form N–4);

* * * * *

Note 1 to § 232.405: * * * For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), a registered index-linked annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 232.405), a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4), General Instruction C.3.(g) of Form N–1A, General Instruction I of Form N–2, General Instruction C.3.(h) of Form N–3, General Instruction C.3.(h) of Form N–4, General Instruction C.3.(h) of Form N–6, General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of Form S–6, and General Instruction C.4 of Form N–CSR, as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 15. 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.

* * * * *

■ 16. Revise Form N–4 (referenced in §§ 239.17b and 274.11c).

Note: Form N–4 is attached as Appendix A to this document. Form N–4 does not appear in the Code of Federal Regulations.

■ 17. Amend Form N–6 (referenced in §§ 239.17c and 274.11d) by revising Instruction 3 to Item 30.

Note: Form N–6 is attached as Appendix B to this document. Form N–6 will not appear in the Code of Federal Regulations.

18. Add § 239.66 to read as follows:

§ 239.66 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities and registered index-linked annuities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, unit investment trusts, and registered index-linked annuities pursuant to §§ 230.456, § 230.457, or 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

■ 19. Revise Form 24F–2 (referenced in §§ 239.66 and 274.24).

Note: Form 24F–2 is attached as Appendix C to this document. Form 24F–2 will not appear in the Code of Federal Regulations.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 20. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

■ 21. Revise § 274.24 to read as follows:

§ 274.24 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities and registered index-linked annuities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, unit investment trusts, and registered index-linked annuities pursuant to §§ 230.456, 230.457, or 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

By the Commission.

Dated: September 29, 2023.

Vanessa Countryman,
Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

Appendix A—Form N-4

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM N-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Pre-Effective Amendment No. _____ ☐Post-Effective Amendment No. _____ ☐

and/or

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

Amendment No. _____ ☐

(Check appropriate box or boxes.)

(Exact Name of Registered Separate Account)_____
(Name of Insurance Company)_____
(Address of Insurance Company's Principal Executive Offices) (Zip Code)_____
(Insurance Company's Telephone Number, including Area Code)_____
(Name and Address of Agent for Service)

Approximate Date of Proposed Public Offering: _____

It is proposed that this filing will become effective (check appropriate box):

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)(1)
- ☐ on (date) pursuant to paragraph (a)(1) of rule 485 under the Securities Act.

If appropriate, check the following box:

- ☐ This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Check each box that appropriately characterizes the Registrant:

- ☐ New Registrant (as applicable, a Registered Separate Account or Insurance Company that has not filed a Securities Act registration statement or amendment thereto within 3 years preceding this filing)
- ☐ Emerging Growth Company (as defined by Rule 12b-2 under the Securities Exchange Act of 1934 ("Exchange Act"))
- ☐ If an Emerging Growth Company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.
- ☐ Relying on Rule 12h-7 under the Exchange Act

Omit from the facing sheet reference to the other Act if the registration statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" only where securities are being registered under the Securities Act of 1933.

Form N-4 is to be used by (1) separate accounts that are unit investment trusts that offer variable annuity contracts to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933, (2) insurance companies to register index-linked annuity contracts under the Securities Act of 1933, and (3) insurance companies to register annuity contracts that have any combination of these options under the applicable statutes. The Commission has designed Form N-4 to provide investors with information that will assist them in making a decision about investing in these contracts. The Commission also may use the information provided on Form N-4 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N-4, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N-4 unless the Form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

CONTENTS OF FORM N-4

GENERAL INSTRUCTIONS	iv
A. Definitions.....	iv
B. Filing and Use of Form N-4	v
C. Preparation of the Registration Statement.....	vi
D. Incorporation by Reference	x
 PART A - INFORMATION REQUIRED IN A PROSPECTUS.....	 1
Item 1. Front and Back Cover Pages	1
Item 2. Overview of the Contract	2
Item 3. Key Information.....	4
Item 4. Fee Table	10
Item 5. Principal Risks of Investing in the Contract.....	14
Item 6. Description of Insurance Company, Registered Separate Account, and Investment Options	15
Item 7. Charges.....	21
Item 8. General Description of Contracts	23
Item 9. Annuity Period	25
Item 10. Benefits Available Under the Contract.....	25
Item 11. Purchases and Contract Value.....	27
Item 12. Surrenders and Withdrawals.....	27
Item 13. Loans	28
Item 14. Taxes	29
Item 15. Legal Proceedings.....	29
Item 16. Financial Statements.....	29
Item 17. Investment Options Available Under the Contract.....	29
 PART B - INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION	 35
Item 18. Cover Page and Table of Contents	35
Item 19. General Information and History.....	35
Item 20. Non-Principal Risks of Investing in the Contract.....	36
Item 21. Services	36
Item 22. Purchase of Securities Being Offered.....	37
Item 23. Underwriters	38
Item 24. Calculation of Performance Data.....	39
Item 25. Annuity Payments	41
Item 26. Financial Statements.....	41
 PART C - OTHER INFORMATION	 44
Item 27. Exhibits	44
Item 28. Directors and Officers of the Insurance Company	46
Item 29. Persons Controlled by or Under Common Control with the Insurance Company or the Registered Separate Account ..	46
Item 30. Indemnification	46
Item 31. Principal Underwriters	47
Item 31A. Information about Contracts with Index-Linked Options	48
Item 32. Location of Accounts and Records	48
Item 33. Management Services	48
Item 34. Fee Representation and Undertakings.....	48
 SIGNATURES	 50

GENERAL INSTRUCTIONS**A. Definitions**

References to sections and rules in this Form N-4 are to the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] (the "Investment Company Act"), unless otherwise indicated. Terms used in this Form N-4 have the same meaning as in the Investment Company Act or the related rules, unless otherwise indicated. As used in this Form N-4, the terms set out below have the following meanings:

"Class" means a class of a Contract that varies principally with respect to distribution-related fees and expenses.

"Contract" means any accumulation contract or annuity contract, any portion thereof, or any unit of interest or participation therein issued by an Insurance Company that offers Index-Linked Options, and/or Variable Options, and/or Fixed Options, as applicable, pursuant to the registration statement prepared on this Form.

"Contract Adjustment" means a positive or negative adjustment made to the value of the Contract by the Insurance Company if amounts are withdrawn from an Index-Linked Option or from the Contract before the end of a specified period. This adjustment may be based on calculations using a predetermined formula, or a change in interest rates, or some other factor or benchmark.

"Crediting Period" means the period of time over which an Index's performance is measured, subject to applicable limits on Index gains and losses, to determine the amount of positive or negative interest that will be credited to an Index-Linked Option at the end of the period.

"Fixed Option" means an Investment Option under the Contract pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn interest at a rate specified by the Insurance Company, subject to a minimum guaranteed rate under the Contract.

"Index" or "Indexes" means any index, rate, or benchmark (such as a registered exchange-traded fund that tracks an index) used in the calculation of positive or negative interest credited to an Index-Linked Option.

"Index-Linked Option" means an Investment Option offered under any Contract, pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, will earn positive or negative interest based, in part, on the performance of a specified Index.

"Insurance Company" means the insurance company issuing the Contract, which company is subject to state supervision. The Insurance Company may be the depositor or sponsor of any Registered Separate Account in which the Contract participates. If there is more than one Insurance Company, the information called for in this Form about the Insurance Company shall be provided for each Insurance Company.

"Investment Option" means a Fixed Option, an Index-Linked Option, and/or a Variable Option, as applicable.

"Platform Charge" means any fee charged by the Insurance Company to make a Portfolio Company available in connection with a Variable Option under the Contract, and that varies solely on the basis of the Portfolio Company selected.

"Portfolio Company" means any investment company in which the Registered Separate Account invests and which may be selected by the investor in connection with a Variable Option.

“Registered Separate Account” means a separate account (as defined in section 2(a)(37) of the Investment Company Act [15 U.S.C. 80a-2(a)(37)]) in which the Contract participates with respect to Variable Options offered under the Contract.

“Registrant” means, as applicable, a Registered Separate Account or the Insurance Company.

“SAI” means the Statement of Additional Information required by Part B of this Form.

“Securities Act” means the Securities Act of 1933 [15 U.S.C. 77a et seq.].

“Securities Exchange Act” means the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

“Statutory Prospectus” means a prospectus that satisfies the requirements of section 10(a) of the Securities Act [15 U.S.C. 77j(a)].

“Summary Prospectus” has the meaning provided by paragraph (a)(11) of rule 498A under the Securities Act [17 CFR 230.498A(a)(11)].

“Variable Option” means an Investment Option under any Contract pursuant to which the value of the Contract, either during an accumulation period or after annuitization, or both, varies according to the investment experience of a Portfolio Company.

B. Filing and Use of Form N-4

1. What is Form N-4 used for?

Form N-4 is used by all separate accounts organized as unit investment trusts and offering Contracts with Variable Options and all Insurance Companies that offer Contracts with Variable Options and/or Index-Linked Options to file:

- (a) An initial registration statement under the Investment Company Act and any amendments to the registration statement;
- (b) An initial registration statement required under the Securities Act and any amendments to the registration statement, including amendments required by section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)]; or
- (c) Any combination of the filings in paragraph (a) or (b).

2. What is included in the registration statement?

- (a) For registration statements or amendments filed under both the Investment Company Act and the Securities Act or only under the Securities Act, include the facing sheet of the Form, Parts A, B, and C, and the required signatures.
- (b) For registration statements or amendments filed only under the Investment Company Act, include the facing sheet of the Form, responses to all Items of Parts A (except Items 1, 4, 5, 9, and 16), B, and C (except Items 27(c), (k), (l), and (m)), and the required signatures.

3. What are the fees for Form N-4?

No registration fees are required for a filing on Form N-4 to register as an investment company under the Investment Company Act or to register securities under the Securities Act. If a filing on Form N-4 is made to register securities under the Securities Act and securities are sold to the

public, registration fees must be paid on an ongoing basis after the end of the Registrant's fiscal year. See section 24(f) [15 U.S.C. 80a-24(f)] and rules 24f-2 [17 CFR 270.24f-2], 456 [17 CFR 230.456], and 457 [17 CFR 230.457].

4. What rules apply to the filing of a registration statement on Form N-4?

- (a) For registration statements and amendments filed under both the Investment Company Act and the Securities Act or under only the Securities Act, the general rules under the Securities Act, particularly the rules regarding the filing of registration statements in Regulation C [17 CFR 230.400 – 230.498A], apply to the filing of registration statements on Form N-4. Specific requirements concerning investment companies and registered index-linked annuities appear in rules 480 - 488 and 495 - 498A of Regulation C.
- (b) For registration statements and amendments filed only under the Investment Company Act, the general rules under the Investment Company Act, particularly the provisions in rules 8b-1 – 8b-31 [17 CFR 270.8b-1 to 8b-31], apply to the filing of registration statements on Form N-4.
- (c) The plain English requirements of rule 421(d) under the Securities Act [17 CFR 230.421(d)] apply to prospectus disclosure in Part A of Form N-4.
- (d) Regulation S-T [17 CFR 232.10 – 232.501] applies to all filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR").

C. Preparation of the Registration Statement

1. Administration of the Form N-4 Requirements

- (a) The requirements of Form N-4 are intended to promote effective communication between the Registrant and prospective investors. A Registrant's prospectus should clearly disclose the fundamental features and risks of the Contracts, using concise, straightforward, and easy to understand language. A Registrant should use document design techniques that promote effective communication.
- (b) The prospectus disclosure requirements in Form N-4 are intended to elicit information for an average or typical investor who may not be sophisticated in legal or financial matters. The prospectus should help investors to evaluate the risks of an investment and to decide whether to invest in a Contract by providing a balanced disclosure of positive and negative factors. Disclosure in the prospectus should be designed to assist an investor in comparing and contrasting a Contract with other Contracts.
- (c) Responses to the Items in Form N-4 should be as simple and direct as reasonably possible and should include only as much information as is necessary to enable an average or typical investor to understand the particular characteristics of the Contracts. The prospectus should avoid including lengthy legal and technical discussions and simply restating legal or regulatory requirements to which Contracts generally are subject. Brevity is especially important in describing the practices or aspects of the Registrant's operations that do not differ materially from those of other separate accounts or insurance companies. Avoid excessive detail, technical or legal terminology, and complex language, including the use of formulas as the primary means of communicating certain terms or features of the Contract. Also avoid lengthy sentences and paragraphs that may make the prospectus difficult for

investors to understand and detract from its usefulness.

- (d) The requirements for prospectuses included in registration statements on Form N-4 will be administered by the Commission in a way that will allow variances in disclosure or presentation if appropriate for the circumstances involved while remaining consistent with the objectives of Form N-4.

2. Form N-4 is divided into three parts:

- (a) *Part A.* Part A includes the information required in a Registrant's prospectus under section 10(a) of the Securities Act. The purpose of the prospectus is to provide essential information about the Registrant and the Contracts in a way that will help investors to make informed decisions about whether to purchase the securities described in the prospectus. In responding to the Items in Part A, avoid cross-references to the SAI unless otherwise prescribed by the Form. Cross-references within the prospectus are most useful when their use assists investors in understanding the information presented and does not add complexity to the prospectus.
- (b) *Part B.* Part B includes the information required in a Registrant's SAI. The purpose of the SAI is to provide additional information about the Registrant and the Contracts that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to be in the prospectus, but that some investors may find useful. Part B affords the Registrant an opportunity to expand discussions of the matters described in the prospectus by including additional information that the Registrant believes may be of interest to some investors. The Registrant should not duplicate in the SAI information that is provided in the prospectus, unless necessary to make the SAI comprehensible as a document independent of the prospectus.
- (c) *Part C.* Part C includes other information required in a Registrant's registration statement.

3. Additional Matters

- (a) *Organization of Information.* Organize the information in the prospectus and SAI to make it easy for investors to understand. Notwithstanding rule 421(a) under the Securities Act [17 CFR 230.421(a)] regarding the order of information required in a prospectus, disclose the information required by Item 2 (Overview of the Contract), Item 3 (Key Information), and Item 4 (Fee Table) in numerical order at the front of the prospectus. Do not precede Items 2, 3, and 4 with any other Item except the Cover Page (Item 1), a glossary, if any (General Instruction C.3.(d)), or a table of contents meeting the requirements of rule 481(c) under the Securities Act [17 CFR 230.481(c)].
- (b) *Other Information.* A Registrant may include, except in response to Items 2 and 3, information in the prospectus or the SAI that is not otherwise required so long as the information is not incomplete, inaccurate, or misleading and does not, because of its nature, quantity, or manner of presentation, obscure or impede understanding of the information that is required to be included. For example, Registrants are free to include in the prospectus financial statements required to be in the SAI, and may include in the SAI financial statements that may be placed in Part C. However, information regarding non-principal risks that is not otherwise required to be in the prospectus must be disclosed in the SAI and not the prospectus, in accordance with Items 5 and 20.
- (c) *Presentation of Information.* To aid investor comprehension, Registrants are encouraged to use, as appropriate, question-and-answer formats, tables, side-by-side comparisons, captions, bullet points, numeric examples, illustrations or similar presentation methods. For

example, such presentation methods would be appropriate when presenting disclosure for similar Contract features, prospectuses describing multiple Contracts, or the operation of optional benefits or annuitization.

(d) *Use of Terms.*

- (i) *Definitions.* Define the special terms used in the prospectus (e.g., accumulation unit, participant, Crediting Period, etc.) in any presentation that clearly conveys meaning to investors. If the Registrant elects to include a glossary or list of definitions, only special terms used throughout the prospectus must be defined or listed. If a special term is used in only one section of the prospectus, it may be defined there (and need not be included in any glossary or list of definitions that the Registrant includes).
- (ii) *Alternate Terminology.* A Registrant may use alternate terminology other than that used in the form so long as the terminology used by the Registrant clearly conveys the meaning of, or provides comparable information as, the terminology included in the form.

(e) *Use of Form N-4 to Register Multiple Contracts*

- (i) A single prospectus may describe multiple Contracts that are essentially identical. Whether the prospectus describes Contracts that are “essentially identical” will depend on the facts and circumstances. For example, a Contract that does not offer optional benefits would not be essentially identical to one that does for a charge. Similarly, group and individual Contracts would not be essentially identical. However, Contracts that vary only due to state regulatory requirements would be essentially identical.
- (A) Paragraph (a) of General Instruction C.3 requires Registrants to disclose the information required by Items 2, 3, and 4 in numerical order at the front of the prospectus and generally not to precede the Items with other information. As a general matter, Registrants providing disclosure in a single prospectus for more than one Contract, may depart from the requirement of paragraph (a) as necessary to present the required information clearly and effectively (although the order of information required by each Item must remain the same). For example, the prospectus may present all of the Item 2 information for the Contracts, followed by all of the Item 3 information for several Contracts (e.g., by providing several Key Information Tables sequentially or by providing a single Key Information Table containing separate disclosures for each Contract to the extent that such disclosures would vary by Contract), and followed by all of the Item 4 information for the Contracts. Alternatively, the prospectus may present Items 2, 3, and 4 for each of several Contracts sequentially. Other presentations also would be acceptable if they are consistent with the Form’s intent to disclose the information required by Items 2, 3, and 4 in a standard order at the beginning of the prospectus. Registrants that present Items 2, 3, and 4 for each of several Contracts sequentially or that utilize another presentation should consider whether investors might benefit from a brief explanation about how the information in the prospectus is presented, such as headings for each contract in the prospectus’ table of contents and/or a brief narrative at the beginning of the prospectus explaining the presentation. Registrants are encouraged to present information in a manner that limits repetition.

- (B) The Registrant should generally include appropriate titles, headings, or any other information to promote clarity and facilitate understanding regarding which disclosures apply to which Contract, if such disclosures would vary based on the Contract.
- (ii) Multiple prospectuses may be combined in a single registration statement on Form N-4 when the prospectuses describe Contracts that are substantially similar. For example, a Registrant could determine it is appropriate to include multiple prospectuses in a registration statement in the following situations: (i) the prospectuses describe the same Contract that is sold through different distribution channels; (ii) the prospectuses describe Contracts that differ only with respect to Portfolio Companies offered; or (iii) the prospectuses describe both the original and a modified version of the same Contract (where the “modified” version differs in the features or options that the Registrant offers under that Contract).
- (f) *Dates.* Rule 423 under the Securities Act [17 CFR 230.423] applies to the dates of the prospectus and the SAI. The SAI should be made available at the same time that the prospectus becomes available for purposes of rules 430 and 460 under the Securities Act [17 CFR 230.430 and 230.460].
- (g) *Sales Literature.* A Registrant may include sales literature in the prospectus so long as the amount of this information does not add substantial length to the prospectus and its placement does not obscure essential disclosure.
- (h) Interactive Data File
 - (i) An Interactive Data File (see rule 232.11 of Regulation S-T [17 CFR 232.11]) is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T [17 CFR 232.405] for any registration statement or post-effective amendment thereto on Form N-4 that includes or amends information provided in response to Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(c)(1), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A with regard to Contracts that are being sold to new investors.
 - (A) Except as required by paragraph (h)(i)(B), the Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted on or before the date the registration statement or post-effective amendment that contains the related information becomes effective.
 - (B) In the case of a post-effective amendment to a registration statement filed pursuant to paragraphs (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485 under the Securities Act [17 CFR 230.485(b)], the Interactive Data File must be submitted either with the filing, or as an amendment to the registration statement to which the Interactive Data Filing relates that is submitted on or before the date the post-effective amendment that contains the related information becomes effective.
 - (ii) An Interactive Data File is required to be submitted to the Commission in the manner provided by rule 405 of Regulation S-T for any form of prospectus filed pursuant to paragraphs (c) or (e) of rule 497 under the Securities Act [17 CFR 230.497(c) or (e)] that includes information provided in response to Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(c)(1), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A that varies from the

registration statement with regard to Contracts that are being sold to new investors. The Interactive Data File must be submitted with the filing made pursuant to rule 497.

- (iii) The Interactive Data File must be submitted in accordance with the specifications in the EDGAR Filer Manual, and in such a manner that will permit the information for each Contract, and, for any information that does not relate to all of the Classes in a filing, each Class of the Contract to be separately identified.
- (i) *Website Addresses.* Any website address included in an electronic version of the Statutory Prospectus must include an active hyperlink or other means of facilitating access that leads directly to the relevant website address. This requirement does not apply to an electronic Statutory Prospectus filed on the EDGAR system.

D. Incorporation by Reference

1. General Requirements

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus); rule 303 of Regulation S-T [17 CFR 232.303] (specific requirements for electronically filed documents); and rule 0-4 under the Investment Company Act [17 CFR 270.0-4] (additional rule on incorporation by reference for investment companies). In general, a Registrant may incorporate by reference, in the answer to any item of Form N-4 not required to be in the prospectus, any information elsewhere in the registration statement or in other statements, applications, or reports filed with the Commission.

2. Specific Rules for Incorporation by Reference in Form N-4:

- (a) A Registrant may not incorporate by reference into a prospectus information that Part A of this Form requires to be included in a prospectus, except as specifically permitted by Part A of the Form.
- (b) A Registrant may incorporate by reference any or all of the SAI into the prospectus (but not to provide any information required by Part A to be included in the prospectus) without delivering the SAI with the prospectus.
- (c) A Registrant may incorporate by reference into the SAI or its response to Part C information that Parts B and C require to be included in the Registrant's registration statement.

PART A - INFORMATION REQUIRED IN A PROSPECTUS

Item 1. Front and Back Cover Pages

- (a) *Front Cover Page.* Include the following information on the outside front cover page of the prospectus:
- (1) The Registered Separate Account's name.
 - (2) The Insurance Company's name.
 - (3) The types of Contracts offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred).
 - (4) The name of the Contract and the Class or Classes, if any, to which the Contract relates.
 - (5) The types of Investment Options offered under the Contract, and a cross-reference to the prospectus appendix providing additional information about each option.
 - (6) A statement that the Contract is a complex investment and involves risks, including potential loss of principal. For Contracts with Index-Linked Options, prominently state that the Insurance Company limits the amount an investor can earn on an Index-Linked Option, the potential for investment loss could be significantly greater than the potential for investment gain, and an investor could lose a significant amount of money if the Index declines in value. Prominently disclose as a percentage the maximum amount of loss from negative Index performance that an investor could experience after taking into account the minimum guaranteed limit on Index loss provided under the Contract.
 - (7) A statement that the Contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash. Briefly state that withdrawals could result in surrender charges, negative Contract Adjustments, taxes, and tax penalties, as applicable. Prominently state as a percentage the maximum potential loss resulting from a negative Contract Adjustment, if applicable.
 - (8) A statement that the Insurance Company's obligations under the Contract are subject to its financial strength and claims-paying ability.
 - (9) The date of the prospectus.
 - (10) The statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].
 - (11) The statement that additional information about certain investment products, including [type of Contract], has been prepared by the Securities and Exchange Commission's staff and is available at [Investor.gov](https://www.investor.gov).
 - (12) If applicable, the legend: "If you are a new investor in the Contract, you may cancel your Contract within 10 days of receiving it without paying fees or penalties[, although we will apply the Contract Adjustment]. In some states, this cancellation period may be longer. Upon cancellation, you will receive either a full refund of the amount you paid with your application or your total Contract value. You should review this prospectus, or consult with your investment professional, for additional information about the specific cancellation terms that apply."

Instruction. A Registrant may include on the front cover page any additional information, subject to the requirements of General Instruction C.3.(b) and (c).

(b) *Back Cover Page.* Include the following information on the outside back cover page of the prospectus:

- (1) A statement that the SAI includes additional information about the Registrant. Explain that the SAI is available, without charge, upon request, and explain how investors may make inquiries about their Contracts. Provide a toll-free (or collect) telephone number for investors to call to request the SAI, to request other information about the Contracts, and to make investor inquiries.

Instructions.

1. A Registrant may indicate, if applicable, that the SAI and other information are available on its website and/or by email request.
 2. A Registrant may indicate, if applicable, that the SAI and other information are available from an insurance agent or financial intermediary (such as a broker-dealer or bank) through which the Contracts may be purchased or sold.
 3. When a Registrant (or an insurance agent or financial intermediary through which Contracts may be purchased or sold) receives a request for the SAI, the Registrant (or insurance agent or financial intermediary) must send the SAI within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.
- (2) A statement whether and from where information is incorporated by reference into the prospectus as permitted by General Instruction D. Unless the information is delivered with the prospectus, explain that the Registrant will provide the information without charge, upon request (referring to the telephone number provided in response to paragraph (b)(1)).

Instruction. The Registrant may combine the information about incorporation by reference with the statements required under paragraph (b)(1).

- (3) A statement that reports and other information about the Registered Separate Account are available on the Commission's website at <http://www.sec.gov>, and that copies of this information may be obtained, upon payment of a duplicating fee, by electronic request at the following email address: publicinfo@sec.gov.
- (4) The EDGAR contract identifier for the Contract on the bottom of the back cover page in type size smaller than that generally used in the prospectus (e.g., 8-point modern type).

Item 2. Overview of the Contract

Provide a concise description of the Contract including the following information:

- (a) *Purpose.* Briefly describe the purpose(s) of the Contract (e.g., to help the investor accumulate assets through an investment portfolio, to provide or supplement the investor's retirement income, to provide death and/or other benefits). State for whom the Contract may be appropriate (e.g., by discussing a representative investor's time horizon, liquidity needs, and financial goals).
- (b) *Phases of Contract.* Briefly describe the accumulation (savings) phase and annuity (income) phase of the Contract.
 - (1) This discussion should include a brief overview of the Investment Options available under the Contract.

Instructions.

1. Prominently disclose that additional information about each Investment Option is provided in an appendix to the prospectus and provide a cross-reference to the appendix.
2. A detailed explanation of the Registered Separate Account, Portfolio Companies, Indexes, and Investment Options is not necessary and should be avoided.

(2) With respect to any Index-Linked Option currently offered under the Contract, include the following information.

- (i) State that the Insurance Company will credit positive or negative interest at the end of a Crediting Period to amounts allocated to an Index-Linked Option based, in part, on the performance of the Index.
- (ii) Disclose that an investor could lose a significant amount of money if the Index declines in value.

Instruction. Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance, after taking into account the minimum guaranteed limit on Index loss provided under the Contract.

- (iii) Briefly explain that the Insurance Company limits the negative Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Briefly describe the manner(s) in which the Insurance Company limits negative returns through the use of a floor, buffer, or some other rate or measure. Provide an example of how such rate could operate to limit a negative Index return (e.g., "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period, meaning your Contract value will decrease by 15%"). Disclose the minimum limit on Index losses guaranteed for the life of the Contract for any Index-Linked Option.
- (iv) Briefly explain that the Insurance Company limits the positive Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Briefly describe the manner(s) in which the Insurance Company limits positive returns through the use of a cap, participation rate, or some other rate or measure. Provide an example of how such rate could operate to limit a positive Index return (e.g., "if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period, meaning your Contract value will increase by 4%"). Disclose the minimum limit on Index gains guaranteed for the life of the Contract for any Index-Linked Option.

(3) State, if applicable, that if an investor annuitizes, the investor will receive a stream of income payments, however (i) the investor will be unable to make withdrawals, and (ii) death benefits and living benefits will terminate.

- (c) *Contract Features.* Summarize the Contract's primary features, including death benefits, withdrawal options, loan provisions, and Contract benefits. If applicable, state that the investor will incur an additional fee for selecting a particular benefit.
- (d) *Contract Adjustment.* If applicable, state that an investor could lose a significant amount of money due to the Contract Adjustment if amounts are removed from an Index-Linked Option or from the Contract prior to the end of a specified period. Briefly describe the transactions subject to the

Contract Adjustment.

Instruction. Prominently state as a percentage the maximum amount of loss an investor could experience from a negative Contract Adjustment. State that this loss could be greater due to surrender charges and tax consequences.

Item 3. Key Information

Include the following information:

Important Information You Should Consider About the [Contract]

FEES AND EXPENSES	
Are There Charges for Early Withdrawals?	
Are There Transaction Charges?	
Are There Ongoing Fees and Expenses?	
RISKS	
Is There a Risk of Loss From Poor Performance?	
Is this a Short-Term Investment?	
What are the Risks Associated with the Investment Options?	
Is There Any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract?	
RESTRICTIONS	
Are There Restrictions on the Investment Options?	
Are there any Restrictions on Contract Benefits?	

TAXES	
What are the Contract's Tax Implications?	
CONFLICTS OF INTEREST	
How are Investment Professionals Compensated?	
Should I Exchange My Contract?	

Instructions.

1. *General.*

- (a) Disclose the required information in the tabular presentation(s) reflected herein, in the order specified. A Registrant may exclude any disclosures that are not applicable, or modify any of the statements required to be included, so long as the modified statement contains comparable information. Notwithstanding this instruction and General Instruction C.3.(d)(ii), the title, headings, and sub-headings for this tabular presentation may not be modified or substituted with alternate terminology unless otherwise provided.
- (b) Provide cross-references to the location in the Statutory Prospectus where the subject matter is described in greater detail. Cross-references in electronic versions of the Summary Prospectus and/or Statutory Prospectus should link directly to the location in the Statutory Prospectus where the subject matter is discussed in greater detail, or should provide a means of facilitating access to that information through equivalent methods or technologies. The cross-reference should be adjacent to the relevant disclosure, either within the table row, or presented in an additional table column.
- (c) All disclosures provided in response to this Item should be short and succinct, consistent with the limitations of a tabular presentation.
- (d) All disclosures provided in this tabular presentation also must be presented in a question and answer format. Unless the context otherwise requires, when answering a question presented on a given row of the table, begin the response with "Yes" or "No" in bold text.

2. *Fees and Expenses.*

- (a) *Are There Charges for Early Withdrawals?* Include a statement that if the investor withdraws money from the Contract within [x] years following the investor's last purchase payment, the investor will be assessed a surrender charge. Include in this statement the maximum surrender charge (as a percentage of [purchase payment or amount surrendered]), and the maximum number of years that a surrender charge may be assessed since the last purchase payment under the Contract. Provide an example of the maximum surrender charge an investor could pay (in dollars) under the Contract assuming a \$100,000 investment (e.g., "[i]f you make an early withdrawal, you could pay a surrender charge of up to \$9,000 on a

\$100,000 investment. This loss will be greater if there is a negative Contract Adjustment, taxes, or tax penalties.”).

If applicable, include a statement that if all or a portion of account value is removed from an Index-Linked Option or from the Contract before the expiration of a specified period, the Insurance Company will apply a Contract Adjustment, which may be negative. Include in this statement the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment (e.g., “[y]ou could lose up to XX% of your investment due to the contract adjustment”). Provide an example of the maximum negative adjustment that could be applied (in dollars) assuming a \$100,000 investment (e.g., “[i]f you allocate \$100,000 to an investment option with a 3-year Crediting Period and later withdraw the entire amount before the 3 years have ended, you could lose up to \$90,000 of your investment. This loss will be greater if you also have to pay a surrender charge, taxes, and tax penalties.”). Provide a brief narrative description of the Contract transactions subject to the Contract Adjustment (e.g., withdrawals, surrender, annuitization, etc.).

- (b) *Are There Transaction Charges?* State that in addition to surrender charges and Contract Adjustments (if applicable), the investor may also be charged for other transactions, and provide a brief narrative description of the types of such charges (e.g., front-end loads, charges for transferring cash value between Investment Options, charges for wire transfers, etc.).

- (c) *Are There Ongoing Fees and Expenses?*

Include the following information, in the order specified:

- (i) *Minimum and Maximum Annual Fee Table.*

- (A) The legend: “The table below describes the fees and expenses that you may pay each year, depending on the Investment Options and optional benefits you choose. Please refer to your Contract specifications page for information about the specific fees you will pay each year based on the options you have elected.”

- (B) Provide Minimum and Maximum Annual Fees in substantially the following tabular format, in the order specified.

Annual Fee	Minimum	Maximum
Base Contract (varies by Contract Class)	[]%	[]%
Portfolio Company fees and expenses	[]%	[]%
Optional benefits available for an additional charge (for a single optional benefit, if elected)	[]%	[]%

- (C) Explain, in a parenthetical or footnote to the table or each caption, the basis for each percentage (e.g., % of separate account value or benefit base, or % of net asset value).
- (D) Calculate Base Contract fees by dividing the total amount of Base Contract fees (including dollar-based Contract expenses) collected during the year that are attributable to the Contract by the total average net assets that are attributable to the

Contract.

- (E) If the Insurance Company offers multiple Portfolio Companies under the Contract, it should disclose the minimum and maximum “Annual Portfolio Company Expenses” calculated in accordance with Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A] (before expense reimbursements or fee waiver arrangements). If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Insurance Company should include the maximum Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses.
- (F) The Minimum Annual Fee means the lowest current fee for each annual fee category (*i.e.*, the least expensive Contract Class, the lowest Portfolio Company Total Annual Operating Expenses, and the least expensive optional benefit available for an additional charge). The Maximum Annual Fee means the highest current fee for each annual fee category (*i.e.*, the most expensive Contract Class, the highest Portfolio Company Total Annual Operating Expenses, and the most expensive optional benefit available for an additional charge).
- (G) For Contracts that offer Index-Linked Options and impose ongoing fees and expenses on the Index-Linked Options, Variable Options, and/or Fixed Options, precede the table with a prominent statement explaining that: (1) there is an implicit ongoing fee on Index-Linked Options by the Insurance Company limiting, through the use of a cap, participation rate, or some other rate or measure, the amount an investor can earn on an Index-Linked Option; (2) imposing this limit helps the Insurance Company make a profit on the Index-Linked Option; and (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses.

(ii) *Lowest and Highest Annual Cost Table.*

- (A) The legend: “Because your Contract is customizable, the choices you make affect how much you will pay. To help you understand the cost of owning your Contract, the following table shows the lowest and highest cost you could pay *each year*, based on current charges. This estimate assumes that you do not take withdrawals from the Contract, **which could add surrender charges and negative Contract Adjustments that substantially increase costs.**”
- (B) Provide Lowest and Highest Annual Costs in substantially the following tabular format, in the order specified.

Lowest Annual Cost: \$[]	Highest Annual Cost: \$[]
Assumes: - Investment of \$100,000 5% annual appreciation - Least expensive combination of Contract Classes and Portfolio Company fees and expenses	Assumes: - Investment of \$100,000 5% annual appreciation - Most expensive combination of Contract Classes, optional benefits, and Portfolio Company fees and expenses

Lowest Annual Cost: \$[]	Highest Annual Cost: \$[]
• No optional benefits • No sales charges • No additional purchase payments, transfers or withdrawals	• No sales charges • No additional purchase payments, transfers or withdrawals

(C) Calculate the Lowest and Highest Annual Cost estimates in the following manner:

- a. Calculate the dollar amount of fees that would be assessed based on the assumptions described in the table above for each of the first 10 Contract years.
 - b. Total each year's fees (discounted to the present value using a 5% annual discount rate) and divide by 10 to calculate the estimated dollar amounts that are required to be set forth in the table above.
 - c. Sales loads, other than ongoing sales charges, should be excluded from the Lowest and Highest Annual Cost estimates.
 - d. Amounts of any bonus payment should be excluded from the Lowest and Highest Annual Cost estimates.
 - e. Unless otherwise provided, the least and most expensive combination of Contract Classes, Portfolio Company fees and expenses, and optional benefits should be based on the disclosures provided in the Example in Item 4. If a different combination of Contract Classes, Annual Portfolio Company Expenses, and/or optional benefits would result in different Minimum or Maximum fees in different years, use the least expensive and most expensive combination of Contract Classes, Annual Portfolio Company Expenses, and optional benefits each year.
- (iii) For Contracts that offer Index-Linked Options and that do not impose any ongoing fees and expenses under the Contract, prominently state, in lieu of the disclosure required by Instructions 2(c)(i) and (ii), that (1) there is an implicit ongoing fee on Index-Linked Options by the Insurance Company limiting, through the use of a cap, participation rate, or some other rate or measure, the amount an investor can earn on an Index-Linked Option; (2) imposing this limit helps the Insurance Company make a profit on the Index-Linked Options; and (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses.

3. Risks.

- (a) *Is There a Risk of Loss From Poor Performance?* State that an investor can lose money by investing in the Contract. For a Contract with Index-Linked Options, prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance, after taking into account the minimum guaranteed limit on Index loss provided under the Contract.
- (b) *Is This a Short-Term Investment?* State that a Contract is not a short-term investment and is

not appropriate for an investor who needs ready access to cash, accompanied by a brief explanation. State that amounts withdrawn from the Contract may result in surrender charges, taxes, and tax penalties. If applicable, state that amounts removed from an Index-Linked Option or from the Contract before the end of a specified period may also result in a negative Contract Adjustment and loss of positive Index performance.

For Index-Linked Options, state that Contract value will be reallocated at the end of the Crediting Period according to the investor's instructions, and disclose the default reallocation in the absence of such instructions.

- (c) *What are the Risks Associated with the Investment Options?* State that an investment in the Contract is subject to the risk of poor investment performance and can vary depending on the performance of the Investment Options available under the Contract (e.g., Portfolio Companies, if a Variable Option, or the Index, if an Index-Linked Option), that each Investment Option (including any Fixed Option) will have its own unique risks, and that the investor should review the available Investment Options before making an investment decision. For Index-Linked Options, also state that:
- (A) The cap, participation rate, or some other rate or measure, as applicable, will limit positive Index returns (e.g., limited upside). Provide an example for each type of limit imposed under the Contract (e.g., "if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period"), and prominently state that this may result in the investor earning less than the Index return; and
- (B) The floor, buffer, or some other rate or measure, as applicable, will limit negative Index returns (e.g., limited protection in the case of market decline). Provide an example for each type of limit imposed under the Contract (e.g., "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period"), and prominently state that even after limiting a negative Index return, the investor could still lose up to XX% of their investment.
- (d) *Is There Any Chance the Insurance Company Won't Pay Amounts Due to Me Under the Contract?* State that an investment in the Contract is subject to the risks related to the Insurance Company, including that any obligations (including under any Fixed Options and Index-Linked Options), guarantees, or benefits are subject to the claims-paying ability of the Insurance Company. Further state that more information about the Insurance Company, including if applicable its financial strength ratings, is available upon request, and indicate how such requests can be made (e.g., via toll-free telephone number).

Instruction. A Registrant may include the Insurance Company's financial strength rating(s) and omit the portion of the disclosures regarding the availability of the Insurance Company's financial strength ratings specified by the last sentence of Instruction 3.(d).

4. *Restrictions.*

- (a) *Are There Limits on the Investment Options?* State whether there are any restrictions that may limit the Investment Options that an investor may choose, as well as any limitations on the transfer of Contract value among Investment Options. State any reservation of rights by the Insurance Company or the Registered Separate Account under the Contract, including if applicable, the right to remove or substitute Portfolio Companies, add or remove Index-Linked Options and change the features of an Index-Linked Option from one Crediting Period to the

next, including the Index and the current limits on Index gains and losses (subject to contractual minimum guarantees), substitute the Index of an Index-Linked Option during its Crediting Period, and stop accepting additional purchase payments.

- (b) *Are There Any Restrictions on Contract Benefits?* State whether there are any restrictions or limitations relating to benefits offered under the Contract (e.g., death benefits, living benefits, Contract loans, performance “locks” relating to the Contract Adjustment, etc.), and/or whether a benefit may be modified or terminated by the Insurance Company. If applicable, state that withdrawals that exceed limits specified by the terms of a Contract benefit may affect the availability of the benefit by reducing the benefit by an amount greater than the value withdrawn, and/or could terminate the benefit.
5. *Taxes—What are the Contract’s Tax Implications?* State that an investor should consult with a tax professional to determine the tax implications of an investment in and purchase payments received under the Contract, and that there is no additional tax benefit to the investor if the Contract is purchased through a tax-qualified plan or individual retirement account (IRA). Explain that withdrawals will be subject to ordinary income tax and may be subject to tax penalties.
6. *Conflicts of Interest.*
- (a) *How Are Investment Professionals Compensated?* State that some investment professionals may receive compensation for selling the Contract to investors, and briefly describe the basis upon which such compensation is typically paid (e.g., commissions, revenue sharing, compensation from affiliates and third parties). State that these investment professionals may have a financial incentive to offer or recommend the Contract over another investment.
- (b) *Should I Exchange my Contract?* State that some investment professionals may have a financial incentive to offer an investor a new contract in place of the one the investor already owns, and that an investor should only exchange their contract if the investor determines, after comparing the features, fees, and risks of both contracts, and any fees or penalties to terminate the existing contract, that it is preferable for the investor to purchase the new contract rather than continue to own the existing contract.

Instruction. A Registrant may omit these line-items if neither the Registrant nor any of its related companies pay financial intermediaries for the sale of the Contract or related services.

Item 4. Fee Table

Include the following information:

The following tables describe the fees and expenses that you will pay when buying, owning, and surrendering or making withdrawals from an Investment Option or from the Contract. Please refer to your Contract specifications page for information about the specific fees you will pay each year based on the options you have elected.

The first table describes the fees and expenses that you will pay at the time that you buy the Contract, surrender or make withdrawals from an Investment Option or from the Contract, or transfer Contract value between Investment Options. State premium taxes may also be deducted.

Transaction Expenses

Sales Load Imposed on Purchases (as a percentage of purchase payments)	___%
Deferred Sales Load (or Surrender Charge) (as a percentage of purchase payments or amount surrendered, as applicable)	___%
Transfer Fee	___%
Contract Adjustment Maximum Potential Loss (as a percentage of Contract value at the start of the Crediting Period or amount withdrawn, as applicable)	___%

The next table describes the fees and expenses that you will pay *each year* during the time that you own the Contract (not including Portfolio Company fees and expenses).

If you choose to purchase an optional benefit, you will pay additional charges, as shown below.

Annual Contract Expenses

Administrative Expenses	\$___
Base Contract Expenses (as a percentage of average account value or Contract value)	___%
Optional Benefit Expenses (as a percentage of benefit base or other (e.g., average account value))	___%

In addition to the fees described above, we limit the amount you can earn on an Index-Linked Option. Imposing this limit helps us make a profit on the Index-Linked Option. In return for accepting this limit on Index gains, you will receive some protection from Index losses.

The next item shows the minimum and maximum total operating expenses charged by the Portfolio Companies that you may pay periodically during the time that you own the Contract. Expenses shown may change over time and may be higher or lower in the future. These amounts also include applicable Platform Charges if you choose to invest in certain Portfolio Companies. A complete list of Portfolio Companies available under the Contract, including their annual expenses, may be found at the back of this document.

Annual Portfolio Company Expenses**Minimum****Maximum**

(expenses that are deducted from Portfolio Company assets, including management fees, distribution and/or service (12b-1) fees, and other expenses)	___%	___%

Example

This Example is intended to help you compare the cost of investing in the Variable Options with the cost of investing in other annuity contracts that offer variable options. These costs include transaction expenses, annual Contract expenses, and Annual Portfolio Company Expenses.

The Example assumes all Contract value is allocated to the Variable Options. The Example does not reflect the Contract Adjustment. Your costs could differ from those shown below if you invest in Index-Linked Options or Fixed Options.

The Example assumes that you invest \$100,000 in the Variable Options for the time periods indicated. The Example also assumes that your investment has a 5% return each year and assumes the most expensive combination of Annual Portfolio Company Expenses and optional benefits available for an additional charge. Although your actual costs may be higher or lower, based on these assumptions, your costs would be:

	1 year	3 years	5 years	10 years
If you surrender your Contract at the end of the applicable time period:	\$___	\$___	\$___	\$___
If you annuitize at the end of the applicable time period:	\$___	\$___	\$___	\$___
If you do <i>not</i> surrender your Contract:	\$___	\$___	\$___	\$___

Instructions

1. Include the narrative explanations in the order indicated. A Registrant may modify a narrative explanation if the explanation contains comparable information to that shown, and may omit a narrative explanation that is not applicable under the Contract.
2. Assume that the Contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in a brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.
3. A Registrant may omit captions if the Registrant does not charge or reserve the right to charge the fees or expenses covered by the captions.
4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.
5. In the Transaction Expenses and Annual Contract Expenses tables, the Registrant must disclose the maximum guaranteed charge, unless a specific instruction directs otherwise. If a fee other

than a Contract Adjustment is calculated based on a benchmark (e.g., a fee that varies according to volatility levels or Treasury yields), the Registrant must also disclose the maximum guaranteed charge as a single number. The Registrant may disclose the current charge, in addition to the maximum charge, if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge. In addition, the Registrant may include in a footnote to the table a tabular, narrative, or other presentation providing further detail regarding variations in the charge. For example, if deferred sales charges decline over time, the Registrant may include in a footnote a presentation regarding the scheduled reductions in the deferred sales charges.

6. Provide a separate fee table (or separate column within the table) for each Contract offered by the prospectus that has different fees.
7. For a Contract with more than one Class, provide a separate response for each Class.

Transaction Expenses

8. "Sales Load Imposed on Purchases" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.
9. "Deferred Sales Load" includes the maximum contingent deferred sales load (or surrender charge), expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.
10. "Transfer Fee" includes the maximum fee charged for any exchange or transfer of Contract value between Investment Options or from the Registered Separate Account to another investment company or from the Registered Separate Account to the insurance company's general account. The Registrant may include a tabular presentation of the range of transfer fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the transfer fee.
11. "Contract Adjustment Maximum Potential Loss" includes the maximum negative Contract Adjustment that may be imposed, expressed as a percentage of Contract value at the start of the Crediting Period or of the amount withdrawn, as applicable. The Registrant should list in a footnote the Contract transactions subject to a Contract Adjustment.
12. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

Annual Contract Expenses

13. Administrative Expenses include any Contract, account, or similar fee imposed on a dollar basis and charged on any recurring basis (e.g., \$50 per year).
14. Base Contract Expenses include mortality and expense risk fees and account fees and expenses. Account fees and expenses include all fees and expenses charged to any Investment Option (except sales loads, mortality and expense risk fees, and optional benefits expenses) that are deducted on a percentage basis.

15. Optional Benefits Expenses include any optional features (e.g., enhanced death benefits and living benefits) offered under the Contract for an additional charge.
16. If the Registrant (or any other party pursuant to an agreement with the Registrant) imposes any other recurring charge (other than Annual Portfolio Company Expenses), add another caption describing it and list the (maximum) amount or basis on which the charge is deducted.

Annual Portfolio Company Expenses

17. If a Registrant offers multiple Portfolio Companies, it should disclose the minimum and maximum “Annual Portfolio Company Expenses” for any Portfolio Company calculated in accordance with Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A (before expense reimbursements or fee waiver arrangements)]. If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Registrant should include the maximum Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses.
18. A Registrant may also reflect, in an additional line-item to the range of Annual Portfolio Company Expenses, minimum and maximum Annual Portfolio Company Expenses calculated in accordance with Item 3 of Form N-1A that include expense reimbursements or fee waiver arrangements that are in place and reflected in the Portfolio Company’s registration statement pursuant to Item 3 of Form N-1A. If the Registrant provides this disclosure, also disclose the period for which the expense reimbursements or fee waiver arrangement is expected to continue, and, if applicable, that it can be terminated at any time at the option of a Portfolio Company. If the Registrant charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, the Registrant should include the current Platform Charge associated with each Portfolio Company when calculating minimum and maximum Annual Portfolio Company Expenses that include expense reimbursements or fee waiver arrangements.

Example

19. For purposes of the Example(s) in the table, provide the following for each Variable Option Contract Class:
 - (a) Assume that the percentage amounts listed under “Annual Contract Expenses” remain the same in each year of the 1-, 3-, 5-, and 10-year periods;
 - (b) The most expensive combination of Contract features must be shown first. Additional expense presentations are permitted, but not required;
 - (c) Assume the maximum sales load that may be deducted from purchase payments is deducted;
 - (d) For any breakpoint in any fee, assume that the amount of Variable Option (and Portfolio Company) assets remains constant as of the level at the end of the most recently completed fiscal year;
 - (e) Assume no exchanges or other transactions;
 - (f) Reflect any Contract expenses by dividing the total amount of Contract expenses (including dollar-based Contract expenses) collected during the year that are attributable to the Contract by the total average net assets that are attributable to the Contract. Add the resulting percentage to Base Contract expenses and assume that it remains the same in each year of

the 1-, 3-, 5-, and 10-year periods;

- (g) Reflect any deferred sales load (or surrender charge) by assuming a complete surrender on the last day of the year;
- (h) Provide the information required in the second section of the Example only if Variable Option fees upon annuitization are different from those charged upon surrender; and
- (i) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender.

Item 5. Principal Risks of Investing in the Contract

Summarize the principal risks of purchasing a Contract, including as applicable:

- (a) *Investment Option Risk*. Explain the principal risks of investing in an Investment Option, including the risks of poor investment performance and, for Index-Linked Options, the maximum potential loss from negative Index performance over the Crediting Period, as a percentage.
- (b) *Early Withdrawal Risk*. State that Contracts are unsuitable as short-term savings vehicles. Explain the limitations on access to cash value through withdrawals, including, as applicable, surrender charges, negative Contract Adjustments, loss of interest, and the possibility of adverse tax consequences. State the maximum potential loss resulting from a negative Contract Adjustment, as a percentage.
- (c) *Index-Linked Option Risk*. In addition to the potential loss from negative Index performance, describe the principal risks of investing in any Index-Linked Option offered under the Contract. State that an investor is not invested in the Index or in the securities tracked by the Index.

Instructions. Include in this discussion:

- (1) The principal risks relating to, as applicable, limiting positive Index returns, the possibility of losses despite limits on negative Index returns, interest crediting methodologies, the impact of Contract fees on the amount of interest credited, and the reallocation of Contract value at the end of an Index-Linked Option's Crediting Period,
 - (2) The principal risks associated with the Index, including, as applicable, risks relating to type (e.g., market risk, small-cap risk, foreign securities risk, emerging market risk, etc.), the exclusion of dividends from Index return, and market volatility. Specify which risks relate to each Index offered under the Contract. Describe the principal risks related to the possible substitution of the Index before the end of an Index-Linked Option's Crediting Period.
- (d) *Contract Benefits Risk*. Describe the principal risks associated with any benefits under the Contract, including the impact of excess withdrawals, if applicable.
 - (e) *Insurance Company Risk*. Explain the principal risks associated with the Insurance Company's ability to meet its guarantees under the Contract, including risks relating to its financial strength and claims-paying ability.
 - (f) *Contract Changes Risk*. Describe the principal risks relating to any material reservation of rights under the Contract, including if applicable, the right to remove or substitute Portfolio Companies, add or remove Index-Linked Options and change the features of an Index-Linked Option from one

Crediting Period to the next, stop accepting additional purchase payments, and impose investment restrictions or limitations on transfers.

Item 6. Description of Insurance Company, Registered Separate Account, and Investment Options

Concisely discuss the organization and operation or proposed operation of the Insurance Company, Registered Separate Account, Variable Options, Index-Linked Options, and Fixed Options. Include the information specified below, as applicable.

(a) *Insurance Company.* Provide the name and address of the Insurance Company. State that the Insurance Company is obligated to pay all amounts promised to investors under the Contracts, subject to its financial strength and claims-paying ability.

Instruction. If applicable, indicate that the Insurance Company is relying on the exemption provided by rule 12h-7 under the Securities Exchange Act (17 CFR 240.12h-7).

(b) *Registered Separate Account.* Briefly describe the Registered Separate Account. Include a statement indicating that:

- (1) income, gains, and losses credited to, or charged against, the separate account reflect the separate account's own investment experience and not the investment experience of the Insurance Company's other assets; and
- (2) the assets of the separate account may not be used to pay any liabilities of the Insurance Company other than those arising from the Contracts.

(c) *Variable Options.* Briefly describe the Variable Options currently offered under the Contract, including statements indicating that:

- (1) Contract value allocated to a Variable Option will vary based on the investment experience of the corresponding Portfolio Company in which the Variable Option invests. There is a risk of loss of the entire amount invested.
- (2) Information regarding each Portfolio Company, including (i) its name, (ii) its type (e.g., money market fund, bond fund, balanced fund, etc.) or a brief statement concerning its investment objectives, (iii) its investment adviser and any sub-investment adviser, (iv) current expenses, and (v) performance is available in an appendix to the prospectus, and provide cross-references. State that each Portfolio Company has issued a prospectus that contains more detailed information about the Portfolio Company, and provide instructions regarding how investors may obtain paper or electronic copies.
- (3) Concisely discuss the rights of investors to instruct the Insurance Company on the voting of shares of the Portfolio Companies, including the manner in which votes will be allocated.

(d) *Index-Linked Options.*

- (1) Describe the Index-Linked Options currently offered under the Contract, including statements indicating that:
 - (i) The Insurance Company will credit positive or negative interest at the end of a Crediting Period to amounts allocated to an Index-Linked Option based, in part, on the performance of the Index. An investment in an Index-Linked Option is not an investment in the Index or in

any Index fund.

- (ii) The potential for investment loss could be significantly greater than the potential for investment gain. An investor could lose a significant amount of money if the Index declines in value.

Instruction. Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance, after taking into account the minimum guaranteed limit on Index loss provided under the Contract.

- (iii) An investor could lose a significant amount of money due to the Contract Adjustment if amounts are removed from an Index-Linked Option prior to the end of its Crediting Period.

Instruction. Prominently state as a percentage the maximum amount of loss an investor could experience from a negative Contract Adjustment. State that this loss could be greater due to surrender charges and tax consequences.

- (iv) The Insurance Company can add or remove Index-Linked Options and change the features of an Index-Linked Option from one Crediting Period to the next, including the Index and the current limits on Index gains and losses, subject to contractual minimum guarantees.
- (v) Information regarding the features of each currently offered Index-Linked Option, including (i) its name, (ii) its type (e.g., market Index, exchange-traded fund, etc.), or a brief statement describing the assets that the Index seeks to track (e.g., U.S. large-cap equities), (iii) its Crediting Period, (iv) its Index crediting methodology, (v) its limit on Index loss, and (vi) its guaranteed minimum limit on Index gain, is available in an appendix to the prospectus, and provide cross-references.

Instruction. This statement may be modified to conform to the table provided in response to Item 17(b).

(2) Describe how interest is calculated and credited for each Index-Linked Option.

(i) *Limits on Index Losses*

- (A) State that the Insurance Company will limit the negative Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Describe the manner(s) in which the Insurance Company will limit negative returns through the use of a floor, buffer, or some other rate or measure. Provide an example of how such rate could operate to limit a negative Index return (e.g., "if the Index return is -25% and the buffer rate is -10%, we will credit -15% (the amount that exceeds the buffer rate) at the end of the Crediting Period, meaning your Contract value will decrease by 15%").
- (B) Disclose the current limit on Index losses for each Index-Linked Option, and the minimum limit guaranteed for the life of the Contract for any Index-Linked Option. State that the current limit on Index losses will not change during an Index-Linked Option's Crediting Period.
- (C) Describe the factors the Insurance Company considers in determining the current rate for an Index-Linked Option, and how that choice may impact other features of the option set by the Insurance Company. Explain what an investor should consider

regarding limits on Index losses before selecting an Index-Linked Option for investment.

(ii) *Limits on Index Gains.*

- (A) State that the Insurance Company will limit the positive Index return used in calculating interest credited to an Index-Linked Option at the end of its Crediting Period. Describe the manner(s) in which the Insurance Company will limit positive returns through the use of a cap, participation rate, or some other rate or measure. Provide an example of how such rate could operate to limit a positive Index return (e.g., “if the Index return is 12% and the cap rate is 4%, we will credit 4% in interest at the end of the Crediting Period, meaning your Contract value will increase by 4%”).
- (B) Disclose the current limit on Index gains for each Index-Linked Option, and the minimum limit guaranteed for the life of the Contract for any Index-Linked Option. State that the current limit on Index gains will not change during an Index-Linked Option’s Crediting Period.
- (C) Describe the factors the Insurance Company considers in determining the current rate for an Index-Linked Option, and how that choice may impact other features of the option set by the Insurance Company. Explain what an investor should consider regarding limits on Index gains before selecting an Index-Linked Option for investment.

(iii) *Crediting Period.*

- (A) Generally describe the Index-Linked Option Crediting Periods available under the Contract (e.g., 1, 3, and 6 years) and the factors an investor should consider regarding different Crediting Period lengths before selecting an Index-Linked Option for investment.
- (B) Prominently state that amounts must remain in an Index-Linked Option until the end of its Crediting Period to be credited with all or partial interest, as applicable, and to avoid a possible Contract Adjustment in addition to potential surrender charges and tax consequences. Describe the transactions subject to a Contract Adjustment. Provide cross-references to related disclosure in the prospectus.

(iv) *Methodology and Examples.*

- (A) For each Index crediting methodology, describe how interest is calculated and credited at the end of a Crediting Period based on the interest crediting formula or performance measure (e.g. point-to-point, step-up calculations, enhanced performance).
- (B) For each Index, provide a bar chart showing the annual return for each of the last 10 calendar years (or for the life of the Index if less than 10 years). Provide a hypothetical example alongside each Index return that reflects the return after applying a 5% cap and a -10% buffer.

Include the following legend before the bar chart, in the format specified:

The bar chart shown below provides the Index’s annual returns for the last 10 calendar years (or for the life of the Index if less than 10 years), as well as the Index returns after applying a hypothetical 5% cap and a hypothetical -10%

buffer. The chart illustrates the variability of the returns from year to year and shows how hypothetical limits on Index gains and losses may affect these returns. Past performance is not necessarily an indication of future performance.

The performance below is NOT the performance of any Index-Linked Option. Your performance under the Contract will differ, perhaps significantly. The performance below may reflect a different return calculation, time period, and limit on Index gains and losses than the Index-Linked Options, and does not reflect Contract fees and charges, including surrender charges and the Contract Adjustment, which reduce performance.

Instructions.

1. Include only one legend if bar charts for multiple Indexes are presented.
2. Provide the corresponding numerical return adjacent to each bar.
3. If the Contract does not offer any Index-Linked Option that uses a cap in its Index crediting methodology, the Company may reflect the rate or measure used to limit Index gains under the Contract assuming a hypothetical percentage comparable to a 5% cap. If the Contract does not offer any Index-Linked Option that uses a buffer in its Index crediting methodology, the Company may reflect the rate or measure used to limit Index losses under the Contract assuming a hypothetical percentage comparable to a -10% buffer.
4. If applicable, disclose in a footnote to the table that the Index return does not reflect the dividends paid on the assets comprising the Index.
5. If applicable, disclose in a footnote to the table that the Index provider deducts fees and costs when calculating the Index return.
6. Do not include additional performance presentations or historical Index performance that precedes the inception of the Index.

(C) Provide a numerical example to illustrate the mechanics of each type of Index crediting methodology in a clear, concise, and understandable manner.

Include the following legend, in the format specified:

The following examples illustrate how we calculate and credit interest under each Index crediting methodology assuming hypothetical Index returns and hypothetical limits on Index gains and losses. The examples assume no withdrawals.

Instructions.

1. Assume hypothetical returns and limits that are reasonable based on current and anticipated market conditions and Contract sales.
2. Include in the example a positive Index return above the limit on Index gains and a negative Index return below the limit on Index losses.

3. Reflect any charges subtracted from interest credited or deducted from Contract value in the Index-Linked Options.
4. Additional examples, charts, graphs, or other presentations may be included if clear, concise, and understandable.

(v) *Indexes.*

- (A) For each Index, briefly describe the types of investments that compose the Index. Direct the investor to additional information about the Index.

Instructions.

1. Where there is more than one version of an Index (for example a total return version, price return version), it should be clear which Index relates to the Index-Linked Option.
 2. If the Index is an exchange-traded fund ("ETF"), clarify whether the Index performance is based on the ETF's Net Asset Value or closing value. Also clarify if the performance is based on the share price of the ETF and the impact of using share price as opposed to total return.
 3. If applicable, state that the Index does not reflect dividends paid on the securities comprising the Index, or that the Index deducts fees and costs when calculating Index performance, which will reduce Index performance.
- (B) State that the Insurance Company reserves the right to substitute an Index prior to the end of a Crediting Period. Explain: (a) all circumstances that could necessitate a substitution; (b) how the Insurance Company would choose a replacement Index; (c) when and how investors will be notified of any such change; (d) how Index return will be calculated at the end of the Crediting Period; and (e) what would happen if a suitable replacement Index were not found, including whether the Index-Linked Option will be discontinued prior to the end of the Crediting Period.

- (vi) *Maturity.* State whether investors will receive advance notice of a maturing Index-Linked Option. Disclose how an investor may provide instructions on reallocating Contract value at the end of the Crediting Period, and any automatic default reallocation in the absence of such instructions.

Instruction. Explain how investors will be informed of Index-Linked Options available for allocation at the end of a Crediting Period, including any changes to currently offered Index-Linked Options, and the discontinuance or addition of Index-Linked Options.

- (vii) *Other Material Features.* Describe any other material aspect of the Index-Linked Options, including limitations on transfers to or from the Index-Linked Options, rate holds, "bail-out" provisions, start dates, and holding accounts. If applicable, briefly describe how charges may impact Index-Linked Option value.

(e) *Fixed Options.*

- (1) Describe the Fixed Options currently offered under the Contract. State that information regarding the features of each currently offered Fixed Option, including (i) its name, (ii) its term,

and (iii) its minimum guaranteed interest rate, is available in an appendix to the prospectus, and provide cross-references.

Instruction. This statement may be modified to conform to the table provided in response to Item 17(c).

- (2) Describe how interest is calculated and when it is credited for each Fixed Option. Disclose the length of the term and the minimum guaranteed interest rate.

Instruction. Disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under state law.

- (i) **Maturity.** If applicable, state whether investors will receive advance notice of a maturing Fixed Option. Disclose how an investor may provide instructions on reallocating Contract value at the end of the term, and any automatic default reallocation in the absence of such instructions.

Instruction. Explain how investors will be informed of Fixed Options available for allocation at the end of a term, including any changes to currently offered Fixed Options, and the discontinuance or addition of Fixed Options.

- (ii) **Other Material Features.** Describe any other material aspect of the Fixed Options, including limitations on transfers to or from the Fixed Options, rate holds, start dates, and holding accounts.

Item 7. Charges

- (a) **Description.** Briefly describe all current charges deducted from purchase payments, Contract value, or Investment Option assets, or any other source (e.g., sales loads, premium taxes and other taxes, administrative and transaction charges, risk charges, Contract loan charges, and optional benefit charges). Indicate whether each charge will be deducted from purchase payments, Contract value, or Investment Option assets, the proceeds of withdrawals or surrenders, or some other source. When possible, specify the amount of any charge as a percentage or dollar figure (e.g., 0.95% of average daily net assets or \$5 per exchange). For recurring charges, specify the frequency of the deduction (e.g., daily, monthly, annually). Identify the person who receives the amount deducted, briefly explain what is provided in consideration for the charges, and explain the extent to which any charge can be modified. Where it is possible to identify what is provided in consideration for a particular charge (e.g., use of sales load to pay distribution costs), explain what is provided in consideration for that charge separately.

Instructions.

1. Describe the sales loads applicable to the Contract and how sales loads are charged and calculated, including the factors affecting the computation of the amount of the sales load. If the Contract has a front-end sales load, describe the sales load as a percentage of the applicable measure of purchase payments and as a percentage of the net amount invested for each breakpoint. For Contracts with a deferred sales load, describe the sales load as a percentage of the applicable measure of purchase payments (or other basis) that the deferred sales load may represent. Percentages should be shown in a table. Identify any events on which a deferred sales load is deducted (e.g., surrender or withdrawal). The description of any deferred sales load should include how the deduction will be allocated among Investment Options and when, if ever, the sales load will be waived (e.g., if the Contract provides a free withdrawal amount).

2. Unless set forth in response to Instruction 1, list any special purchase plans or methods established pursuant to a rule or an exemptive order that reflect scheduled variations in, or elimination of, the sales load (e.g., group discounts, waiver of sales load upon annuitization or attainment of a certain age, waiver of deferred sales load for a certain percentage of Contract value ("free corridor"), investment of proceeds from another policy, exchange privileges, employee benefit plans, or the terms of a merger, acquisition or exchange offer made pursuant to a plan of reorganization); identify each class of individuals or transactions to which such plans apply; state each different sales charge available as a percentage of the public offering price and as a percentage of the net amount invested; and state from whom additional information may be obtained. Describe any other special purchase plans or methods established pursuant to a rule that reflect other variations in, or elimination of, the sales load or in any administrative charge or other deductions from purchase payments, and generally describe the basis for the variation or elimination in the sales load or other deduction (i.e., the size of the purchaser, a prior or existing relationship with the purchaser, the purchaser's assumption of certain administrative functions, or other characteristics that result in differences in costs or services).
 3. If proceeds from sales loads will not cover the expected costs of distributing the Contracts, identify from what source the shortfall, if any, will be paid. If any shortfall is to be made from assets from the Insurance Company's general account, disclose, if applicable, that any amounts paid by the Insurance Company may consist, among other things, of proceeds derived from Base Contract Expenses.
 4. If the Contract's charge for premium or other taxes varies according to jurisdiction, identification of the range of current premium or other taxes is sufficient.
- (b) *Commissions Paid to Dealers.* State the commissions paid to dealers as a percentage of purchase payments.
- (c) *Portfolio Company Charges.* State that charges are deducted from and expenses paid out of the assets of the Portfolio Companies that are described in the prospectuses for those companies.
- (d) *Operating Expenses.* Describe any type of operating expenses for which the Registered Separate Account is responsible. If organizational expenses of the Registered Separate Account are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.
- (e) *Contract Adjustment.* Describe any Contract Adjustment under the Contract.

Instructions.

1. State the maximum potential loss, as a percentage, that could result from a negative Contract Adjustment.
2. Define the period during which the Contract Adjustment applies.
3. Describe all transactions subject to the Contract Adjustment. For example, as applicable, state whether an adjustment will be applied if amounts are transferred or withdrawn from an Index-Linked Option or from the Contract due to a partial withdrawal, surrender, election of an annuity option, payment of death benefit proceeds, etc., or where a particular Contract option (such as a withdrawal under a guaranteed living benefit) is utilized. Describe any circumstances under which the adjustment will be waived.
4. Briefly describe in simple terms the manner in which the Contract Adjustment is determined,

including: (i) whether the adjustment results from the application of a particular formula or set of factors (e.g., a change in value of hypothetical derivative instruments); (ii) the factors that may cause a positive or negative adjustment (e.g., timing of withdrawal, Index volatility, increase in external interest rates, etc.); (iii) a description of any proportionate withdrawal calculations; and (iv) how a positive or negative adjustment is applied (e.g., allocated among the Investment Options, applied to a withdrawal amount). Detailed disclosure on the method of calculating the Contract Adjustment should be placed in the SAI in response to Item 22. Provide a cross-reference to the SAI for more information about the Contract Adjustment, including examples illustrating the operation of the adjustment.

5. State how the Contract Adjustment will affect the Contract value, surrender value, death benefit, and any living benefits, and disclose that a negative adjustment could reduce the values under the Contract by an amount greater than the value withdrawn. If applicable, state the impact of the Contract Adjustment on interest to be credited to an Index-Linked Option at the end of its Crediting Period.
6. Describe the relationship between the Contract Adjustment and any other charges or fees applied under the Contract, including, for example, the sequence in which charges and adjustments are applied.
7. Briefly describe the purpose of the Contract Adjustment (e.g., to transfer risk from the Insurance Company to the investor to protect the Insurance Company from losses on its own investments supporting Contract guarantees if amounts are withdrawn prematurely).
8. Disclose how an investor can obtain information about the current value of a Contract Adjustment. State that this value can fluctuate daily, and the current value quoted to the investor may differ from the actual value calculated at the time of adjustment.

Item 8. General Description of Contracts

- (a) *Contract Rights.* Identify the person or persons (e.g., the investor, participant, annuitant, or beneficiary) who have material rights under the Contracts, and the nature of those rights (1) during the accumulation period, (2) during the annuity period, and (3) after the death of the annuitant or investor.

Instruction. Disclose all material state variations and intermediary-specific variations (e.g., variations resulting from different brokerage channels) to the offering.

- (b) *Contract Provisions and Limitations.* Briefly describe any provisions and limitations for:

- (1) minimum Contract value, and the consequences of falling below that amount;
- (2) allocation of purchase payments among Investment Options;
- (3) transfer of Contract value between Investment Options, including transfer programs (e.g., dollar cost averaging, portfolio rebalancing, asset allocation programs, and automatic transfer programs);
- (4) conversion or exchange of Contracts for another contract, including a fixed or variable annuity or life insurance contract; and

Instruction. In discussing conversion or exchange of Contracts, the Registrant should include any time limits on conversion or exchange, the name of the company issuing the other contract and whether that company is affiliated with the issuer of the Contract, and how the cash value of the Contract will be affected by the conversion or exchange.

(5) buyout offers, including interests or participations therein.

(c) *General Account.* Describe the obligations under the Contract that are funded by the Insurance Company's general account (e.g., Index-Linked or Fixed Options, death benefits, living benefits, or other benefits available under the Contract), and state that these amounts are subject to the Insurance Company's claims-paying ability and financial strength.

(d) *Contract or Registered Separate Account Changes.* Briefly describe the changes that can be made in the Contracts or the operations of the Registered Separate Account by the Registered Separate Account or the Insurance Company, including:

- (1) why a change may be made (e.g., changes in applicable law or interpretations of law);
- (2) who, if anyone, must approve any change (e.g., the investor or the Commission); and
- (3) who, if anyone, must be notified of any change.

Instruction. Describe only those changes that would be material to a purchaser of the Contracts, such as a reservation of the right to deregister the Registered Separate Account under the Investment Company Act or to substitute one Portfolio Company for another. Do not describe possible non-material changes, such as changing the time of day at which accumulation unit values are determined.

(e) *Class of Purchasers.* Disclose any limitations on the class or classes of purchasers to whom the Contract is being offered.

(f) *Frequent Transfers among Variable Options.*

- (1) Describe the risks, if any, that frequent transfers of Contract value among Variable Options may present for other investors and other persons (e.g., participants, annuitants, or beneficiaries) who have material rights under the Contract.
- (2) State whether or not the Registered Separate Account or Insurance Company has adopted policies and procedures with respect to frequent transfers of Contract value among Variable Options.
- (3) If neither the Registered Separate Account nor the Insurance Company has adopted any such policies and procedures, provide a statement of the specific basis for the view of the Insurance Company that it is appropriate for the Registered Separate Account and Insurance Company not to have such policies and procedures.
- (4) If the Registered Separate Account or Insurance Company has any such policies and procedures, describe those policies and procedures, including:
 - (i) whether or not the Registered Separate Account or Insurance Company discourages frequent transfers of Contract value among Variable Options;
 - (ii) whether or not the Registered Separate Account or Insurance Company accommodates frequent transfers of Contract value among Variable Options; and
 - (iii) any policies and procedures of the Registered Separate Account or Insurance Company for deterring frequent transfers of Contract value among Variable Options, including any restrictions imposed by the Registered Separate Account or Insurance Company to prevent or

minimize frequent transfers. Describe each of these policies, procedures, and restrictions with specificity. Indicate whether each of these restrictions applies uniformly in all cases or whether the restriction will not be imposed under certain circumstances, including whether each of these restrictions applies to trades that occur through omnibus accounts at intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators. Describe with specificity the circumstances under which any restriction will not be imposed. Include a description of the following restrictions, if applicable:

- (A) any restrictions on the volume or number of transfers that may be made within a given time period;
 - (B) any transfer fee;
 - (C) any costs or administrative or other fees or charges that are imposed on persons deemed to be engaged in frequent transfers of Contract value among Variable Options, together with a description of the circumstances under which such costs, fees, or charges will be imposed;
 - (D) any minimum holding period that is imposed before a transfer may be made from a Variable Option into another;
 - (E) any restrictions imposed on transfer requests submitted by overnight delivery, electronically, or via facsimile or telephone; and
 - (F) any right of the Registered Separate Account or Insurance Company to reject, limit, delay, or impose other conditions on transfers or to terminate or otherwise limit Contracts based on a history of frequent transfers among Variable Options, including the circumstances under which such right will be exercised.
- (5) If applicable, include a statement, adjacent to the disclosure required by paragraphs (f)(1) through (f)(4) of this Item, that the Statement of Additional Information includes a description of all arrangements with any person to permit frequent transfers of Contract value among Variable Options.

Item 9. Annuity Period

Briefly describe the annuity options available. The discussion should include:

- (a) Material factors that determine the level of annuity benefits;
- (b) The annuity commencement date (give the earliest and latest possible dates);
- (c) Frequency and duration of annuity payments, and the effect of these on the level of payment;
- (d) The effect of assumed investment return;
- (e) Any minimum amount necessary for an annuity option and the consequences of an insufficient amount; and
- (f) Rights, if any, to change annuity options or to effect a transfer of investment base after the annuity commencement date.

Instructions:

1. Describe the choices, if any, available to a prospective annuitant, and the effect of not specifying a choice. Where an annuitant is given a choice in assumed investment return, explain the effect of choosing a higher, as opposed to a lower, assumed investment return.
 2. Detailed disclosure on the method of calculating annuity payments should be placed in the SAI in response to Item 25.
- (g) If applicable, state that the investor will not be able to withdraw any Contract value amounts after the annuity commencement date.

Item 10. Benefits Available Under the Contract

- (a) Include the following information:

The following table[s] summarize information about the benefits available under the contract.

Name of Benefit	Purpose	Is Benefit Standard or Optional	Maximum Fee	Brief Description of Restrictions/ Limitations
			[]%	
			[]%	

Instructions.

1. General.

- (a) The table required by paragraph (a) of this Item is meant to provide a tabular summary overview of the benefits described in paragraph (b) of this Item (e.g., standard or optional death benefits, standard or optional living benefits, etc.).
- (b) If the Contract offers multiple benefits of the same type (e.g., death benefit, accumulation benefit, withdrawal benefit, long-term care benefit), the Registrant may include multiple tables in response to paragraph (a) of this Item, if doing so might better permit comparisons of different benefits of the same type. Registrants that choose to use a single table should consider whether grouping together multiple benefits of the same type, with appropriate headings, might similarly permit better comparisons of those benefits.
- (c) The Registrant should include appropriate titles, headings, or any other information to promote clarity and facilitate understanding of the table(s) presented in response to paragraph (a) of this Item. For example, if certain optional benefits are only available to certain investors (e.g., investors who invested during specific time periods), the table could include footnotes or headings to identify which optional benefits are affected and to whom those optional benefits are available.

2. Name of Benefit. State the name of each benefit included in the table(s).

3. Purpose. Briefly describe the purpose of each benefit included in the table(s).

4. Is Benefit Standard or Optional. State whether the benefit is standard or optional. If the Registrant includes titles or headings for the table(s) specifying whether the benefit is standard or optional, the Registrant does not need to include the "Is Benefit Standard or Optional" column in the table(s).

5. *Maximum Fee.* State the maximum fee associated with each benefit included in the table(s). Include parentheticals providing information about what the stated percentage refers to (e.g., percentage of Contract value, percentage of benefit base, etc.).
 6. *Current Fee.* The Registrant may disclose the current charge in a separate column titled "Current Charge," if the disclosure of the current charge is no more prominent than, and does not obscure or impede understanding of, the disclosure of the maximum charge.
 7. *Brief Description of Restrictions/Limitations.* Briefly describe the restriction(s) or limitation(s) associated with each benefit. Registrants are encouraged to use short phrases (e.g., "benefit limits investment options available," "withdrawals could terminate benefit") to describe the restriction(s) or limitation(s).
- (b) Briefly describe any benefits (e.g., death benefits, living benefits, etc.) offered under a Contract, including:
- (1) Whether the benefit is standard or optional;
 - (2) The operation of the benefit, including the amount of the benefit and how the benefit amount may vary, the circumstances under which the value of the benefit may increase or be reduced (including the effect of withdrawals), and how the benefit may be terminated;
 - (3) Fees and costs, if any, associated with the benefit; and
 - (4) How the benefit amount is calculated and payable and the effect of choosing a specific method of payment on calculation of the benefit.
- (c) Briefly describe any limitations, restrictions and risks associated with any benefit offered under the Contract (e.g., restrictions on which Portfolio Companies or Investment Options may be selected; risk of reduction or termination of benefit or of additional costs resulting from excess withdrawals).

Instruction. In responding to paragraphs (b) and (c) of this Item, provide one or more examples illustrating the operation of each benefit in a clear, concise, and understandable manner.

Item 11. Purchases and Contract Value

- (a) Briefly describe the procedures for purchasing a Contract. Include a concise explanation of:
- (1) the minimum initial and subsequent purchase payments required and any limitations on the amount of purchase payments that will be accepted (if there are separate limits for each Investment Option, state these limits);
 - (2) a statement of when initial and subsequent purchase payments are credited; and
 - (3) a description of how purchase payments are allocated to the Investment Options, including how such allocation would take place in the absence of instructions from the investor.
- (b) For Variable Options:
- (1) Describe the manner in which purchase payments are credited, including: (A) an explanation that purchase payments are credited on the basis of accumulation unit value; (B) how accumulation unit value is determined; and (C) how the number of accumulation units credited to a Contract is determined.

- (2) Explain that investment performance of the Portfolio Companies, expenses, and deduction of certain charges affect accumulation unit value and/or the number of accumulation units.
 - (3) Describe when calculations of accumulation unit value are made and that purchase payments are credited to a Contract on the basis of accumulation unit value next determined after receipt of a purchase payment.
- (c) Identify each principal underwriter (other than the Insurance Company) of the Contracts and state its principal business address. If the principal underwriter is affiliated with the Registrant or any affiliated person of the Registrant, identify how they are affiliated (e.g., the principal underwriter is controlled by the Insurance Company).

Item 12. Surrenders and Withdrawals

- (a) *Surrender and Withdrawal*. Briefly describe how surrenders and withdrawals can be made from a Contract, including any limits on the ability to surrender, how the proceeds are calculated, and when they are payable. Briefly describe the potential effect of such surrenders and withdrawals.
- (b) *Additional Information Regarding Surrender and Withdrawal*. Indicate generally whether and under what circumstances surrenders and withdrawals are available under a Contract, including the minimum and maximum amounts that may be surrendered or withdrawn, any limits on their availability, how the proceeds are calculated, and when the proceeds are payable.
- (c) *Effect of Surrender and Withdrawal*. Indicate generally whether and under what circumstances surrenders or withdrawals will affect a Contract's cash value, death benefit(s), and/or any living benefits, and whether any charge(s) and Contract Adjustment will apply.
- (d) *Investment Option Allocation*. Describe how surrenders and withdrawals will be allocated to the Investment Options, including how such allocation would take place in the absence of instructions from the investor.

Instruction. The Registrant should generally describe the terms and conditions that apply to surrender and withdrawal transactions. Technical information regarding the determination of amounts available to be surrendered or withdrawn should be included in the SAI.

- (e) *Involuntary Redemption*. Briefly describe any provision for involuntary redemptions under the Contract and the reasons for it, such as the size of the account or infrequency of purchase payments.
- (f) *Revocation Rights*. Briefly describe any revocation rights (e.g., "free look" provisions), including a description of how the amount refunded is determined. Disclose the method for crediting Variable Option earnings to purchase payments during the free look period, and whether Investment Options are limited during the free look period.

Item 13. Loans

Briefly describe the loan provisions of the Contract, including any of the following that are applicable.

- (a) *Availability of Loans*. State that a portion of the Contract's cash surrender value may be borrowed. State how the amount available for a loan is calculated.
- (b) *Limitations*. Describe any limits on availability of loans (e.g., a prohibition on loans during the first Contract year).

- (c) *Interest*. Describe how interest accrues on the loan, when it is payable, and how interest is treated if not paid. Explain how interest on the amount in the collateral account is credited to the Contract and allocated to the investment options.
- (d) *Effect on Contract Value and Death Benefit*. Describe how loans and loan repayments affect Contract value and how they are allocated among the investment options, including, if applicable, how such allocation would take place in the absence of instructions from the investor. Include (i) a brief explanation that amounts borrowed under a Contract do not participate in the investment experience of an Investment Option and that loans, therefore, can affect the Contract value and death benefit whether or not the loan is repaid, and (ii) a brief explanation that the Contract value at surrender and the death proceeds payable will be reduced by the amount of any outstanding Contract loan plus accrued interest.
- (e) *Other Effects*. Describe any other effect that a loan could have on the Contract (e.g., the effect of a Contract loan in excess of Contract value).
- (f) *Procedures*. Describe the loan procedures, including how and when amounts borrowed are transferred out of the Investment Options and how and when amounts repaid are credited to the Investment Options.

Item 14. Taxes

- (a) *Tax Consequences*. Describe the material tax consequences to the investor and beneficiary of buying, holding, exchanging, or exercising rights under the Contract.

Instruction. Discuss the taxation of annuity payments, death benefit proceeds, periodic and non-periodic withdrawals, loans, and any other distribution that may be received under the Contract, as well as the tax benefits accorded the Contract, and other material tax consequences. Describe, if applicable, whether the tax consequences vary with different uses of the Contract.

- (b) *Qualified Plans*. Identify the types of qualified plans for which the Contracts are intended to be used.

Instructions:

1. Identify the types of persons who may use the plans (e.g., corporations, self-employed individuals) and disclose, if applicable, that the terms of the plan may limit the rights otherwise available under the Contracts.
 2. Do not describe the Internal Revenue Code requirements for qualifications of plans or the non-annuity tax consequences of qualification (e.g., the effect on employer taxation).
- (c) *Effect*. Describe the effect, if any, of taxation on the determination of cash values or Contract values.

Item 15. Legal Proceedings

Describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Registered Separate Account, the principal underwriter, or the Insurance Company is a party. Include the name of the court where the case is pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceedings instituted, or known to be contemplated, by a governmental authority.

Instruction. For purposes of this requirement, legal proceedings are material only to the extent that they are likely to have a material adverse effect on the Registered Separate Account, the ability of the principal underwriter to perform its contract with the Registrant, or the ability of the Insurance Company to meet its obligations under the Contracts.

Item 16. Financial Statements

If all of the required financial statements of the Registered Separate Account and the Insurance Company (see Item 26 and General Instruction C.3.(b)) are not in the prospectus, state, under a separate caption, where the financial statements may be found. Briefly explain how investors may obtain any financial statements not in the Statement of Additional Information.

Item 17. Investment Options Available Under the Contract

Include the following information as an Appendix under the heading **“Appendix: Investment Options Available Under the Contract.”** A Registrant may modify the Appendix heading as appropriate under the Contract.

(a) *Variable Options.* Include the following legend, in the format specified below:

The following is a list of Portfolio Companies available under the Contract. More information about the Portfolio Companies is available in the prospectuses for the Portfolio Companies, which may be amended from time to time and can be found online at [____]. You can also request this information at no cost by calling [____] or by sending an email request to [____].

The current expenses and performance information below reflects fee and expenses of the Portfolio Companies, but do not reflect the other fees and expenses that your Contract may charge [, such as Platform Charges]. Expenses would be higher and performance would be lower if these other charges were included. Each Portfolio Company’s past performance is not necessarily an indication of future performance.

Type/Investment Objective	Portfolio Company and Adviser/ Subadviser	Current Expenses	Average Annual Total Returns		
			(as of 12/31/___)		
			1 year	5 year	10 year
[Insert]	[Names of Portfolio Company and adviser/subadviser]	[_]%	[_]%	[_]%	[_]%

Instructions.

1. General.

- (a) Only include Portfolio Companies that are investment options under the Contract. Indicate if investments in any of the Portfolio Companies are restricted (e.g., because of a “hard” or “soft” close).
- (b) The introductory legend to the table must provide a website address, other than the address of the Commission’s electronic filing system; toll free telephone number; and email address that investors can use to obtain the prospectuses of the Portfolio Companies and to request other information about the Portfolio Companies. The website address must be specific

enough to lead investors directly to the prospectuses of the Portfolio Companies, rather than to the home page or other section of the website on which the materials are posted. The website could be a central site with prominent links to each document.

- (c) The legend may indicate, if applicable, that the prospectuses and other information are available from a financial intermediary (such as an insurance sales agent or broker-dealer) through which the Contract may be purchased or sold.
 - (d) Registrants not relying upon rule 498A(j) under the Securities Act [17 CFR 230.498A(j)] with respect to the Portfolio Companies that are investment options under the Contract may, but are not required to, provide the next-to-last sentence of the first paragraph of the introductory legend to the table regarding online availability of the prospectuses.
 - (e) If applicable, include a statement explaining that updated performance information is available and providing a website address and/or toll-free (or collect) telephone number where the updated information may be obtained.
2. *Type/Investment Objective.* Briefly describe each Portfolio Company's type (e.g., money market fund, bond fund, balanced fund, etc.), or include a brief statement describing the Portfolio Company's investment objectives.
 3. *Portfolio Company and Adviser/Subadviser.* State the name of each Portfolio Company and its adviser/subadviser, as applicable. The adviser's/sub-adviser's name may be omitted if it is incorporated into the name of the Portfolio Company. A Registrant also need not identify a sub-adviser whose sole responsibility for the Portfolio Company is limited to day-to-day management of the Portfolio Company's holdings of cash and cash equivalent instruments, unless the Portfolio Company is a money market fund or other Portfolio Company with a principal investment strategy of regularly holding cash and cash equivalent instruments. If the Portfolio Company has three or more sub-advisers, each of which manages a portion of the Portfolio Company's portfolio, the Registrant need not identify each such sub-adviser, except that the Registrant must identify any sub-adviser that is (or is reasonably expected to be) responsible for the management of a significant portion of the Portfolio Company's net assets. For purposes of this paragraph, a significant portion of a Portfolio Company's net assets generally will be deemed to be 30% or more of the Portfolio Company's net assets.
 4. *Current Expenses.* Report "Total Annual Fund Operating Expenses" as calculated pursuant to Item 3 of Form N-1A [17 CFR §§ 239.15A and 274.11A], reflecting any expense reimbursements or fee waiver arrangements that are in place and reported in the Portfolio Company's registration statement pursuant to Item 3 of Form N-1A. If applicable, identify each Portfolio Company subject to an expense reimbursement or fee waiver arrangement and provide a footnote stating that their annual expenses reflect temporary fee reductions.
 5. *Platform Charge.* If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, add a column titled "Platform Charge" disclosing the current Platform Charge for each Portfolio Company. If applicable, also provide a footnote indicating the highest level to which any relevant Platform Charge may be increased.
 6. *Current Expenses + Platform Charge.* If the Insurance Company charges a Platform Charge to make any of the Portfolio Companies available as investment options under the Contract, add a column titled "Current Expenses + Platform Charge." The column contemplated by this Instruction

must be presented in a manner reasonably calculated to draw investor attention to that column.

7. *Average Annual Total Returns.* For purposes of this Item, “average annual total returns” means the “average annual total return” (before taxes) as calculated pursuant to Item 4(b)(2)(iii) of Form N-1A.

(b) *Index-Linked Options.* Include the following legend, in the format specified below:

The following is a list of Index-Linked Options currently available under the Contract. We may change the features of the Index Linked Options listed below (including the Index and the current limits on Index gains and losses), offer new Index-Linked Options, and terminate existing Index-Linked Options. We will provide you with written notice before doing so. Information about current limits on Index gains is available at [provide website address].

Note: If amounts are withdrawn from an Index-Linked Option before the end of its Crediting Period, we may apply a Contract Adjustment. This may result in a significant reduction in your Contract value that could exceed any protection from Index loss that would be in place if you held the option until the end of the Crediting Period.

Index	Type of Index	Crediting Period	Index Crediting Methodology	Limit on Index Loss (if held until end of Crediting Period)	Guaranteed Minimum Limit on Index Gain
[Name of Index]	[Insert]	[] Year	[]	[]%	[]%

Instructions.

1. *General.*

- (a) Include appropriate cross-references in the legend to the section(s) of the prospectus that describe the features of the Index-Linked Options as well as the Contract Adjustment.
- (b) Only include those Index Linked Options that are available under the Contract. Indicate if investments in any of the Index-Linked Options are restricted (e.g., because of a “hard” or “soft” close).
- (c) An Insurance Company may add, modify, or exclude table headings only as necessary to describe the material features of an Index-Linked Option.
- (d) If an Index provider calculates the Index return in a manner that does not reflect the full investment performance of the assets tracked by the Index (e.g., the return does not reflect dividends paid on the assets composing the Index, the return reflects a fee or cost, etc.), then include, if applicable, a footnote to the table stating that the Index return does not reflect the full investment performance of the assets it tracks, which will reduce Index performance.
- (e) The website address in the legend must be specific enough to lead investors directly to current rates, rather than to the home page or other section of the website on which the rates are posted.

2. *Index.* Provide the name of the Index.
3. *Type.* Briefly describe the type of Index (e.g., market index, exchange-traded fund, etc.), or include a brief statement describing the assets that the Index seeks to track (e.g., U.S. large-cap equities).
4. *Crediting Period.* State the duration of the Index-Linked Option.
5. *Index Crediting Methodology.* If the Insurance Company utilizes multiple index crediting methodologies under the Contract (e.g., point-to-point, step-up, enhanced upside, etc.), include a column indicating the type of methodology used for each Index-Linked Option.
6. *Limit on Index Loss (if held until end of Crediting Period).* State the current percentage used by the Insurance Company in its interest crediting methodology to limit the amount of negative Index return credited to the Index-Linked Option. Identify in the table whether this limit is a buffer, floor, or some other rate or measure.
7. *Limit on Index Gain.* State the guaranteed minimum percentage the Insurance Company may use in its interest crediting methodology to limit the amount of positive Index return credited to the Index-Linked Option. Identify in the table whether this limit is a cap, participation rate, or some other rate or measure.

(c) *Fixed Options.* Include the following legend, in the format specified below:

The following is a list of Fixed Options currently available under the Contract. We may change the features of the Fixed Options listed below, offer new Fixed Options, and terminate existing Fixed Options. We will provide you with written notice before doing so.

Name	Term	Minimum Guaranteed Interest Rate
[Name of Fixed Option]	[] Year	[]%

Instructions.

1. *General.*

- (a) Include appropriate cross-references in the legend to the section(s) of the prospectus that describe the features of the Fixed Options.
- (b) Only include those Fixed Options that are available under the Contract.
- (c) A Company may add, modify, or exclude table headings only as necessary to describe the material features of a Fixed Option.

2. *Term.* State the duration of the Fixed Option.

3. *Minimum Guaranteed Interest Rate.* Disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under state law.

(d) *Restrictions.* If the availability of one or more Investment Options varies by benefit offered under the Contract:

- (1) The following sentence should be added to the first paragraph of the legend preceding each table above, as applicable: “Depending on the [optional] benefits you choose, you may not be able to invest in certain Investment Options, as noted below.”; and
- (2) Indicate which Investment Options are available (or are restricted) under the benefits offered under the Contract. The Appendix could incorporate a separate table that is structured pursuant to the following example, or could use any other presentation that might promote clarity and facilitate understanding:

[Investment Option]	[Benefit #1]	[Benefit #2]	[Benefit #3]	[Benefit #4]
Investment Option A	☒	☒	☒	☒
Investment Option B	☒	☒	☒	
Investment Option C	☒	☒		
Investment Option D	☒			

PART B - INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION**Item 18. Cover Page and Table of Contents**

(a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

- (1) The Registered Separate Account's name.
- (2) The Insurance Company's name.
- (3) The name of the Contract and the Class or Classes, if any, to which the Contract relates.
- (4) A statement or statements:
 - (i) That the SAI is not a prospectus;
 - (ii) How the prospectus may be obtained; and
 - (iii) Whether and from where information is incorporated by reference into the SAI, as permitted by General Instruction D.

Instruction. Any information incorporated by reference into the SAI must be delivered with the SAI.

- (5) The date of the SAI and the prospectus to which the SAI relates.
- (b) *Table of Contents.* Include under appropriate captions (and subcaptions) a list of the contents of the SAI and, when useful, provide cross-references to related disclosure in the prospectus.

Item 19. General Information and History

- (a) *Insurance Company.* Provide the date and form of organization of the Insurance Company, the name of the state or other jurisdiction in which the Insurance Company is organized, and a description of the general nature of the Insurance Company's business.

Instruction. The description of the Insurance Company's business should be short and need not list all of the businesses in which the Insurance Company engages or identify the jurisdictions in which it does business if a general description (e.g., "variable annuity" or "reinsurance") is provided.

- (b) *Registered Separate Account.* Provide the date and form of organization of the Registered Separate Account and the Registered Separate Account's classification pursuant to section 4 of the Investment Company Act [15 U.S.C. 80a-4] (i.e., a separate account and a unit investment trust).
- (c) *History of Insurance Company and Registered Separate Account.* If the Insurance Company's name was changed during the past five years, state its former name and the approximate date on which it was changed. If, at the request of any state, sales of contracts offered by the Registered Separate Account have been suspended at any time, or if sales of contracts offered by the Insurance Company have been suspended during the past five years, briefly describe the reasons for and results of the suspension. Briefly describe the nature and results of any bankruptcy, receivership, or similar proceeding, or any other material reorganization, readjustment, or succession of the Insurance Company during the past five years.
- (d) *Ownership of Registered Separate Account Assets.* If 10 percent or more of the assets of any Variable Option are not attributable to Contracts or to accumulated deductions or reserves (e.g., initial capital contributed by the Insurance Company), state what percentage those assets are of the

total assets of the Registered Separate Account. If the Insurance Company, or any other person controlling the assets, has any present intention of removing the assets from the Registered Separate Account, so state.

- (e) *Control of Insurance Company.* State the name of each person who controls the Insurance Company and the nature of its business.

Instruction. If the Insurance Company is controlled by another person that, in turn, is controlled by another person, give the name of each control person and the nature of its business.

Item 20. Non-Principal Risks of Investing in the Contract

Summarize the non-principal risks of purchasing a Contract to the extent not disclosed in the prospectus.

Item 21. Services

- (a) *Expenses Paid by Third Parties.* Describe all fees, expenses, and costs of the Registered Separate Account that are to be paid by persons other than the Insurance Company or the Registered Separate Account, and identify those persons.
- (b) *Service Agreements.* Summarize the substantive provisions of any management-related service contract that may be of interest to a purchaser of the Contracts, under which services are provided to the Registrant in connection with the Contracts, unless the contract is described in response to some other item of the form. Indicate the parties to the contract, and the total dollars paid and by whom for each of the past three years.

Instructions:

1. The term “management-related service contract” includes any contract with the Registrant to keep, prepare, or file accounts, books, records, or other documents required under federal or state law, or to provide any similar services with respect to the daily administration of the Registered Separate Account, but does not include the following:
 - (a) Any agreement with the Registrant to act as custodian or agent to administer purchases and redemptions under the Contracts, and
 - (b) Any contract with the Registrant for outside legal or auditing services, or contract for personal employment entered into with the Registrant in the ordinary course of business.
 2. In summarizing the substantive provisions of any management-related service contract, include the following:
 - (a) The name of the person providing the service;
 - (b) The direct or indirect relationships, if any, of the person with the Registered Separate Account, the Insurance Company, or the principal underwriter; and
 - (c) The nature of the services provided, and the basis of the compensation paid for the services for the Registrant’s last three fiscal years.
- (c) *Other Service Providers.*
- (1) Unless disclosed in response to paragraph (b) or another item of this form, identify and state the

principal business address of any person who provides significant administrative or business affairs management services for the Registrant in connection with the Contracts (e.g., an “Administrator,” “Sub-Administrator,” “Servicing Agent”), describe the services provided, and the compensation paid for the services.

- (2) State the name and principal business address of the Registered Separate Account’s custodian and Registrant’s independent public accountant and describe generally the services performed by each.
- (3) If the Registered Separate Account’s assets are held by a person other than the Insurance Company, a commercial bank, trust company, or depository registered with the Commission as custodian, state the nature of the business of each such person.
- (4) If an affiliated person of the Registered Separate Account or the Insurance Company, or an affiliated person of such an affiliated person, acts as administrative or servicing agent for the Registrant in connection with the Contracts, describe the services the person performs and the basis for remuneration. State, for the past three years, the total dollars paid for the services, and by whom.

Instruction. No disclosure need be given in response to paragraph (c)(4) of this Item for an administrative or servicing agent who is also the Insurance Company.

- (5) If the Insurance Company is the principal underwriter of the Contracts, so state.

Item 22. Purchase of Securities Being Offered

- (a) Describe the manner in which Registrant’s securities are offered to the public. Include a description of any special purchase plans and any exchange privileges not described in the prospectus.

Instruction. Address exchange privileges between Investment Options, between the Registered Separate Account and other separate accounts, and between the Registered Separate Account and contracts offered through the Insurance Company’s general account.

- (b) Describe the method that will be used to determine the sales load on the Contracts offered by the Registrant.

Instruction. Explain fully any difference in the price at which Contracts are offered to members of the public, as individuals or as groups, and the prices at which the Contracts are offered for any class of transactions or to any class of individuals, including officers, directors, members of the board of managers, or employees of the Insurance Company, underwriter, Portfolio Company, or investment adviser to the Portfolio Company.

- (c) *Frequent Transfer Arrangements.* Describe any arrangements with any person to permit frequent transfers of Contract value among Variable Options, including the identity of the persons permitted to engage in frequent transfers pursuant to such arrangements, and any compensation or other consideration received by the Registered Separate Account, the Insurance Company, or any other party pursuant to such arrangements.

Instructions:

- 1. The consideration required to be disclosed by paragraph (c) of this Item includes any agreement to maintain assets in the Registered Separate Account or in other investment companies or

accounts managed or sponsored by the Insurance Company, any investment adviser of a Portfolio Company, or any affiliated person of the Insurance Company or of any such investment adviser.

2. If the Registrant has an arrangement to permit frequent transfers of Contract value among Variable Options by a group of individuals, such as the participants in a defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), the Registrant may identify the group rather than identifying each individual group member.

- (d) *Contract Adjustment.* Fully explain the operation of any Contract Adjustment under the Contract, including any formulas used to calculate the adjustment.

Instruction. Include one or more numeric examples to illustrate the application of the Contract Adjustment. The example should include a negative adjustment, reflect surrender charges, if applicable, and disclose the percentage change in Contract value as a result of the adjustment.

Item 23. Underwriters

- (a) *Identification.* Identify each principal underwriter (other than the Insurance Company) of the Contracts, and state its principal business address. If the principal underwriter is affiliated with the Registered Separate Account, the Insurance Company, or any affiliated person of the Registered Separate Account or the Insurance Company, identify how they are affiliated (e.g., the principal underwriter is controlled by the Insurance Company).
- (b) *Offering and Commissions.* For each principal underwriter distributing Contracts of the Registrant, state:
 - (1) whether the offering is continuous; and
 - (2) the aggregate dollar amount of underwriting commissions paid to, and the amount retained by, the principal underwriter for each of the Registrant's last three fiscal years.
- (c) *Other Payments.* With respect to any payments made by the Registrant to an underwriter or dealer in the Contracts during the Registrant's last fiscal year, disclose the name and address of the underwriter or dealer, the amount paid and basis for determining that amount, the circumstances surrounding the payments, and the consideration received by the Registrant. Do not include information about:
 - (1) Payments made through deduction from purchase payments made at the time of sale of the Contracts; or
 - (2) Payments made from Contract values upon surrender of or withdrawal from the Contracts

Instructions.

1. Information need not be given about the service of mailing proxies or periodic reports of the Registered Separate Account.
2. Exclude information about bona fide contracts with the Registered Separate Account or the Insurance Company for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registered Separate Account or the Insurance Company in the ordinary course of business.

3. Information need not be given about any service for which total payments of less than \$15,000 were made during each of the Registrant's last three fiscal years.
4. Information need not be given about payments made under any contract to act as administrative or servicing agent.
5. If the payments were made under an arrangement or policy applicable to dealers generally, describe only the arrangement or policy.

Item 24. Calculation of Performance Data

- (a) *Money Market Funded Sub-Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account of a Registered Separate Account that holds itself out as a "money market" account or sub-account should be calculated according to paragraphs (a)(1) - (2).
- (1) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from Contracts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.
 - (2) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from Contracts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

$$\text{EFFECTIVE YIELD} = [(\text{BASE PERIOD RETURN} + 1)^{365/7}] - 1.$$

Instructions:

1. When calculating the yield or effective yield quotations, the calculation of net change in account value must include all deductions that are charged to all Contracts in proportion to the length of the base period. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size.
2. Deductions from purchase payments and sales loads assessed at the time of redemption or annuitization should not be reflected in the computation of yield and effective yield. However, the amount or specific rate of such deductions must be disclosed.
3. Exclude realized gains and losses from the sale of securities and unrealized appreciation and depreciation from the calculation of yield and effective yield. Exclude income other than investment income.

4. If applicable, disclose that the performance information may not reflect all Contract charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). Performance would be lower if these charges were included.
- (b) *Other Sub-Accounts.* Performance information included in the prospectus for the Registered Separate Account should be calculated according to paragraphs (b)(i) – (iii).
- (1) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$$P(1+T)^n = ERV$$

Where:

- P = a hypothetical initial purchase payment of \$1,000
- T = average annual total return
- n = number of years
- ERV = ending redeemable value of a hypothetical \$1,000 purchase payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions:

1. Assume the maximum sales load (or other charges deducted from purchase payments) is deducted from the initial \$1,000 purchase payment.
2. Include all recurring fees that are charged to all Contracts. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size. If recurring fees charged to Contracts are paid other than by redemption of accumulation units, they should be appropriately reflected.
3. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10- year periods and the deduction of all nonrecurring charges deducted at the end of each period.
4. If the Registered Separate Account's registration statement has been in effect less than one, five, or ten years, the time period during which the registration statement has been in effect should be substituted for the period stated.
5. Carry the total return quotation to the nearest hundredth of one percent.
6. Total return information in the prospectus need only be current to the end of the Registered Separate Account's most recent fiscal year.
7. If applicable, disclose that the performance information may not reflect all Contract charges

and provide one or more examples of such charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). State that performance would be lower if these charges were included.

- (2) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registered Separate Account included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{YIELD} = 2\left[\left(\frac{a-b}{cd}\right) + 1\right]^6 - 1$$

Where:

a = net investment income earned during the period by the Portfolio Company attributable to shares owned by the sub-account

b = expenses accrued for the period (net of reimbursements)

c = the average daily number of accumulation units outstanding during the period

d = the maximum offering price per accumulation unit on the last day of the period.

Instructions:

1. Include among the expenses accrued for the period all recurring fees that are charged to all Contracts. For any account fees that vary with the size of the account, assume an account size equal to the sub-account's mean (or median) account size.
2. If a broker-dealer or an affiliate (as defined in paragraph (b) of rule 1-02 of Regulation S-X [17 CFR 210.1-02(b)]) of the broker-dealer has, in connection with directing the Portfolio Company's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the Portfolio Company (other than brokerage and research services as these terms are defined in section 28(e) of the Securities Exchange Act [15 U.S.C. 78bb(e)]), add to expenses accrued for the period an estimate of additional amounts that would have been accrued for the period if the Portfolio Company had paid for the services directly in an arms-length transaction.
3. Net investment income must be calculated by the Portfolio Company as prescribed by Item 26(b)(4) of Form N-1A.

NOTE: (a-b) = net investment income in the Item 26(b)(4) equation.

4. Disclose the amount or specific rate of any nonrecurring account or sales charges.
5. If applicable, disclose that the performance information may not reflect all Contract charges (contracts may impose certain charges that are not reflected in the performance of the sub-account, but reduce the value of an investment in the sub-account, such as optional benefit charges). State that performance would be lower if these charges were included.

- (3) *Non-Standardized Performance Quotation.* A Registered Separate Account may calculate

performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

Item 25. Annuity Payments

Describe the method for determining the amount of annuity payments if not described in the prospectus. In addition, describe how any change in the amount of a payment after the first payment is determined.

Item 26. Financial Statements

(a) *Registered Separate Account*. Provide financial statements of the Registered Separate Account.

Instructions. Include, in a separate section, the financial statements and schedules required by Regulation S-X [17 CFR 210]. Financial statements of the Registered Separate Account may be limited to:

- (i) An audited balance sheet or statement of assets and liabilities as of the end of the most recent fiscal year;
- (ii) An audited statement of operations of the most recent fiscal year conforming to the requirements of rule 6-07 of Regulation S-X [17 CFR 210.6-07];
- (iii) An audited statement of cash flows for the most recent fiscal year if necessary to comply with generally accepted accounting principles; and
- (iv) Audited statements of changes in net assets conforming to the requirements of rule 6-09 of Regulation S-X [17 CFR 210.6-09] for the two most recent fiscal years.

(b) *Insurance Company*. Provide financial statements of the Insurance Company.

Instructions:

1. Include, in a separate section, the financial statements and schedules of the Insurance Company required by Regulation S-X. If the Insurance Company would not have to prepare financial statements in accordance with generally accepted accounting principles except for use in this registration statement or other registration statements filed on Forms N-3, N-4, or N-6, its financial statements may be prepared in accordance with statutory requirements. The Insurance Company's financial statements must be prepared in accordance with generally accepted accounting principles if the Insurance Company prepares financial information in accordance with generally accepted accounting principles for use by the Insurance Company's parent, as defined in rule 1-02(p) of Regulation S-X [17 CFR 210.1-02(p)], in any report under sections 13(a) and 15(d) of the Securities Exchange Act [15 U.S.C. 78m(a) and 78o(d)] or any registration statement filed under the Securities Act.
2. All statements and schedules of the Insurance Company required by Regulation S-X, except for the consolidated balance sheets described in rule 3-01 of Regulation S-X [17 CFR 210.3-01], and any notes to these statements or schedules, may be omitted from Part B and instead included in Part C of the registration statement. If any of this information is omitted from Part B and included in Part C, the consolidated balance sheets included in Part B should be accompanied by a statement that additional financial information about the Insurance Company is available, without charge, upon request. When a request for the additional financial information is received, the Registrant should send the information within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally

prompt delivery.

1. Notwithstanding rule 3-12 of Regulation S-X [17 CFR 210.3-12], the financial statements of the Insurance Company need not be more current than as of the end of the most recent fiscal year of the Insurance Company. In addition, when the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Insurance Company, the registration statement need not include financial statements of the Insurance Company more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Insurance Company unless the audited financial statements for such fiscal year are available. The exceptions to rule 3-12 of Regulation S-X contained in this Instruction 3 do not apply when:
 - (a) The Insurance Company's financial statements have never been included in an effective registration statement under the Securities Act of a separate account that offers variable annuity contracts or variable life insurance contracts; or
 - (b) The balance sheet of the Insurance Company at the end of either of the two most recent fiscal years included in response to this Item shows a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than \$2,500,000; or
 - (c) The balance sheet of the Insurance Company at the end of a fiscal quarter within 135 days of the expected date of effectiveness under the Securities Act (or a fiscal quarter within 90 days of filing if the registration statement is filed solely under the Investment Company Act) would show a combined capital surplus, if a stock company, or an unassigned surplus, if a mutual company, of less than \$2,500,000. If two fiscal quarters end within the 135 day period, the Insurance Company may choose either for purposes of this test.

Any interim financial statements required by this Item need not be comparative with financial statements for the same interim period of an earlier year.

- (c) *Changes in and Disagreements with Accountants.* For Contracts with Index-Linked Options, include the information required by Item 304 of Regulation S-K [17 CFR 229.304].

PART C - OTHER INFORMATION**Item 27. Exhibits**

Subject to General Instruction D regarding incorporation by reference and rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated and file copies rather than originals, unless otherwise required by rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

- (a) *Board of Directors Resolution.* The resolution of the board of directors of the Insurance Company authorizing the establishment of the Registered Separate Account.
- (b) *Custodian Agreements.* All agreements for custody of securities and similar investments of the Registered Separate Account, including the schedule of remuneration.
- (c) *Underwriting Contracts.* Underwriting or distribution contracts between the Registered Separate Account or Insurance Company and a principal underwriter and agreements between principal underwriters or the Insurance Company and dealers.
- (d) *Contracts.* The form of each Contract, including any riders or endorsements.
- (e) *Applications.* The form of application used with any Contract provided in response to (d) above.
- (f) *Insurance Company's Certificate of Incorporation and By-Laws.* The Insurance Company's current certificate of incorporation or other instrument of organization and by-laws and any related amendment.
- (g) *Reinsurance Contracts.* Any contract of reinsurance related to a Contract.
- (h) *Participation Agreements.* Any participation agreement or other contract relating to the investment by the Registered Separate Account in a Portfolio Company.
- (i) *Administrative Contracts.* Any contract relating to the performance of administrative services in connection with administering a Contract.
- (j) *Other Material Contracts.* Other material contracts not made in the ordinary course of business to be performed in whole or in part on or after the filing date of the registration statement.
- (k) *Legal Opinion.* An opinion and consent of counsel regarding the legality of the securities being registered, stating whether the securities will, when sold, be legally issued and represent binding obligations of the Insurance Company.
- (l) *Other Opinions.* Copies of any other opinions, appraisals, or rulings, and consents of their use relied on in preparing this registration statement and required by section 7 of the Securities Act [15 U.S.C. 77g].
- (m) *Omitted Financial Statements.* Financial statements omitted from Item 26.
- (n) *Initial Capital Agreements.* Any agreements or understandings made in consideration for providing the initial capital between or among the Registered Separate Account, Insurance Company, underwriter, or initial investors and written assurances from the Insurance Company or initial investors that purchases were made for investment purposes and not with the intention of redeeming

or reselling.

- (o) *Form of Initial Summary Prospectuses.* The form of any Initial Summary Prospectus that the Registrant intends to use on or after the effective date of the registration statement, pursuant to rule 498A under the Securities Act [17 CFR 230.498A].
- (p) *Power of attorney.* Any power of attorney included pursuant to rule 483(b) under the Securities Act [17 CFR 230.483(b)].
- (q) *Letter Regarding Change in Certifying Accountant.* For Contracts with Index-Linked Options, a letter from the Insurance Company's former independent accountant regarding its concurrence or disagreement with the statements made by the Insurance Company in the registration statement concerning the resignation or dismissal as the Insurance Company's principal accountant.

Instructions.

1. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the Registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.
2. The Registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (e.g., disclosure of bank account numbers, social security numbers, home addresses and similar information).
3. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (g) and (j) of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].
4. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business

Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

5. Registrants are required to provide the Initial Summary Prospectus exhibits, as required by paragraph (o) of this Item, only in connection with the filing of an initial registration statement, or in connection with a pre-effective amendment or a post-effective amendment filed in accordance with paragraph (a) of rule 485 under the Securities Act [17 CFR 230.485(a)]. Registrants should add a legend clearly identifying the document as a form of Initial Summary Prospectus the Registrant intends to use on or after the effective date of the registration statement.

Item 28. Directors and Officers of the Insurance Company

Provide the following information about each director or officer of the Insurance Company:

(1)	(2)
Name and Principal Business Address	Positions and Offices with Insurance Company

Instruction. Registrants are required to provide the above information only for officers or directors who are engaged directly or indirectly in activities relating to the Registered Separate Account or the Contracts, and for executive officers including the Insurance Company’s president, secretary, treasurer, and vice presidents who have authority to act as president in the president’s absence.

Item 29. Persons Controlled by or Under Common Control with the Insurance Company or the Registered Separate Account

Provide a list or diagram of all persons directly or indirectly controlled by or under common control with the Insurance Company or the Registered Separate Account. For any person controlled by another person, disclose the percentage of voting securities owned by the immediately controlling person or other basis of that person’s control. For each company, also provide the state or other sovereign power under the laws of which the company is organized.

Instructions:

1. Include the Registered Separate Account and the Insurance Company in the list or diagram and show the relationship of each company to the Registered Separate Account and Insurance Company and to the other companies named, using cross-references if a company is controlled through direct ownership of its securities by two or more persons.
2. Indicate with appropriate symbols subsidiaries that file separate financial statements, subsidiaries included in consolidated financial statements, or unconsolidated subsidiaries included in group financial statements. Indicate for other subsidiaries why financial statements are not filed.

Item 30. Indemnification

State the general effect of any contract, arrangements, or statute under which any underwriter or affiliated person of the Registrant is insured or indemnified against any liability incurred in his or her

official capacity, other than insurance provided by any underwriter or affiliated person for his or her own protection.

Item 31. Principal Underwriters

- (a) *Other Activity.* State the name of each investment company (other than the Registered Separate Account) for which each principal underwriter currently distributing the Registrant's securities also acts as a principal underwriter, Insurance Company, sponsor, or investment adviser.
- (b) *Management.* Provide the information required by the following table for each director, officer, or partner of each principal underwriter named in the response to Item 23:

(1)	(2)
Name and Principal Business Address	Positions and Offices with Underwriter

Instruction. If a principal underwriter is the Insurance Company or an affiliate of the Insurance Company, and is also an insurance company, the above information for officers or directors need only be provided for officers or directors who are engaged directly or indirectly in activities relating to the Registered Separate Account or the Contracts, and for executive officers including the Insurance Company's or its affiliate's president, secretary, treasurer, and vice presidents who have authority to act as president in the president's absence.

- (c) *Compensation From the Registrant.* Provide the information required by the following table for all commissions and other compensation received, directly or indirectly, from the Registrant during the Registrant's last fiscal year by each principal underwriter:

(1)	(2)	(3)	(4)	(5)
Name of Principal Underwriter	Net Underwriting Discounts	Compensation on Redemption	Brokerage Commission	Other Compensation

Instructions:

1. Disclose the type of services rendered in consideration for the compensation listed under column (5).
2. Information need not be given about the service of mailing proxies or periodic reports of the Registered Separate Account.
3. Exclude information about bona fide contracts with the Registered Separate Account or the Insurance Company for outside legal or auditing services, or bona fide contracts for personal employment entered into with the Registered Separate Account or the Insurance Company in the ordinary course of business.
4. Exclude information about any service for which total payments of less than \$15,000 were made during each of the Registrant's last three fiscal years.

5. Exclude information about payments made under any agreement whereby another person contracts with the Registered Separate Account or the Insurance Company to perform as custodian or administrative or servicing agent.

Item 31A. Information about Contracts with Index-Linked Options

For any Contract with Index-Linked Options offered through this registration statement, provide the information required by the following table as of December 31 of the prior year:

Name of the Contract	Number of Contracts outstanding	Total value attributable to the Index-Linked Option	Number of Contracts sold during the prior calendar year	Gross premiums received during the prior calendar year	Amount of Contract value redeemed during the prior calendar year	Combination Contract (Yes/No)

Instructions:

1. In the case of group Contracts, each participant certificate should be counted as an individual Contract.
2. "Total value attributable to the Index-Linked Option" means the sum of the Contract value in the Index-Linked Options of each individual Contract. For "Combination Contracts," which for purposes of this Item are Contracts that offer Variable Options in addition to Index-Linked Options, exclude amounts allocated to the Registered Separate Account.

Item 32. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document, required to be maintained by the Registered Separate Account pursuant to section 31(a) of the Investment Company Act [15 U.S.C. 80a-30(a)] and the rules under that section.

Instruction. The Registered Separate Account may omit this information to the extent it is provided in its most recent report on Form N-CEN [17 CFR 274.101].

Item 33. Management Services

Provide a summary of the substantive provisions of any management-related service contract not discussed in Part A or Part B, disclosing the parties to the contract and the total amount paid and by whom for the Registrant's last three fiscal years.

Instructions:

1. The instructions to Item 21(b) shall also apply to this Item.
2. Exclude information about any service provided for payments totaling less than \$15,000 during each of the Registrant's last three fiscal years.

Item 34. Fee Representation and Undertakings

- (a) With regard to Variable Options, provide a representation of the Insurance Company that the fees and charges deducted under the Contracts, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the Insurance Company.

-
- (b) With regard to Index-Linked Options, furnish the following undertakings in substantially the following form:
1. To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement to include any prospectus required by section 10(a)(3) of the Securities Act; and
 2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933 and the Investment Company Act of 1940, the Registrant (certifies that it meets all of the requirements for effectiveness of this registration statement under rule 485(b) under the Securities Act and) has duly caused this registration statement to be signed on its behalf by the undersigned, duly authorized, in the City of _____, and State of _____, on this _____ day of _____, _____.

(Registered Separate Account)

By _____
(Signature)

(Title)

(Insurance Company)

By _____
(Name of Officer of Insurance Company)

(Title)

Instruction:

If the registration statement is being filed only under the Securities Act or under both the Securities Act and the Investment Company Act, it should be signed by both the Registered Separate Account and the Insurance Company, if applicable. If the registration statement is being filed only under the Investment Company Act, it should be signed only by the Registered Separate Account.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

Appendix B—Form N-6**Form N-6**

* * * * *

Item 30. Exhibits

* * * * *

Instructions.

* * *

3. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (g) and (j) of this Item if the Registrant customarily and actually treats that information as private. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit.

If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

Appendix C—Form 24F-2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F-2
Annual Notice of Securities Sold
Pursuant to Rule 24f-2 under the
Investment Company Act of
1940 or Rule 456(e) under the
Securities Act of 1933

Read Instructions at end of this Form before preparing.

1. Name and address of issuer:
2. The name and EDGAR identifier of each series or class of securities for which this Form is filed. If the Form is being filed for all series and classes of securities of the issuer, check the box but do not list series or classes: ☐
3. Investment Company Act File Number: Securities Act File Number:
4(a). Last day of fiscal year for which this Form is filed:
4(b). ☐ Check box if this Form is being filed late (<i>i.e.</i> , more than 90 calendar days after the end of the issuer's fiscal year). (See Instruction A.2) <i>Note: If the Form is being filed late, interest must be paid on the registration fee due.</i>
4(c). ☐ Check box if this is the last time the issuer will be filing this Form.

5. Calculation of registration fee (if calculating on a class-by-class or series-by-series basis, provide the EDGAR identifier for each such class or series):

(i) Aggregate sale price of securities sold during the fiscal year pursuant to section 24(f) or rule 456(e): \$ _____

(ii) Aggregate price of securities redeemed or repurchased during the fiscal year: \$ _____

(iii) Aggregate price of securities redeemed or repurchased during any *prior* fiscal year ending no earlier than the date the issuer became eligible to use this form that were not previously used to reduce registration fees payable to the Commission: \$ _____

(iv) Total available redemption credits [add Items 5(ii) and 5(iii)]: -\$ _____

(v) Net sales -- if Item 5(i) is greater than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: \$ _____

(vi) Redemption credits available for use in future years — if Item 5(i) is less than Item 5(iv) [subtract Item 5(iv) from Item 5(i)]: \$ (_____)

(vii) Multiplier for determining registration fee (See Instruction C.9): x _____

(viii) Registration fee due [multiply Item 5(v) by Item 5(vii)] (enter "0" if no fee is due): =\$ _____

6. Interest due -- if this Form is being filed more than 90 days after the end of the issuer's fiscal year (see Instruction D):

+\$ _____

7. Total of the amount of the registration fee due plus any interest due [line 5(viii) plus line 6]:

= \$ _____

8. Explanatory Notes (if any): The issuer may provide any information it believes would be helpful in understanding the information reported in response to any item of this Form. To the extent responses relate to a particular item, provide the item number(s), as applicable.

SIGNATURES

This report has been signed below by the following persons on behalf of the issuer and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

*Please print the name and title of the signing officer below the signature.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 24F-2
Annual Notice of Securities Sold
Pursuant to Rule 24f-2 under
the Investment Company Act of 1940 or
Rule 456(e) under the Securities Act of 1933

INSTRUCTIONS

A. General

1. This Form should be used by an open-end management investment company, closed-end management company that makes periodic repurchase offers pursuant to § 270.23c-3(b) of this chapter (an "interval fund"), face amount certificate company, or unit investment trust for annual filings required by rule 24f-2 under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act") or an issuer that offers registered index-linked annuity securities for annual filings required by rule 456 under the Securities Act of 1933 [15 U.S.C. 77a-aa] ("Securities Act") (each an "issuer"). If the issuer has registered more than one class or series of securities that are required to be reported on this form on the same registration statement under the Securities Act, the issuer may file a single Form 24F-2 for those classes or series that have the same fiscal year end. Such an issuer may calculate its fees based on aggregate net sales of the series having the same fiscal year end. An issuer choosing to calculate registration fees on a class-by-class or series-by-series basis should make a single filing consisting of a separate Form 24F-2 for each class or series in a single EDGAR document.
2. This Form must be filed within 90 calendar days after the end of the issuer's fiscal year or, if the last day of the 90 day period falls on Saturday, Sunday or a Federal holiday, the first business day thereafter. For example, a Form 24F-2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday or Sunday, the Form must be filed on the following Monday. In these instructions, we refer to this as the "Due Date."
3. Pursuant to rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] this Form must be submitted in electronic format using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.
4. This Form must be accompanied by the appropriate registration fee. If the Form is being filed late, interest must be paid. See Instruction D.
5. This Form will be deemed filed with the Commission on the date on which it is received and accepted by the Commission. The Commission will not accept for filing any Form accompanied by insufficient payment of the registration fee. A Form accompanied by insufficient payment of the registration fee will not be deemed accepted and filed until receipt by the Commission of proper payment of the registration fee. No part of the registration fee is refundable. Issuers should refer to rule 111 of the Securities Act [17 CFR 230.111], rule 0-8 under the Investment Company Act [17 CFR 270.0-8], rule 3a of the Commission's Rules of Informal and Other Procedures [17 CFR 202.3a], and rule 13(c) under Regulation S-T [17 CFR 232.13(c)] for instructions on payment of fees to the Commission.

B. Identifying Information

1. **Item 1** - Provide the name of the issuer as it appears on the cover of the issuer's most recent Securities Act registration statement or post-effective amendment.
2. **Item 2** - If the Form is being filed for all classes and series of securities of the issuer, the issuer should check the box and not list the names of the classes and series. Issuers of registered index-linked annuities should check this box if the Form is being filed for all of the issuer's registered index-linked annuity and classes.
3. **Item 3** - If applicable, the Investment Company Act file number should be the number assigned to the issuer's registration statement filed under the Investment Company Act (beginning with "811-"). The Securities Act file number is the number of the issuer's most recent Securities Act registration statement (beginning with "2-", "33-" or "333-") relating to the securities being reported (e.g., issuers of registered index-linked annuities should use the most recent registered index-linked annuity Securities Act registration statement being reported, but not any other intervening Securities Act registration statements relating to securities not being reported).

4. Item 4(a) - In the case of an issuer that ceases operations, the date it ceases operations is deemed the last day of its fiscal year for purposes of section 24(f) of the Investment Company Act or rule 456(e) of the Securities Act.

5. Item 4(b) - Check the box if the Form is filed late. If the issuer files the Form late, the issuer is required under section 24(f) or rule 456(e) to pay interest on unpaid amounts at the rate applicable to Treasury and tax loan accounts. See Instruction D.

6. Item 4(c) - Check the box if this is the last time the issuer will be filing Form 24F-2 (*i.e.*, if the issuer has ceased operations).

C. Computation of Registration Fee

1. Item 5 is a work sheet for calculating the registration fee due. An issuer must aggregate prices for all classes or series for which the Form is being filed. If the issuer charges a front-end sales load on its securities, the aggregate sale price must include the sales load.

2. Mergers -

(a) In the case of a liquidation, merger, or sale of all or substantially all of the assets of an issuer ("merger"), the securities of the entity ceasing operation (the "Predecessor") that are exchanged for or converted into the other issuer (the "Successor") should be treated as redemptions on the Predecessor's final Form 24F-2 (not the Successor's).

(b) In the case of a merger in which the Predecessor is *not* deemed to cease operations (*e.g.*, a reorganization), the Successor inherits the sales and redemption credits of the Predecessor, and the Successor must report them as sales and redemptions on its next Form 24F-2 filing. The Predecessor in this type of merger need not file a final Form 24F-2. See Rule 24f-2(b)(1) and (2) [17 CFR 270.24f-2(b)(1) and (2)] and rule 456(e)(4) [17 CFR 230.456(e)(4)].

3. Special Rule for Unit Investment Trusts - The aggregate sale price of securities sold to a unit investment trust ("UIT") that offers interests that are registered under the Securities Act and on which a registration fee has been or will be paid to the Commission, may be excluded from the aggregate sale price of securities reported in Item 5(i). If the issuer chooses to exclude the aggregate sale price of these securities from Item 5(i), the issuer may not use securities redeemed or repurchased from those UITs for purposes of determining the redemption or repurchase price of securities in Items 5(ii) and 5(iii).

4. Special Rule for Registered Index-Linked Annuities - The aggregate sale price of securities sold during the fiscal year in reliance upon registration under rule 456(e) shall include the value of any expiring annuity contract or investment option that is rolled over into a new crediting period. The value of such contracts or options should therefore be reported in Item 5(i). In addition, the value of such expiring annuity contract or options should also be reported in Item 5(ii) as a redemption. Where the contract value of the new and expiring annuity contract is the same, the reported amounts attributable to such contracts in Items 5(i) and 5(ii) would result in a net-zero calculation.

5. Item 5(i) - Report the aggregate sale price of securities sold during the fiscal year in reliance upon registration under section 24(f) or rule 456(e). Include securities issued pursuant to dividend reinvestment plans ("DRIP shares") whether or not they are required to be registered under the Securities Act. *Do not* include the sale price of securities, if any, that were registered under the Securities Act *other than* pursuant to section 24(f) or rule 456(e), as applicable. [Example: An interval fund issuer sold 1,000,000 shares, 250,000 of which were registered prior to August 1, 2021. Item 5(i) should show the aggregate sale price of 750,000 shares.]

6. Item 5(ii) - Report the aggregate redemption or repurchase price of securities redeemed or repurchased during the fiscal year in reliance upon registration under section 24(f) or rule 456(e). *Do not* include securities that have been redeemed or repurchased, if any, other than pursuant to section 24(f) or rule 456(e), as applicable.

7. Item 5(iii) - Report the aggregate redemption or repurchase price of securities redeemed or repurchased during any prior fiscal year ending no earlier than the date the issuer became eligible to use this Form (*e.g.*, August 1, 2021 for interval funds, [EFFECTIVE DATE] for issuers of registered index-linked annuity securities, and October 11, 1995 for all other filers on this Form) that were *not* used previously to reduce registration fees payable to the Commission.

8. Items 5(iv) through 5(vi) - Report the sum of Items 5(ii) and 5(iii) in Item 5(iv). Subtract Item 5(iv) from Item 5(i). If Item 5(iv) is less than Item 5(i), report the result in Item 5(v) (net sales). If Item 5(iv) is greater than Item 5(i), report the resulting negative number in parentheses in Item 5(vi) (net redemptions or repurchases). The amount of redemptions or repurchases reported in Item 5(vi) may be used by the issuer in future years to offset sales (by including it in response to Item 5(iii) of Form 24F-2 filed for the next fiscal year).

9. Item 5(vii) - The registration fee is calculated by multiplying the net sales amount (Item 5(v)) by the fee rate.

For the current fee rate, see <https://www.sec.gov/ofm/Article/feeamt.html>. The fee rate in effect at the time of filing applies to all securities sold during the fiscal year, regardless of whether the fee rate changes during the year.

10. Item 5(viii) - If the issuer reports net redemptions or repurchases in Item 5(vi), report "0" in Item 5(viii).

D. Computation of Interest Due if Form is Filed Late

1. Item 6 – Section 24(f) and rule 456(e) require any issuer that pays its registration fee after the Due Date (see Instruction A.2) to pay interest to the Commission on fees that are not paid on time. The payment of interest does not preclude the Commission from bringing an action to enforce the requirements of section 24(f) or rule 456(e), as applicable. Under section 11 of the Debt Collection Act [31 U.S.C. 3717(a)], the interest rate is published by the Secretary of the Treasury. The rate is computed annually and is effective on January 1 each year. In some circumstances the rate may be changed on a quarterly basis. Filers owing interest should verify the current interest rate. Filers can find the rate by looking for the "current value of funds rate" on the Treasury Department's internet site at <https://fiscal.treasury.gov/reports-statements/cvfr/rates.html>.

2. The interest is assessed only on the amount of the registration fee due, and begins to accrue on the day after the Due Date. The amount of interest due should be calculated based on the interest rate in effect at the time the interest payment is made using the following formula:

$$I = (X) (Y) (Z/365)$$

where:

I = Amount of interest due

X = Amount of registration fee due

Y = Applicable interest rate, expressed as a fraction

Z = Number of days by which the registration fee payment is late

E. Signature

The Form must be signed on behalf of the issuer by an authorized officer of the issuer. See rule 302 of Regulation S-T [17 CFR 232.302] regarding signatures on forms filed electronically.

F. SEC's Collection of Information

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. Filing of this Form is mandatory. The principal purpose of this collection of information is to enable issuers to calculate the registration fee payable to the Commission. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. 3507. The responses to the collection of information will not be kept confidential.

Appendix D—Retail Investor Feedback Flyer**Tell Us about Your Experiences with Registered Index-Linked Annuities and Other Annuity Products**

We are requesting input from retail investors regarding registered index-linked annuities (or “RILAs”), a type of annuity contract offered by insurance companies. In a RILA, the investor’s gains or losses are based on whether a selected index goes up or down over a set period of time, such as three years. These annuities also have what is called a “bounded return structure,” meaning that they will usually limit your losses when the index goes down, but at the cost of limiting your gains when the index goes up. We encourage interested persons to provide comments on any or all of the following questions. Please provide your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER OR November 28, 2023, WHICHEVER IS LATER] – and thank you for your feedback!

Part 1: Have you purchased or considered purchasing any kind of annuity, including a RILA? If so:

1. What were your reasons for either purchasing or not purchasing the annuity?

Text box

- a. What features of the annuity appealed to you?

Text box

- b. What were your investment goals?

Text box

- c. What alternatives did you consider to the annuity, if any?

Text box

2. Where did you learn about the annuity? Did someone recommend it to you?

Text box

3. What kind of annuity did you consider purchasing?

	Yes	No
Fixed annuity	[]	[]
Variable annuity	[]	[]
RILA	[]	[]
Other type of annuity (please specify)	[]	[]

4. What kind of annuity did you end up purchasing?

	Yes	No

Fixed annuity	[]	[]
Variable annuity	[]	[]
RILA	[]	[]
Other type of annuity (please specify)	[]	[]

5. What documents or other materials did you use when considering the purchase?

Text box

a. Did you find those documents or materials easy or challenging to understand?

Text box

b. Which documents did you find to be more confusing?

Text box

c. Were the documents or materials at a reading level comfortable for you?

Yes	No
[]	[]

Text box (please add any explanatory detail)

- d. Were those documents or materials helpful?

Yes	No
[]	[]

Text box (please add any explanatory detail)

- e. What, if any, other information do you wish had been available?

Text box

- f. If the annuity was a RILA, how well do you think that the documents you received explained the RILA's features?

Text box

- g. If the annuity was a RILA, do you think, based on the documents you received, you could explain all of the RILA's features?

Yes	No
[]	[]

Text box (please add any explanatory detail)

Part 2: Have you purchased a RILA? A RILA is a type of annuity contract where the investor’s gains or losses are based on whether a selected index goes up or down over a set period of time subject to a bounded return structure. If so:

6. Please describe your experience investing in the RILA.
- a. Has your experience with the RILA been consistent with your expectations for the RILA, based on any materials you read (or information that a financial professional told you) before purchasing the RILA? For example, if you purchased the RILA based on the expectation that it was a long-term investment and would allow you to participate to a degree in positive market performance while providing some protection against loss, was that your experience? Conversely, did you find that you ended up having to withdraw money early and lose some of the benefits you had anticipated?

Yes	No
[]	[]

Text box (please add any explanatory detail)

- b. If you have withdrawn money from the RILA, did you pay fees or penalties?

Yes	No
☐	☐

Text box (please add any explanatory detail)

- c. Were you aware when you purchased the RILA that withdrawals would be subject to such fees or penalties?

Yes	No
☐	☐

Text box (please add any explanatory detail)

Part 3: When you make investment decisions, what type of information do you want?

7. When you select investments, what information sources do you most commonly read?

	Yes	No
Prospectus	☐	☐
Annual shareholder report	☐	☐

Website of the investment product	[]	[]
Other information source (please explain below)	[]	[]

Text box (please add any explanatory detail, including any other information source not mentioned above)

8. Do you prefer to rely on a recommendation from a financial professional?

Yes	No
[]	[]

a. If you rely on a financial professional, do you also separately research the recommended investment?

Yes	No
[]	[]

9. Do you prefer to receive short summary documents (with more detailed disclosures available for additional research)?

Yes	No
[]	[]

a. If you answered “yes”:
What do you consider an appropriate length for a summary?

1-2 pages	[]
3-5 pages	[]
6-10 pages	[]
More than 10 pages	[]

What topics do you want the summary to include? For example, should the summary explain the investment being offered, any fees being charged, ways that you may not get the returns described, or the risks of the investment?

Text box

If an investment product offers different features you can select (such as the type of index it tracks or the time in which the investment lasts), how would you like to see the summary organized? For example:

	Yes	No
A summary based on the decisions you will have to make when selecting among available features, and the implications of selecting various features?	[]	[]
A summary of each feature of the investment product, to allow the reader to identify important information for a particular decision?	[]	[]
Other (please add any explanatory detail)		

- b. Please share any reasons you may prefer to receive a longer, more detailed disclosure document instead of a summary.

Text box

Part 4: Is there anything else you want to tell us about RILAs?

Text box

**

Ways to Submit Your Feedback
You can send us feedback in the following ways (include the file number S7-16-23 in your response):
Print Your Responses and Mail
Secretary Securities and Exchange Commission 100 F Street, NE Washington, Dc 20549-1090
Print Your Responses and Email
Select a PDF printer to create a file you can email to: rule-comments@sec.gov

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.

If you are interested in more information on the proposal, or want to provide feedback on additional questions, please see the Commission's proposing release, available at <https://www.sec.gov/files/rules/proposed/2022/33-11250.pdf>. Comments should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER OR November 28, 2023, WHICHEVER IS LATER].

Thank you!



FEDERAL REGISTER

Vol. 88

Friday,

No. 197

October 13, 2023

Part III

The President

Proclamation 10651—General Pulaski Memorial Day, 2023

Proclamation 10652—International Day of the Girl, 2023

Presidential Documents

Title 3—

Proclamation 10651 of October 10, 2023

The President

General Pulaski Memorial Day, 2023

By the President of the United States of America

A Proclamation

Today, we celebrate the life and legacy of General Casimir Pulaski—whose story is forever woven into our Nation’s fight for independence and who remains a source of inspiration for all those standing for the cause of freedom around the world.

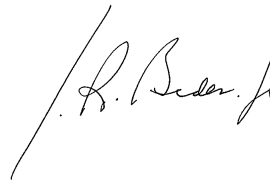
Born and raised in Warsaw, General Pulaski long fought against the Russian domination of Poland. In 1777—after learning of our young Nation’s aspiration for independence—he stepped up to serve alongside American soldiers in the Revolutionary War, including leading a critical counterattack that helped slow British advances. In 1779, General Pulaski made the ultimate sacrifice for our country—giving his life so that our Nation and our ideas of freedom, equality, and democracy might live.

General Pulaski’s heroism represents just one of the countless contributions that Polish people have made to promote liberty around the world—contributions we continue to see today. Since Russia’s brutal full-scale invasion of Ukraine last year, the world has witnessed countless acts of courage and conviction by the people of Poland for the causes of freedom and human decency. They have donated tanks, artillery, and aircraft to support Ukraine’s self-defense and have become a key hub for aid from other partners. As I have seen first-hand during my trips to Poland these past 2 years, they have embraced Ukrainian refugees during this dark moment, offering them safety, hope, and light.

General Pulaski famously wrote to George Washington regarding the fight for our independence, “I came here, where freedom is being defended, to serve it, and to live or die for it.” He laid down his life, not for a place, person, or President but for an idea unlike any other idea in all of human history—the idea of the United States of America, a citadel of liberty and beacon of freedom. As we pay tribute to his life and service, may we also honor our friends in Poland and our vibrant Polish American community, which continues to uphold his legacy and keep the flame of freedom burning bright.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2023, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to General Casimir Pulaski and honoring all those who champion freedom around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping diagonal line extending upwards and to the left from the start of the signature.

[FR Doc. 2023-22828

Filed 10-12-23; 11:15 am]

Billing code 3395-F4-P

Presidential Documents

Proclamation 10652 of October 10, 2023

International Day of the Girl, 2023

By the President of the United States of America

A Proclamation

On International Day of the Girl, we recognize that when every girl around the world has the opportunity to realize her potential, the possibilities for our future are limitless.

Girls are dreamers and doers leading our world forward—growing up to become changemakers, innovators, entrepreneurs, service members, activists, public servants, and so much more. When we empower girls and ensure they have the resources they need to thrive, countries and economies are stronger, and the entire world is more secure. Yet in far too many places, girls are still being denied equal opportunity, prohibited from contributing to their communities and deprived of the freedom to pursue their dreams without violence and intimidation.

That is why my Administration puts women and girls at the heart of everything we do. I established the White House Gender Policy Council to advance gender equity and equality across all domestic and foreign policy. I released the first-ever United States National Strategy on Gender Equity and Equality, which provides a road map to advance the economic security, safety, health, and well-being of women and girls at home and around the world.

Every girl in America deserves an equal shot at fulfilling her highest aspirations and setting a strong foundation for the future often begins in the classroom. That is why my Administration has secured a historic \$130 billion for America's K–12 schools and invested \$39 billion in colleges and universities. Funding from our American Rescue Plan has put more teachers in our classrooms and more counselors, social workers, and other staff in our schools and is providing high-quality tutoring; supporting record expansion of summer and after-school programming; improving air quality in schools and addressing environmental and safety needs in aging school buildings; and providing a wide range of student supports.

We are also working to ensure that we tackle the mental health crisis, which is taking a toll on our Nation's kids—especially girls. The American Rescue Plan made our country's biggest-ever investment in mental health and substance use programs—including resources to recruit, train, and support more providers at the State and local levels, including in our schools. We are also working to increase the number of school psychologists and mental health counselors available to our kids to make it easier for schools to bill Medicaid to deliver health services, including mental health care, and to expand the Certified Community Behavioral Health Clinics that deliver 24/7 care to those in need, regardless of their ability to pay.

Young women have also demanded that our Nation do better to protect us all from the scourge of gun violence. Last year, I signed the Nation's first major gun safety law in nearly 30 years to prevent gun violence, increase access to mental health care, and save lives. We established the first-ever White House Office of Gun Violence Prevention to build upon these measures.

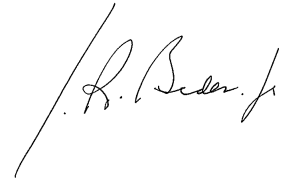
My Administration also remains committed to ending gender-based violence, a human rights issue that undermines the safety, security, and dignity of girls everywhere. This includes taking steps to address the harmful impacts of social media on young people and responding to online harassment and abuse, which disproportionately impacts youth, particularly girls. In my State of the Union Address, I called on the Congress to pass legislation that strengthens our children's privacy and online safety. We have worked with the Congress to reauthorize and strengthen the Violence Against Women Act, and we recently released a National Plan to End Gender-Based Violence—our country's first Government-wide plan to prevent and address sexual violence, intimate partner violence, stalking, and other forms of gender-based violence. We will continue supporting the rights of all women and girls—including transgender women and girls and all members of the LGBTQI+ community—across the Nation.

The United States is committed to empowering girls globally. Last year, we requested a historic doubling of foreign assistance to promote gender equity globally—to provide a record \$2.6 billion in 1 year, including investments in the health, education, and empowerment of girls and young women—and I am pleased to say we have not only met but exceeded that request. Additionally, we are supporting equitable access to health care. We are working to improve access to education with a goal of reaching 15 million girls and young women by 2025. We are continuing to advance the efforts outlined in our updated United States Strategy to Prevent and Respond to Gender-Based Violence Globally.

Today, I am reminded of a message First Lady Jill Biden delivered to girls everywhere at an event honoring the Secretary of State's International Women of Courage awardees: "When you learn and explore, when you raise your voice, when you move through the world with your shoulders back and your head held high, step by step, you shift the ground beneath you . . . And as you take those steps, as you grow into the women you will be, remember: You are never alone." On International Day of the Girl, let us renew this commitment. Let us continue to build a future worthy of the abilities and ambitions of all girls—one with no limit to how far their dreams and talents can carry them.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2023, as International Day of the Girl. I call upon the people of the United States to observe this day with programs, ceremonies, and policies that advance equity and opportunity for girls everywhere.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.



FEDERAL REGISTER

Vol. 88

Friday,

No. 197

October 13, 2023

Part IV

The President

Notice of October 12, 2023—Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

Presidential Documents

Title 3—

Notice of October 12, 2023

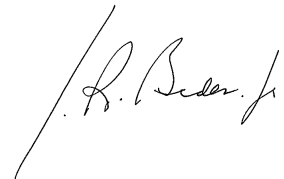
The President

Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

On October 14, 2019, by Executive Order 13894, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Syria.

The situation in and in relation to Syria, and in particular the actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13894 of October 14, 2019, must continue in effect beyond October 14, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13894 with respect to the situation in and in relation to Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 12, 2023.

Reader Aids

Federal Register

Vol. 88, No. 197

Friday, October 13, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

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, OCTOBER

67617-67928.....	2
67929-68422.....	3
68423-69002.....	4
69003-69528.....	5
69529-69872.....	6
69873-70336.....	10
70337-70564.....	11
70565-70884.....	12
70885-71272.....	13

CFR PARTS AFFECTED DURING OCTOBER

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.

2 CFR

Proposed Rules:

1.....	69390
25.....	69390
175.....	69390
180.....	69390
182.....	69390
183.....	69390
184.....	69390
200.....	69390

3 CFR

Proclamations:

10633.....	68423
10634.....	68425
10635.....	68427
10636.....	68429
10637.....	68431
10638.....	68433
10639.....	68435
10640.....	68437
10641.....	68439
10642.....	68441
10643.....	68445
10644.....	70337
10645.....	70565
10646.....	70567
10647.....	70569
10648.....	70571
10649.....	70573
10650.....	70577
10651.....	71263
10652.....	71265

Executive Orders:

14031 (amended by 14109).....	68447
14048 (superseded in part by 14109).....	68447
14084 (amended by 14109).....	68447
14109.....	68447

Administrative Orders:

Memorandums:	
Memorandum of September 21, 2023.....	70563
Memorandum of September 27, 2023.....	67617
Notices:	
Notice of October 12, 2023.....	71271

5 CFR

2424.....69873, 70579

Proposed Rules

2412.....70374

7 CFR

2.....	70579
27.....	69529
457.....	70339

932.....	69873
956.....	69876
981.....	67621

Proposed Rules:

51.....	70379
927.....	69888
981.....	68500
993.....	70608
3550.....	69099
3555.....	69099

10 CFR

72.....	67929
429.....	70580
431.....	69686, 70580

Proposed Rules:

Ch. I.....	69555
20.....	68506
30.....	68506
51.....	68506
72.....	67987
430.....	69826
431.....	67989, 70196
474.....	67682

12 CFR

Proposed Rules

308.....	70391
364.....	70391

13 CFR

120.....	69003, 69529, 70580
125.....	70339, 70343

14 CFR

21.....	70344
39.....	67627, 67629, 67636, 67640, 67935, 67937, 67939, 68451, 68454, 69008, 69011, 69013, 69015, 69018, 69020, 69023, 70885
71.....	69025, 70351
97.....	67942, 67943

Proposed Rules:

1.....	68507
3.....	70911
21.....	68507, 70912
22.....	68507
25.....	67683
27.....	67683
29.....	67683
36.....	68507
39.....	67685, 67999, 68002, 69099, 69102, 69105, 69107, 69110, 69556, 69891, 70409, 70913
43.....	68507
45.....	68507
61.....	68507
65.....	68507
71.....	68004, 68509, 68512, 68514, 68516, 69893
73.....	70915

91.....67683, 68507
119.....68507
121.....67683
125.....67683
135.....67683

15 CFR

744.....70352

17 CFR

230.....70435
232.....67945, 70435
239.....70435
270.....70435
274.....70435

Proposed Rules:

Ch. II.....70908
4.....70852
230.....71088
232.....71088
239.....71088
274.....71088

18 CFR

101.....69294

19 CFR

4.....69026
7.....69026
10.....69026
11.....69026
12.....69026
24.....69026
54.....69026
101.....69026
102.....69026
103.....69026
113.....69026
132.....69026
133.....69026
134.....69026
141.....69026
142.....69026
143.....69026
144.....69026
145.....69026
146.....69026
147.....69026
151.....69026
152.....69026
158.....69026
159.....69026
161.....69026
162.....69026
163.....69026
173.....69026
174.....69026
176.....69026
181.....69026

21 CFR

1.....70887
1307.....69879

Proposed Rules:

172.....70918, 70919
809.....68006
1310.....70610

22 CFR

181.....67643

Proposed Rules:

22.....67687

26 CFR

300.....68456

Proposed Rules:

1.....69559, 70310, 70412
40.....67690
47.....67690
54.....68519
300.....68525
301.....70310

27 CFR**Proposed Rules:**

9.....69113

28 CFR

68.....70586

29 CFR**Proposed Rules:**

2590.....68519

30 CFR

585.....68460

33 CFR

3.....69034
100.....67946, 68462
117.....70591
162.....69034
165.....67950, 68463, 69034,
69036, 70360, 70593, 70889
Proposed Rules:
117.....68031, 68033
165.....70613

34 CFR

Ch. III.....67953, 67955
600.....70004
668.....70004

36 CFR**Proposed Rules:**

214.....67694
251.....67694
261.....68035

37 CFR

390.....69038

Proposed Rules:

43.....69578
210.....70412
384.....68527

40 CFR

50.....70595
52.....67651, 67957, 67963,
68465, 68469, 68471
81.....67651, 68471
180.....68475, 69039
705.....70516
1090.....70602

Proposed Rules:

2.....70616
51.....70616
52.....68529, 68532, 70616
60.....68535
152.....70625

42 CFR

Ch. I.....70768, 70814
12.....69879
402.....70363
411.....68486, 68482
412.....68482, 68491, 68494
413.....68486
419.....68482
488.....68482, 68486
489.....68482, 68486
495.....68482
Proposed Rules
52i.....68553
93.....69583

43 CFR

3195.....67964

44 CFR**Proposed Rules:**

Ch. I.....67697
9.....67870

45 CFR

102.....69531, 70363

Proposed Rules:

147.....68519
205.....67697
260.....67697
261.....67697
263.....67697
410.....68908
2520.....69604
2521.....69604
2522.....69604

46 CFR

11.....67966
175.....69043

Proposed Rules:

10.....68042

47 CFR

8.....69883
20.....70891
54.....67654

Proposed Rules:

73.....68557

48 CFR

Ch. 1.....69502
1.....69503
3.....69517
4.....69503
9.....69503
13.....69503
19.....69523
31.....69517
39.....69503
52.....69503, 69517, 69525
1801.....69883
1812.....70897
1813.....70897
1816.....70897
1819.....69883, 70897
1823.....70897
1832.....70897
1852.....69883, 70897

Proposed Rules:

1.....68055, 68402
2.....68055, 68402
4.....68055, 68402
7.....68055, 68402
10.....68055, 68402
11.....68055, 68402
12.....68055, 68402
19.....68067
37.....68402
39.....68055, 68402
52.....68055, 68402
1831.....67720
1852.....67720

49 CFR

217.....70712
218.....70712
229.....70712
299.....70712
390.....70897
803.....69043

50 CFR

17.....69045, 69074
300.....69068
622.....68495, 68496, 68497,
69553
635.....67654, 70605
648.....68498, 70606, 70909
660.....67656
665.....67984, 69554
679.....67666, 67985, 67986
697.....67667

Proposed Rules:

17.....68070, 68370, 70634
218.....68290
622.....67721

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 October 10, 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.