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The President

Captive Nations Week, 2024

By the President of the United States of America**A Proclamation**

During Captive Nations Week, we remember all those around the world living under oppression and fighting for their liberty. They remind us that freedom is never free and that even the most brutal regime cannot erase the human yearning for dignity and self-determination.

As we marked the 80th anniversary of D-Day this year, we were reminded of the dark forces that the United States and its allies fought against in World War II, like aggression, greed, and the desire to dominate and change borders by force. Still today, the struggle between dictatorship and freedom continues. We see it in various places around the world, where rulers govern with contempt for basic human rights, the rule of law, and democratic governance. In countries like Belarus, Cuba, the Democratic People's Republic of Korea, Iran, Nicaragua, the People's Republic of China, Syria, Russia, Venezuela, and more, millions live without basic freedoms.

In Europe, we see another stark example. Russia is waging an illegal, unjustifiable, and unprovoked war of aggression against Ukraine. For 2 years, the Ukrainian people have fought with extraordinary courage and bravery. The United States is standing with them, alongside a coalition of more than 50 countries, and we will not walk away or bow down. The autocrats of the world are watching closely to see what happens in Ukraine and if we will let this illegal aggression go unchecked. We cannot let that happen. That is why I signed a national security package into law that provided \$61 billion to the people of Ukraine to meet their urgent security and defense needs, ensuring they have the support they need to defend their country.

At the same time, we support the equal and inalienable rights of all people everywhere. That is why my Administration has been working with the Congress to provide up to \$11.8 billion through the end of Fiscal Year 2025 to strengthen democracies across the globe. This year, at the Third Summit for Democracy, the United States and countries around the world came together to strengthen democratic resilience, respect for human rights, and good governance globally. But there is still so much we must do. We must continue working to ensure that women and girls enjoy equal rights and equal participation. We must ensure that Indigenous groups; racial, ethnic, and religious minorities; and people with disabilities do not have their potential stifled by systemic discrimination. We must remember wrongfully detained Americans around the world. And we must ensure that LGBTQI+ people are not targeted with violence because of who they are. When human rights are not upheld, the effects are felt everywhere. They are essential to the advancement of human progress that brings us together.

The challenges of our time remind us that we must continue to secure our freedom and democracy here at home. I signed an Executive Order to promote access to voter registration and election information so every American has an opportunity to exercise their right to vote. And I signed the Electoral Count Reform Act to ensure that our elections answer to the will of the people. I continue to call on the Congress to pass the

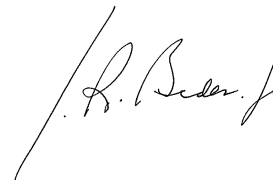
Freedom to Vote Act and the John Lewis Voting Rights Advancement Act, which would further protect the sacred right to vote.

As Americans, we represent something special to the world. We are the only Nation on Earth founded on the idea that all men and women are created equal. Both at home and abroad, our actions every day will ensure that our democracy endures, the soul of our Nation endures, and the free world remains free. This week, we recommit to ensuring that democracy is preserved, is defended, and prevails.

The Congress, by joint resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week of July of each year as "Captive Nations Week."

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim July 21 through July 27, 2024, as Captive Nations Week. I call upon all Americans to reaffirm our commitment to championing those around the world who are working, often at great personal risk, to secure liberty and justice for all.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of July, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.



Presidential Documents

Proclamation 10786 of July 19, 2024

Made in America Week, 2024

By the President of the United States of America

A Proclamation

Across the Nation, American workers are writing the greatest comeback story in our country's history. After a once-in-a-century pandemic, they are bringing new jobs, businesses, and hope to their communities. This week, we celebrate the American workers, unions, companies, and innovators who are the backbone of America's economy, who make "Made in America" not just a slogan but a reality, and who are leading our Nation's transformation to win the global economic competition of the 21st century.

For decades, manufacturing products here at home created good-paying jobs across the country and forged a clear path to the middle class. But over the years, trickle-down economics reversed that progress. American manufacturers shut down their factories. American jobs were exported overseas. And American communities were hollowed out. People and families throughout the United States were robbed of not just their jobs but their dignity, hope, and pride.

My Administration was determined to turn things around by investing in America and Americans once again—building an economy from the middle out and bottom up, not the top down. The results are clear: Since I came into office, the economy has created over 15 million jobs—including nearly 800,000 manufacturing jobs. The unemployment rate fell to its lowest level in half a century. And manufacturing is roaring back with new factories being built all across the country—in big cities and rural communities. So far, companies have invested more than \$700 billion in American manufacturing.

On my watch, Federal projects are being made with American products and are being built by American workers. I signed the "Invent It Here, Make It Here" Executive Order, which directs Federal agencies to prioritize domestic manufacturing when it comes to research, development, innovation, and bringing inventions to market. We are also using the immense purchasing power of the Federal Government—the largest buyer of consumer goods in the world—to bring manufacturing back home. My Administration has implemented the most robust change to the Buy American Act in almost 70 years by raising the domestic content threshold for Federal procurement from 55 percent to 65 percent in 2024—and we are set to raise the bar even higher to 75 percent in 2029.

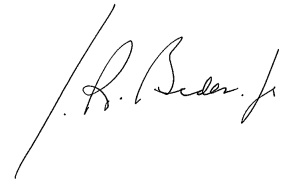
Additionally, thanks to our Bipartisan Infrastructure Law, 60,000 new infrastructure projects have been announced across the country, rebuilding our roads, bridges, airports, ports, rail networks, water systems, and more. We are investing \$90 billion to provide affordable, reliable, high-speed internet to everyone in the United States, which is driving manufacturing jobs in industries like fiber optic cable manufacturing. My CHIPS and Science Act is investing in more research and development for manufacturing than ever before, attracting \$348 billion in private sector investments to build new semiconductor factories. This manufacturing boom is creating hundreds of thousands of jobs—many of which pay over \$100,000 and do not require a college degree.

At the same time, our Inflation Reduction Act is ensuring that the clean energy future is built here in America. Our investments have spurred the private sector to build and create new jobs here at home. To date, the private sector has announced investments in 126 new and expanded solar manufacturing plants; more than 30 wind manufacturing facilities; more than 150 new or expanded sites for electric vehicle assembly, component manufacturing, and charger manufacturing; and more than 250 new or expanded facilities in the battery manufacturing and critical mineral supply chain. These investments are supporting historic growth in clean energy deployment and adoption and creating good-paying jobs across the country. Altogether, since taking office, companies have committed more than \$400 billion in private-sector investment in manufacturing and deployment of clean energy, electric vehicles, and batteries.

For the first time in a long time, American workers are putting shovels in the ground and leading our Nation's greatest economic comeback. Thousands of cities and towns across the country are proving that we can get big things done when we work together. This Made in America Week, let us celebrate America's incredible workers who are restoring American pride. Let us honor the proud legacy and promising future of American products. And let us recommit to nurturing the spirit of innovation that will continue to drive American prosperity for generations to come.

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 July 21 through July 27, 2024, as Made in America Week. I call upon all Americans to observe this week by celebrating Made in America and supporting American workers and domestic businesses that are the backbone of building a future here in America.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of July, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Presidential Documents

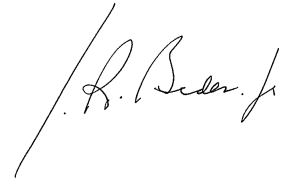
Memorandum of July 19, 2024

Delegation of Functions and Authorities Under Section 9902(a)(3)(B) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Director of the Office of Management and Budget the functions and authorities vested in the President by section 9902(a)(3)(B) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) with respect to the certification and reporting requirements regarding Federal investments in individual projects exceeding \$3 billion.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, July 19, 2024

Rules and Regulations

Federal Register

Vol. 89, No. 142

Wednesday, July 24, 2024

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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0062]

Raisins Produced From Grapes Grown in California; Temporary Relaxation of Substandard and Maturity Dockage Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: This final rule adopts, without change, an interim final rule that temporarily changes the substandard and maturity dockage requirements for raisins covered under the Federal marketing order for raisins produced from grapes grown in California (Order). For the 2023–2024 crop year, the minimum requirements for substandard and maturity dockage in the marketing order's handling regulations are relaxed to accommodate raisins adversely impacted by severe weather conditions.

DATES: Effective July 25, 2024.

FOR FURTHER INFORMATION CONTACT: Jeremy Sasselli, Marketing Specialist, or Barry Broadbent, Branch Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901 or Email: Jeremy.Sasselli@usda.gov or Barry.Broadbent@usda.gov.

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

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553,

temporarily amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), hereinafter referred to as the “Order,” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Raisin Administrative Committee (Committee) locally administers the Order and is comprised of growers and handlers of raisins operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

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

This final rule affirming the interim final rule temporarily relaxes the substandard and maturity dockage minimum requirements for incoming raisins covered under the Order for the 2023–2024 crop year. Section 989.58 requires natural condition raisins that do not meet the minimum requirements must be returned by handlers to producers, reconditioned by handlers at the producers' expense, or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price. Provided, however, handlers may acquire natural condition raisins which exceed the tolerance established for maturity under a weight dockage system. Under the Order, handlers acquire raisins from producers under a weight dockage system and adjust the creditable fruit weight acquired according to the percentage of substandard raisins in the lot and/or the percentage of raisins that fall below certain levels of maturity in the lot. Handler payments to producers, and the payment of handler assessments, are based on the creditable weight of raisins acquired by handlers. Due to unusual crop conditions created by extreme weather events which adversely affected the growing conditions of California raisin grape vines, producers and handlers in the industry are seeing a relatively high percentage of the 2023–2024 crop year deliveries of raisins fall outside the minimum requirements of the substandard and maturity dockage

system. The situation is the result of unforeseen environmental factors that are showing effects on raisin grapes after harvest and drying. The temporary relaxation of the substandard and maturity requirements effectuated by this final rule is expected to mitigate the disruption of the marketing of California raisins caused by adverse environmental conditions on the California raisin industry and provide a cost savings for producers by reducing reconditioning and reinspection costs.

Prior to the 2022–2023 winter, the raisin-growing region in California suffered multiple years of extreme drought, which had long-term detrimental effects on California grape vineyards. Further, over the course of the 2022–2023 winter, temperatures across California were colder than average, rainfall in the San Joaquin Valley exceeded normal levels, and snowfall in the Sierra Nevada greatly exceeded normal levels, leading to one of the largest snowpacks on record. Additionally, in 2023 a series of intense storms brought rain onto the record snowpack, causing rapid snowmelt which had disastrous flooding effects in parts of the San Joaquin Valley, including the historic filling of the Tulare Lake Basin. However, the full effect of such severe weather conditions on raisin grape production only became apparent to producers when dehydrators began their grape dehydrating activities in mid to late August 2023.

During its October 5, 2023, meeting, the Committee determined that rain and cold temperatures into late spring and early summer delayed crop maturity and that record rain and snowmelt created exceptionally high humidity levels throughout the production area, causing some bunch rot and mildew issues. In addition, hurricane Hillary perpetuated these conditions at the end of August 2023 by bringing unseasonal and substantial rainfall throughout the raisin growing region. The crop was also late by at least three weeks, and temperatures in September and into October were below average, which extended the raisin drying period and has delayed deliveries to handlers. Thus, raisins delivered to handlers by producers failed to meet the Order's minimum requirements. This was evident by incoming inspections reported to the Committee since the beginning of the 2023–2024 crop year (August 1) having shown an increase of approximately 160 percent in off-grade natural condition raisins over the average of the past 4 years (29.1 percent versus 11.2 percent). All other varieties of raisins have also shown a 155 percent

increase in off-grade over the previous 4-year average (26.0 percent versus 10.2 percent). Relaxing the limits for the 2023–2024 crop year reduces the number of failing lots of raisins that must be returned by handlers to producers, reconditioned by handlers at the producers' expense, or disposed of through non-normal outlets. This final rule provides cost savings to producers by minimizing reconditioning and reinspection costs and avoid further delays affecting producer deliveries in the 2023–2024 crop year. The Committee unanimously recommended this action during its October 5, 2023, meeting.

Section 989.58(a) of the Order provides authority for the establishment of incoming grade, quality, and condition requirements for natural condition raisins that are delivered from producers to handlers. This section also contains authority for handlers to acquire natural condition raisins which fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system.

Section 989.701 of the Order establishes the minimum grade and condition standards for natural condition raisins. Product that does not meet those requirements is considered substandard. Handlers may acquire product that is determined to be substandard under a weight dockage system. The regulations delineating the Order's weight dockage system are contained in §§ 989.212 and 989.213. Under those provisions, handler acquisitions of raisins, and payments to producers for such raisins, are adjusted according to the percentage of substandard raisins in each lot and/or the percentage of raisins that fall below certain levels of maturity of each lot. Product that does not meet the minimum requirements under the weight dockage system is considered off-grade and must be returned to producers, reconditioned, or disposed of in an eligible non-normal market outlet that does not compete with standard raisins.

Tolerances for Substandard Raisins

Section 989.701 of the Order's regulations specifies the minimum quality requirements for natural condition raisins. Lots of raisins may contain a maximum percentage, depending on varietal type, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes). Specifically, lots of Natural (sun-dried) Seedless, Monukka, Other Seedless, Dipped Seedless, Oleate and Related

Seedless, Other Seedless-Sulfured, and Golden Seedless raisins may contain no more than 5 percent, by weight, of substandard raisins. Lots of Muscat, Sultana, and Zante Currant raisins may contain no more than 12 percent, by weight, of substandard raisins.

Dockage System for Substandard Raisins

Section 989.212 provides that handlers may acquire, under an agreement with a producer, raisins that fall outside the tolerance for substandard raisins specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless—Sulfured raisins which contain from 5.1 through 17.0 percent, by weight, of substandard raisins under a weight dockage system. A handler may also acquire, subject to prior agreement, any lot of Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins containing from 12.1 through 20.0 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of each lot of raisins acquired by handlers under the substandard dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor from the tables in § 989.212. The dockage factor reduces the weight of the raisin lot by an amount approximating the weight of the raisins needed to be removed for the remainder of the lot to meet minimum grade requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for applicable handler assessments and handler payments to producers for product received. However, those raisins failing to meet the established substandard tolerance levels (17.0 or 20.0 percent, depending on varietal type) must be returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards or disposed of in an eligible non-normal market outlet that does not compete with standard raisins.

Because of the adverse crop conditions described above, the industry producers and handlers are dealing with a relatively high percentage of the 2023 crop (marketed over the 2023–2024 crop year) that is falling outside the limits of the substandard dockage systems when delivered to handlers. Further, the Committee has reported that, to date, approximately 29.1 percent of natural

condition raisins delivered to handlers, and approximately 26.0 percent of all other varieties of raisins, have been off-grade, requiring reworking or disposition into non-normal market outlets. In comparison, the average percentages for off-grade deliveries for the 4 years prior to the 2023–2024 crop year shows approximately 11.2 percent and 10.2 percent, respectively.

The Committee recommended that the allowable maximum percentage of substandard raisins in producer deliveries that can be acquired under the dockage system be increased, from 17.0 to 21.0 percent for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins, and from 20.0 to 25.0 percent for Muscat (including other raisins with seeds), Sultana, and Zante Currant raisins. Lots containing more than 21.0 or 25.0 percent, depending on varietal type, of substandard raisins are considered off-grade and require reconditioning before they can be acquired by handlers. This rule makes appropriate changes to § 989.212 to incorporate the Committee's recommendations. The changes apply for the 2023–2024 crop year only.

Increasing the percentage allowed for substandard raisins in incoming fruit is expected to reduce the number of failed lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price. Under the relaxation, handlers are able to acquire more lots of raisins upon first inspection and not experience the potential delay of waiting for failing lots to be reconditioned. The ability to acquire more raisins upon first inspection helps handlers better meet the needs of the market and save producers the cost of reconditioning and reinspecting failed fruit that would otherwise have passed incoming inspections and be received by handlers.

Tolerance for Maturity

Section 989.701 of the Order's regulations specifies that lots of certain varietal types of natural condition raisins must contain a minimum percentage of raisins that are well-matured or reasonably well-matured. Specifically, lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured raisins must contain at least 50 percent, by weight, of raisins that are well-matured or reasonably well-matured, or what is

commonly referred to by the industry as the "B or better" maturity standard.

Dockage System for Maturity

Section 989.213 provides that handlers may acquire, under an agreement with a producer, raisins falling outside the tolerance for maturity specified in § 989.701. Specifically, handlers may acquire any lot of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, Other Seedless-Sulfured raisins which contain from 35.0 to 49.9 percent, by weight, of well-matured or reasonably well-matured raisins under a weight dockage system. The dockage system is applied similarly to the substandard dockage system previously described. The creditable weight of each lot of raisins acquired by handlers under the maturity dockage system is obtained by multiplying the applicable net weight of the lot of raisins by the applicable dockage factor in the tables in § 989.213. The dockage factor reduces the weight of the raisins needed to be removed for the remainder of the lot to meet minimum maturity requirements after processing and packing. The weight determined in this manner represents the creditable weight of the raisins which is used as a basis for payment of handler assessments and handler payments to producers for product received. Those raisins failing to meet the maturity tolerance level of 35.0 percent are returned to the producer or reconditioned by the handler (at the producer's expense) to bring the lot up to acceptable quality standards. If a lot of raisins is subject to both a maturity and substandard dockage factor, only the highest of the two dockage factors is applied, as stated in § 989.210(d).

In addition, the maturity dockage system is divided into three categories depending on the percentage of well-matured or reasonably well-matured raisins in the lot. The creditable fruit weight of raisins delivered by producers to handlers in the first category, which includes lots containing between 45.0 to 49.9 percent well-matured or reasonably well-matured raisins, is reduced .05 percent for each 0.1 percent the lot is below 50.0 percent down to 45.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the second category, which includes lots containing between 40.0 to 44.9 percent well-matured or reasonably well-matured raisins, is reduced 0.1 percent for each 0.1 percent the lot is below 44.9 percent down to 40.0 percent. The creditable fruit weight of raisins delivered by producers to handlers in the third category, which

includes lots containing between 35.0 to 39.9 percent well-matured or reasonably well-matured raisins is reduced 0.15 percent for each 0.1 percent the lot is below 39.9 percent down to 35.0 percent. Applicable handler assessments and producer payments for product received are reduced accordingly. Because of the adverse crop conditions described above, the industry predicts that a relatively high percentage of the 2023 crop will fall below the 35.0 percent tolerance level for maturity when product is delivered to handlers. So far this crop year, approximately 29.1 percent of natural condition raisins have been off-grade and require reconditioning to enter the market. In addition, approximately 26.0 percent of all other varieties have been off-grade.

The Committee recommended that the minimum allowable level for maturity of raisins delivered by producers that can be acquired under the dockage system be reduced, for the 2023–2024 crop year only, from 35.0 to 30.0 percent under a fourth category in the regulation. The Committee also recommended that the creditable fruit weight of raisin deliveries in this fourth category created for the 2023–2024 crop year, or lots containing between 30.0 to 34.9 percent well-matured or reasonably well-matured raisins, be reduced by 0.2 percent for each 0.1 percent the lot is below 34.9 percent down to 30.0 percent. Applicable handler assessments and producer payments for product received are to be reduced accordingly. Lots containing 29.9 percent or less raisins which are well-matured or reasonably well-matured raisins are considered off-grade and require reconditioning before they can be acquired by handlers. A new paragraph (e) is added to § 989.213 for this fourth category and applies only to product handled during the 2023–2024 crop year.

Similar to relaxing the requirements under the substandard dockage system, reducing the minimum allowable level for maturity for the 2023–2024 crop year is expected to reduce the number of failed lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense or disposed of in non-normal outlets. Under this relaxation, handlers are able to acquire more lots of raisins upon first inspection and not continue to experience further delay waiting for failed lots to be reconditioned and reinspected. The ability to acquire more raisins upon first inspection helps handlers better meet the needs of the market and save producers the cost of reconditioning failed fruit that would

otherwise have been acquired by handlers under the weight dockage system. In addition, the industry has indicated that there is strong market demand for raisins and requiring a large percentage of the crop to be reconditioned and reinspected would have hindered the handlers' ability to fulfill that demand, disrupting the orderly marketing of California raisins. Further, the cost of reconditioning and reinspection is expected to be passed on to the consumer. This rule allows better movement of product through market channels and is expected to reduce costs for producers, handlers, and possibly consumers.

Final Regulatory Flexibility Analysis

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

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

There are approximately 1,700 producers of California raisins and approximately 17 handlers subject to regulation under the Order. Small agricultural producers of raisins are defined by the Small Business Administration (SBA) as those having annual receipts equal to or less than \$4.0 million (NAICS code 111332, Grape Vineyards) and small agricultural service firms are defined as those whose annual receipts are equal to or less than \$34.0 million (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

Using USDA National Agricultural Statistics Service (NASS) data, the 2022 season average value of utilized production of California processed raisin-type grapes (most of which are dried into raisins) is \$376.6 million. Dividing that figure by 1,700 producers yields an annual average revenue per producer of \$221,530, well below the SBA large farm size threshold of \$4.0 million. Therefore, in terms of average annual sales of processed raisin-type grapes, the majority of California raisin producers may be classified as small entities.

To make a similar computation for handlers, the first step is to estimate a

representative handler price received per pound for packaged raisins. Recent USDA purchases under the Commodity Procurement Program provide such an estimate. For the most recent raisin crop year used by the RAC (August 2022–July 2023) the average price paid for packaged raisins purchased by the USDA for feeding programs was \$1.56 per pound. For that time period, the RAC provided a list of quantities delivered by handlers. When multiplied by the \$1.56 price per pound, the results showed that 5 handlers had annual raisin receipts greater than \$34.0 million, the SBA threshold level for a large handler. The remaining 12 handlers out of 17 are small handlers, using the SBA criterion.

This final rule relaxes the substandard and maturity dockage requirements specified in §§ 989.212 and 989.213, respectively, of the Order's handling regulations for the 2023–2024 crop year. These sections allow handlers to acquire raisins from producers that do not meet the Order's minimum quality requirements under a weight dockage system. Under the system, handlers adjust their payments to producers for product received, and the payment of Order assessments, according to the percentage of substandard raisins in the lot and/or the percentage of raisins falling below certain levels of maturity. Because of extreme weather issues which adversely affected the growing conditions of the raisin grape vines for the 2023 crop, the industry predicts that a high percentage of the 2023–2024 crop year raisins delivered by producers to handlers will continue to fall outside the current limits of the dockage systems in the handling regulations. Temporarily relaxing the minimum requirements under the dockage systems for the 2023–2024 crop year is expected to reduce the number of lots of raisins returned by handlers to producers or reconditioned by handlers at the producers' expense or disposed of in a non-normal outlet such as animal feed at a much-reduced producer price.

Relaxing the dockage limits for the 2023–2024 crop year allows handlers to acquire more lots of raisins that would otherwise fail specified tolerances for substandard raisins and maturity. Thus, fewer lots are expected to be returned to producers for reconditioning. Under the revised requirements, transportation costs for hauling raisins to and from the handler's premises for reconditioning and reinspection, estimated at \$24 per ton one way, may be eliminated.

Producers are also expected to save on reconditioning costs. Producer costs for reconditioning raisins falling below certain maturity levels (usually a “wash

and dry” process) are estimated at \$275–\$300 per ton. Producers may also save on reinspection costs at \$15.50 per ton because more of their raisins will meet the relaxed incoming substandard and maturity requirements upon first inspection. In addition, producers whose lots of raisins fall into the extended dockage limits for substandard raisins will not have to incur \$60 per ton in costs for “dry reconditioning” expenses.

Relaxing the dockage limits may cause handlers to incur some additional costs; however, such costs are minimal when considering the alternative, that is to receive significantly less product for the 2023–2024 crop year and to not be able to meet market demand. Thus, the benefits of this rule outweigh such costs. While the incoming quality requirements are relaxed, the outgoing quality requirements under the Order will remain unchanged. The burden of removing substandard raisins or raisins falling below certain levels of maturity will be shifted from producers to handlers. However, although handlers will have to undertake the additional burden of cleaning up the fruit, handlers are better prepared than producers to manage the lower quality raisins efficiently and economically because they already have the processing equipment designed to remove the undesirable fruit. Moreover, without this rule, handlers would likely have less fruit available to meet market needs.

The Committee considered several alternatives to the recommended action. An Administrative Subcommittee (Subcommittee) convened on October 3, 2023, to discuss the current crop situation and to submit remediation recommendations to the full Committee. At the meeting, the Subcommittee discussed increasing the allowable amount of substandard fruit from 17.0 to 25.0 percent for Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Monukka, Other Seedless, and Other Seedless-Sulfured. However, many industry members felt that the 25.0 percent was too high for the current conditions in the market, and ultimately the Subcommittee approved recommending a maximum 21.0 percent allowable tolerance for those varieties of substandard incoming fruit. The Subcommittee also considered whether to maintain the dockage for maturity for percentages between 30 and 35 percent at 0.15 percent or to increase it. There were also discussions regarding revising the tolerance for mold under the quality requirements. The majority of the Subcommittee did not favor any changes for mold tolerances. Ultimately,

the Subcommittee voted to recommend to the Committee the changes as contained herein, and the full Committee subsequently voted unanimously to recommend this action to AMS.

The Committee's meetings were widely publicized throughout the production area. The raisin industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. The Subcommittee meeting on October 3, 2023, and subsequent full Committee meeting on October 5, 2023, were each open to the public where any interested parties was able to express views on this issue. In addition, interested persons were invited to submit comments on this final rule, including the regulatory and information collection impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on December 11, 2023 (88 FR 85819). The interim final rule was effective on December 12, 2023. Copies of the interim rule were mailed or sent via email to California raisin handlers. A copy of the interim rule was made available through the internet by AMS via <https://www.regulations.gov>. AMS provided a 60-day comment period ending February 9, 2024, to give interested persons to respond to the interim final rule. No comments were received. Accordingly, no changes have been made to the rule as published.

This final rule continues in effect temporary changes to the minimum requirements for substandard and maturity dockage under the Order's handling regulations for the 2023–2024 crop year. The minimum requirements have been temporarily relaxed to accommodate raisins adversely impacted by severe weather conditions. Producers and handlers are aware of this action as it continues in effect the interim final rule effective on December 12, 2023, and need no preparation time to comply. Accordingly, pursuant to 5 U.S.C. 553(d), AMS finds that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the **Federal Register**. The relaxation of the minimum requirements expires at the end of the 2023–2024 crop year on July 31, 2024.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements are necessary as a result of this action.

Should any changes become necessary, they would be submitted to OMB for approval.

This final rule would not impose any additional reporting or recordkeeping requirements on either small or large California raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

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

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that finalizing the interim rule, without change, as published in the **Federal Register** of December 11, 2023 (88 FR 85819), is consistent with and will tend to effectuate the purposes of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989, which was published at 88 FR 85819 on December 11, 2023, is adopted as a final rule without change.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–16173 Filed 7–23–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3555

[Docket No. RHS–24–SFH–0025]

Single Family Housing Guaranteed Housing Payment Supplement Account Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notification.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing this document for a demonstration program that will establish a new loss mitigation retention option, referred to as the Payment Supplement Account (PSA). The Agency's intention of this demonstration program is to assist borrowers who have experienced a documented hardship that led to an involuntary inability to pay their mortgage obligation, require payment reduction to resume making a monthly payment, and currently have a below market interest rate. This document briefly discusses a special servicing option for servicers to utilize to continue assisting struggling borrowers who seek loss mitigation alternatives, regardless of the nature of their hardship.

DATES: The effective date of this demonstration program is July 24, 2024. The duration of the demonstration program is anticipated to continue until July 24, 2026, at which time the RHS may extend the demonstration program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. RHS will notify the public whether the demonstration program has been extended or terminated.

FOR FURTHER INFORMATION CONTACT: Stephanie Freeman, Finance and Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Email: stephanie.freeman@usda.gov; Phone: (314) 457–6413.

If you are interested in participating in this demonstration program or if you have any questions, please contact the Loan Servicing Branch at SFHGLPServicing@usda.gov.

SUPPLEMENTARY INFORMATION:

Authority

The SFHGLP is authorized by Section 502(h) of the Housing Act of 1949, as amended, codified at 42 U.S.C. 1472(h); and implemented under 7 CFR part 3555.

Overview

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. The RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, state, and federal agencies.

Affordable housing is essential to the vitality of communities in rural America. RD's Single Family Housing Programs give families and individuals the opportunity to purchase, build, repair their existing home, or to refinance their current mortgage under certain criteria. Eligibility for these loans, loan guarantees, or grants is based on income which varies according to the average median income for each eligible rural area.

Section 502 Guaranteed Loan Program provides a 90 percent loan note guarantee to approved lenders in efforts to provide low- and moderate-income households the opportunity to own adequate, modest, decent, safe and sanitary dwellings as their primary residence in eligible rural areas. Eligible applicants may purchase, build, rehabilitate, improve or relocate a dwelling in an eligible rural area. Applicant eligibility for this program is determined by the lender pursuant to the criteria set forth in 7 CFR part 3555, subpart D.

The Domestic Policy Council (DPD) and the National Economic Council (NEC) has recently urged agencies to begin implementing workable home retention solutions that would provide subsequent mortgage protections and minimize the borrowers' risk of foreclosure considering the current market conditions. Therefore, the Agency has continued to explore additional home retention options for servicers to further assist borrowers and reduce Agency losses.

The RHS may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 42 U.S.C. 1476(b); 7 CFR 3555.2(b). Demonstration programs are time- and scope-limited

programs designed to test new approaches and for those reasons, demonstration programs need not be consistent with all regulatory provisions while active. This demonstration program helps struggling borrowers that are delinquent on their mortgage payments and are unable to obtain a payment reduction utilizing the currently available loss mitigation options.

Purpose of the Payment Supplement Account

The Single-Family Housing Guaranteed Loan Program (SFHGLP) provides borrowers with the maximum opportunity to remain successful homeowners and provides servicers with multiple loan servicing options to support borrowers who have experienced a documented hardship. RD continues to explore strategies to improve the quality and effectiveness of our program.

Typically, assistance is accomplished through a combination of rate reduction, term extension, and/or a reduction of the borrower's interest-bearing principal. These assistance options can be accomplished with the utilization of a stand-alone Mortgage Recovery Advance (MRA), also known to the industry as a partial claim. While the Agency's loss mitigation options have continued to deliver assistance to borrowers in default, unprecedented higher interest rates in conjunction with the current economic conditions have impacted the ability and delayed the effectiveness of those relief measures to meaningfully assist borrowers.

Due to the sensitivity of the changes in mortgage rates, rise in consumer debt, and the challenges with mortgage payments associated with the pressures on household finances, the Agency has continued to evaluate additional options for servicers in an effort to further assist borrowers. This demonstration program establishes a new loss mitigation retention option, referred to as the Payment Supplement Account (PSA). The PSA shall be funded by a stand-alone MRA. The PSA assists borrowers who have experienced a documented hardship that led to an involuntary inability to pay their mortgage obligation, require payment reduction to resume making a monthly payment, and currently have a below market interest rate.

Discussion of the Payment Supplement Account

7 CFR 3555.304(d) permits the use of an MRA in conjunction with loss mitigation to provide payment relief to borrowers. The MRA allows the servicer

to advance funds on behalf of the borrower to satisfy the borrower's arrearage, pay legal fees and foreclosure costs related to a cancelled foreclosure action, and reduce the principal balance of the loan.

The PSA demonstration program shall require the servicer to use a portion of the MRA funds to cure the arrearage and segregate the remaining funds in a separate, non-interest-bearing custodial account to provide monthly payment relief to the borrower. The PSA shall be funded by a stand-alone MRA, which shall be incrementally utilized to first, payoff the arrearages accumulated during a hardship to bring the loan current and second, to supplement the principal portion of the borrower's payment in monthly increments and provide payment relief for three years. The PSA shall remain with the servicer's lien as a non-interest-bearing, recoverable servicing advance. The MRA created under this demonstration program shall not be secured by a second lien in favor of RD, which eliminates the need for notary fees, recording costs, and additional legal fees.

Eligibility Requirements

To be eligible under this demonstration program, all the following parameters shall apply:

- The borrower must occupy the home as their primary residence.
- The borrower must have experienced a documented hardship and requires payment reduction to resume making a regular monthly payment. The hardship that caused the borrower's involuntary inability to pay must have been cured. Lenders and servicers may refer to HB-1-3555 Attachment 18-A for guidance on this inquiry.
- There is no reasonable ability for the borrower to cure the delinquency on their own within 12 months without assistance.
- The MRA shall be utilized to cure the arrearage, bring the loan current, and fund a PSA that will be utilized to provide a targeted reduction to the borrower's principal and interest (P&I) payment for three years. At the end of the three years, the borrower shall be responsible for resuming the full amount of their monthly contractual payment.
- The servicer should target a 25 percent principal and interest reduction, not to exceed the principal portion of the principal and interest, for a maximum 3-year total period. If a 25 percent reduction cannot be achieved, offer the achievable reduction, not less

than 5 percent, and not to exceed a maximum 3-year total period.

- Three trial timely payments will be required. Guidance on trial payments is available at HB-1-3555 Attachment 18-A.

- The borrower shall sign an agreement to repay the advance in full.

- The servicer shall segregate the funds paid by USDA for the PSA in a separate, non-interest-bearing custodial account (the PSA) characterized by the following:

- is deposited with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA);

- does not limit the servicer's access to funds for the payment supplement, require an advance notice of withdrawal, or require the payment of a withdrawal penalty; and

- clearly identifies the funds being held in that account as being derived from and held as part of the PSA Agreement executed by the borrower.

- The servicer must ensure that the funds in the PSA are clearly delineated as funds held as a result of the PSA Agreement executed by the borrower, for use only as provided for in the PSA Agreement. Neither the servicer nor the borrower may exercise discretion in the use and application of the funds from the PSA; funds shall be used and applied only to reduce the principal balance.

- The MRA utilized to fund the PSA will be limited to 30 percent of the borrower's unpaid principal balance at the time of initial default. If the borrower has previously been provided an MRA they may still be considered for a PSA MRA provided that the combined amount of MRAs do not exceed the 30 percent maximum outlined above.

- This option is the last option in the loss mitigation waterfall, and it must be determined by the servicer that the borrower is not eligible for any other retention solution prior to solicitation for participation in this pilot.

- Servicers shall advance their own funds to bring the loan current prior to requesting the MRA to establish the PSA.

- Servicers may file an MRA claim with RD to recoup the funds they advance on behalf of the borrower and utilized to fund the PSA, subject to the MRA claim filing requirements described in 7 CFR part 3555.

- The amount of the non-interest-bearing receivable will remain part of the servicer's first lien.

- The servicer shall agree to repay the amount of the MRA to RD when the first lien matures, the borrower sells or

refinances the home, or otherwise pays the loan in full.

- The servicer shall draw from the PSA monthly, only when the borrower makes their portion of the monthly payment, to provide payment relief. As funds are advanced, the amount drawn will be added to the non-interest-bearing receivable.

- If a borrower makes the full amount of their monthly contractual payment, the servicer shall still make the monthly draw from the PSA. Any additional funds paid by the borrower shall be applied to curtail the principal balance.

- A borrower who re-defaults while receiving PSA funds can re-enter the RD loss mitigation waterfall and be evaluated for traditional options, if eligible. Any remaining PSA funds should be applied to the unpaid principal balance as part of that loss mitigation action.

- If a servicing transfer occurs on the guaranteed loan, the servicer shall ensure that the funds in the PSA awaiting disbursement are transferred to the new servicer at the same time as the mortgage transfer. The new servicer shall assume any remaining obligations of the initial servicer in connection with the ongoing loss mitigation action consistent with the terms of the PSA Agreement.

- If there is a loss due to a short sale, a deed-in-lieu of foreclosure, or a foreclosure, any remaining funds in the PSA shall be applied towards the principal balance and added to the non-interest-bearing receivable prior to a loss claim being filed.

The servicer may be required to submit additional information about the pilot program outside of the usual electronic reporting process. This enhanced report shall be provided as requested and should include at minimum the number of current and existing PSA MRAs provided under this pilot. Loan servicing and loss claim submissions will be conducted in accordance with the Housing Act of 1949, as amended, and 7 CFR part 3555.

Paperwork Reduction Act

The regulatory waivers for this demonstration program contains no new reporting or recordkeeping burdens under OMB control number 0575-0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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/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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: Program.Intake@usda.gov.

Yvonne Hsu,

Acting Administrator, Rural Housing Service.

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BILLING CODE 3410-XV-P

SMALL BUSINESS ADMINISTRATION**13 CFR Part 123****RIN 3245–AI08****Disaster Assistance Loan Program
Changes to Unsecured Loan Amounts
and Credit Elsewhere Criteria****AGENCY:** U.S. Small Business Administration.**ACTION:** Direct final rule.

SUMMARY: This direct final rule amends the U.S. Small Business Administration (SBA or Agency) regulations governing the SBA Disaster Loan Program by revising how it determines whether an applicant has credit elsewhere to modernize and replace the current process. SBA is also increasing the unsecured threshold for physical damage loans under Major Disaster declarations and for Economic Injury Disaster Loans (EIDL) under all disaster declarations.

DATES:

Effective date: This rule is effective September 9, 2024, unless SBA receives a significant adverse comment to this direct final rule. If a timely, significant adverse comment is received, the Agency will publish a notification of withdrawal of the direct final rule in the **Federal Register** before the effective date.

Applicability date: This rule is applicable for disasters declared on or after September 9, 2024.

Comment date: Comments must be received on or before August 23, 2024.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 3245–AI08, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information via email to Robert Blocker at robert.blocker@sba.gov and highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Robert Blocker, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at Robert.blocker@sba.gov or (202) 619–0477.

SUPPLEMENTARY INFORMATION:**I. Background Information**

SBA's Disaster Loan Program provides direct assistance to homeowners, renters, businesses, and nonprofits, which is critical to rebuilding communities after a disaster. Pursuant to section 7(b) of the Small Business Act, 15 U.S.C. 636(b) (the Act), SBA is authorized to make direct loans to homeowners, renters, businesses, and non-profit organizations that have been adversely affected by a disaster. The Act authorizes the Administrator to increase the SBA's size limits on unsecured disaster loans for physical damages in Major Disasters and for EIDL loans for all disaster declarations except Military Reservist Economic Injury Disaster Loans (MREIDL). (See 15 U.S.C. 636(d)(6)) SBA is further authorized to set a low-interest rate for individuals and businesses that SBA determines are unable to obtain credit elsewhere and to set a market interest rate for the individuals and businesses that can obtain credit elsewhere.

With natural disasters increasing in severity and frequency across the United States and its territories, SBA is increasing the maximum unsecured loan limits for home and business loans declared for Major Disasters and for EIDL loans for all disaster declaration types. SBA is also revising the method used to determine whether an applicant has credit elsewhere.

SBA believes these changes are necessary to:

- Address limits due to inflation.
- Increase efficiencies in the administration and delivery of the program to better achieve mission and improve outcomes for economic recovery.
- Increase the percentage of borrowers utilizing the SBA mitigation program which is designed to prevent future disaster damages and reduce future disaster economic impacts.
- Reduce the burden of collateral and improve access to credit in underserved communities which oftentimes have limited access to other sources of capital and historically have seen higher rates of disasters and lower economic survival rates.

II. Section-by-Section Analysis*Section 123.11 Does SBA require collateral for any of its disaster loans?*

Section 123.11 defines the conditions under which SBA will not require collateral for disaster loans. Paragraph (a) provides the dollar thresholds below which collateral generally will not be required for EIDL loans, physical disaster home and business loans, and MREIDL loans. Paragraph (c) defines

when SBA will aggregate physical home and business loans and or EIDL loans to the same borrowers and affiliates to determine if collateral is required.

The collateral threshold for major disasters and EIDL across all declaration types, has been at \$25,000 since 2014. The collateral threshold for SBA Agency disasters has been \$14,000 since 2008, except for a temporary increase to \$25,000 in 2015. These amounts have not been updated despite cost and inflationary increases.

SBA is revising paragraphs (a)(1) and (2) to increase the unsecured loan threshold to \$50,000 for EIDL loans for all disasters and for physical home and business loans for Major Disaster declarations. SBA believes the current collateral threshold of \$25,000 unnecessarily prevents borrowers from receiving adequate funds to completely recover after a disaster. A recent working paper published by the National Bureau of Economic Research (NBER working paper) used SBA disaster loan application and loan performance data to analyze the effect of collateral requirements on borrower behavior and default rates.¹ Using data from 2005 to 2018, the authors determined that 38 percent of all borrowers with losses above the secured threshold tended to borrow less money than they were eligible, because many have first liens (some had second liens), on their property. As a result, there is little to no justification for further leveraging a property with insufficient equity. The study concluded that the median Disaster Loan Program borrower forgoes up to 40 percent of their loan eligibility to minimize additional liens on their property. The result is that borrowers make decisions that may result in insufficient funds to repair their home adequately and replace personal property. The NBER working paper authors estimated that over \$1.1 billion in eligible loan funds were not disbursed due to borrowers electing to keep loan amounts below the collateral threshold.

SBA expects the increase in the unsecured loan limit will result in increased use by disaster survivors of additional available funds, which may include funds SBA makes available specifically for mitigation uses that minimize the risk and cost of future disasters. Currently, only two percent of borrowers utilize mitigation funds. By increasing the unsecured threshold, we

¹ The Cost of Consumer Collateral: Evidence from Bunching (<https://www.fdic.gov/analysis/cfr/consumer/2022/papers/collier-paper.pdf>). Collier, Benjamin, et al. *The Cost of Consumer Collateral: Evidence from Bunching*, 2021, <https://doi.org/10.3386/w29527>.

expect more borrowers to fully access the funds available, not only to fully repair and rebuild, but to build resiliency against future risk. This serves as an incentive for borrowers to secure their homes against such impacts to prevent losses and expedite borrowers' recoveries from subsequent disasters. These changes align with SBA's initiative to increase utilization of the mitigation program from two percent to twenty percent.

Historically, home loans make up approximately 80 percent of disaster applications in most disasters. The real estate collateral associated with these loans is primarily the damaged residence of the disaster survivor. Most disaster home borrowers have one or more existing mortgages leaving minimal or no equity value for additional leverage. When SBA requires a lien on those assets, the lien is subordinate to all existing encumbrances and, often does not add recoverable value to SBA's lien position. The subordinate position significantly reduces recovery for SBA in the event of a default and foreclosure. Collateral analysis of SBA loan portfolio from 2018 through 2023, 41 percent of disaster survivors who apply for and receive SBA assistance do not have collateral sufficient to fully secure the loan. Further collateral analysis indicates 13 percent of borrowers do not have adequate equity to secure 20 percent of the loan amount and 7 percent of borrowers have no equity to secure the SBA loan. In practice, the costs of default and foreclosure and the satisfaction of any senior liens on the property significantly diminish SBA's recovery.

This change will expedite disbursement of more funds to borrowers and reduce costs to the Agency for monitoring liens. Most importantly, it will lower costs (lien recording fees, documentary stamps, etc.) to the disaster survivors, while ensuring they have adequate recovery support. Reducing SBA's costs associated with obtaining property reports necessary to secure collateral and preparing security instruments to comply with each state will also reduce the need for both additional disaster contracts and surge staffing to process, disburse, and service secured disaster loans.

Section 123.104 What interest rate will I pay on my home disaster loan?

The current language of § 123.104 requires SBA to determine whether a disaster survivor has credit elsewhere by analyzing their cash flow and disposable assets. SBA is streamlining

the process of determining whether an applicant has credit elsewhere by allowing the use of credit score modeling as a basis of this determination. This change would sync the requirement with what is currently utilized by non-Federal sources. As a result of the changes to § 123.104 SBA also is amending § 123.507(c), as it also references analyzing cash flow and disposable assets.

On April 25, 2014, SBA amended its regulations to allow the use of an applicant's credit score as evidence of repayment ability, 79 FR 22859. The intent of the change was to allow SBA to expedite the processing of applications with strong credit by removing the requirement to analyze cash flow for all loans. Although the change allowed SBA to utilize a more efficient process for determining repayment, there was no coinciding change to streamline the determination of credit elsewhere. Because the current regulation states that credit elsewhere is evaluated based on cash flow and disposable assets, a complete financial analysis still must be performed for every applicant even when credit scores are used as a basis for repayment. To review a disaster survivor's disposable assets, SBA requires home loan applicants to submit a list of assets; business principals to submit a personal financial statement; and, in some cases, business and affiliate entities to submit complete copies of their Federal tax returns. The regulation also requires SBA to review the assets to determine what is disposable. This process is time consuming and subjective.

SBA has determined that a high credit score is the best indication of whether a disaster survivor could obtain financing from non-Federal sources at reasonable terms. The lending industry uses credit scoring for determining both whether to approve credit and what interest rate to provide the borrower. Individual credit scores generally range from 300 to 835. According to the Fair Isaacs Corporation (FICO) loan calculator, borrowers with credit scores of 760 and above receive the lowest mortgage interest rates, and interest rates increase by .225 percentage points in each lower credit score tier.² In addition, according to Bankrate, credit scores of 720 and above receive the lowest average interest rates on personal loans, with the average interest rates

increasing by 2.77–10.7 percentage points in each lower credit score tier.³

The current regulation requiring evaluation of cash flow and disposable assets has led to approvals of disaster loans that are not consistent with private sector practices, where credit scores are the primary factor in determining the interest rate. Our analysis of Hurricane Ian business loans shows that the average credit score for loan business principals for loans approved for businesses with credit elsewhere was 775. In comparison, the average credit score for loans approved for businesses without credit elsewhere was comparable, at 776. Additionally, analysis for home loans approved for Hurricane Ian shows the average credit score for homeowners without credit elsewhere was 717. Of those individuals determined to have credit elsewhere, the average credit score was 784. Of that number, 9.4 percent of those had credit scores of 719 or below.

SBA can use FICO Small Business Scoring Service (SBSS) to determine credit available elsewhere for business loan applicants. The SBSS Score ranges from zero to 300 and is calculated based on the business owners' consumer credit bureau data, the business's credit report (e.g., D&B), the business's financial data, and loan application data. Information obtained from *businesscreditreports.com* shows SBSS scores can be divided into ranges as follows:⁴

Poor: 1–160, 16% of applicants score in this range;

Fair: 161–190, 29% of applicants score in this range;

Good: 191–210, 45% of applicants score in this range;

Excellent: 211–300, 10% of applicants score in this range.

SBA disaster lending has not historically used SBSS scores, so there is no comparable data to show average SBSS scores for current disaster market rate loans compared to below market rate loans or to show what percentage of loans would be at market rate based on a specific SBSS score. However, SBA currently utilizes SBSS scoring for other financial assistance programs, specifically as a prescreening process for 7(a) Small Loans, with a minimum SBSS score of 155; and Community Advantage loans, with a minimum SBSS score of 140. The Disaster Loan Program's implementation of SBSS

² myFICO (www.myfico.com/credit-education/calculators/loan-savings-calculator).

³ Average Personal Loan Interest Rates | Bankrate (<https://www.bankrate.com/loans/personal-loans/average-personal-loan-rates/>).

⁴ BCR—FICO SBSS—Overview.pdf (*businesscreditreports.com*) (<https://businesscreditreports.com/documents/BCR%20-%20FICO%20SBSS%20-%20Overview.pdf>).

scores will bring consistency in prescreening processes across SBA financial programs. The FICO SBSS score is calculated using two main factors: personal finance and business finance. Personal finance includes factors such as on-time payment history, types of loan accounts, and your credit utilization rate. Business finance includes factors like the number of employees, cash flow, time in business, and major complaints and lawsuits against your company.

SBA's rule will streamline the processing of disaster loans by removing the requirement to evaluate cash flow and disposable assets for all loans. However, SBA may still utilize a review of cash flow as part of the credit elsewhere determination in certain situations. For example, when an applicant has a high credit score but large disaster losses, SBA may evaluate cash flow to determine if the cost of obtaining disaster financing from non-Federal sources would present a hardship to the disaster survivor.

The regulatory changes would allow SBA to automate and streamline more loan processes. Utilizing credit scores to determine credit elsewhere also allows SBA to provide greater clarity to disaster survivors regarding interest rate determinations. Furthermore, determining credit elsewhere by using credit scores would make the process easily adaptable. If a score leads to a large increase or decrease in the percentage of disaster survivors showing credit elsewhere, the score can be adjusted, which would directly impact the percentage.

III. Justification for Direct Final Rule

Agencies typically utilize direct final rulemakings for non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and may instead issue a proposed rulemaking. SBA has determined that the regulatory changes addressed in this direct final rulemaking are non-controversial, and not likely to result in adverse comments.

By permitting the use of credit score modeling, SBA is expending the process of determining whether an applicant has credit elsewhere. This will allow for a quicker approval process because SBA will not be restricted to performing a time-consuming cash flow analysis for each loan. SBA will be able to decrease the time it takes to process all loan applications overall and expedite the processing of applications from victims of disasters. The SBA's disaster loan unsecured loan threshold has not changed in over a decade, even though natural disasters are becoming more severe and frequent across the United States and its territories, as evidenced by more longer hurricane seasons and more frequent wildfires, tornados, floods, and blizzards. All disasters are urgent, necessitating the most efficient and effective path to assistance for survivors. In short, an increase in the SBA's disaster unsecured threshold is necessary to meet the current economic demands of more severe and frequent disasters.

SBA does not anticipate receiving significant adverse comments because the principal effect of these amendments is to reduce delays in loan processing and provide faster assistance. Also, SBA will be able to increase the amount disaster survivors can borrow through the SBA's Disaster Assistance Loan Program while reducing the burdens of pledging collateral to the disaster survivors, such as having to provide the additional documentation required for a secured loan amount and incurring costs associated with lien recording fees, title company fees, etc. Unsecured loans require minimal documentation, such as an executed Note and Loan Authorization and Agreement. Because there is less documentation to collect and review, the SBA can disburse funds below the unsecured loan threshold much more quickly. SBA's disaster loan program offers long-term, low interest, fixed rate loans to disaster survivors, enabling them to replace real or personal property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses and non-profits to help them recover from economic injury caused by such disasters.

The changes in this direct final rule will not require members of the public to adjust their behavior. Rather, the changes will benefit the public by allowing for increased compensation before collateral is required to adequately reflect increases in costs associated with replacing and repairing residential real property and household effects that have been lost or damaged

as a result of a disaster, as well as expediting the processing and disbursement of SBA disaster loans. Due to urgent needs for disaster assistance, and the noncontroversial nature of these changes, the SBA concludes immediate action is required to support homeowners, businesses, and their communities as they recover from future disasters.

Compliance With Executive Orders 12866, 12988, 13132, 13175, 13563, 14030, 14094, the Paperwork Reduction Act (44 U.S.C., Ch. 35)), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563 and 14094

SBA is issuing this direct final rulemaking in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. The Office of Management and Budget has determined that this rule does not constitute a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094.

SBA has developed this rule in a manner consistent with these requirements and thoroughly examined the costs and benefits as well as availability of regulatory alternatives associated with its implementation; therefore, SBA has drafted an analysis for the public's information below.

A. Objectives of the Rule

This rule amends regulations governing the SBA Disaster Loan Program by revising the Credit Elsewhere Test (CET) to allow credit score modeling in order to streamline disaster loan processing. Additionally, the rule increases the unsecured loan threshold from \$25,000 to \$50,000 for EIDL loans for all disasters and for physical home and business loans for Major Disaster declarations. The revised

CET streamlines loan processing, including interest rate determination, making these Disaster Loan Program practices more consistent with lending sector practices. SBA recognizes the increased severity of financial consequences from disasters and, in response, is increasing the threshold for the collateral requirement. Evidence suggests that the collateral requirement has been an impediment to access of financial resources for disaster recovery for households by limiting disaster loan amounts. SBA expects that lending shortfalls will become greater with increased severity of financial consequences from disasters.

B. Benefits of the Rule

Revision of the Credit Elsewhere Test (CET) and the introduction of the Agency's Unified Lending Platform (ULP), a new processing system, will streamline SBA disaster lending. The benefit of the revised CET for the Agency and borrowers is clarity of evaluation for loan eligibility and interest rate determination, increased program efficiency, and reduction of uncertainty in the process. Revised CET integrated within the ULP will reduce the hiring of temporary personnel in the Disaster Loan Program for each separate disaster lending period. SBA expects the government to benefit from the cost savings enabled by a reduced need for temporary lending personnel with the revised CET within the ULP.

SBA undertook the increase in the collateral threshold in response to evidence that shows an increase in financial well-being for disaster loan borrowers,⁵ and also addresses a reluctance to enter into a loan agreement with SBA that would involve a lien on property. The collateral threshold revision increases the availability of the benefits of SBA's disaster lending. Noteworthy is that home loans generally make up 80 percent of disaster loan applicants.

The increased threshold for collateral is consistent with increased ability to work within the Agency's statutory authorization in Section 7(b) of the Small Business Act to make loans to individuals and entities that have been adversely affected by disasters. SBA believes that its current collateral requirements are an impediment to increasingly expensive rebuilding efforts, by increasing the collateral threshold SBA will shorten loan cycle time for approved loans. The Agency

has noted that loans without collateral requirements are generally fully funded in a single disbursement while secured loans have usually required multiple disbursements. SBA expects a significant reduction in the time required for full disbursement of loan proceeds for the great majority of disaster borrower by increasing the secured loan limit, along with other program improvements within the ULP, resulting in major benefits to borrowers. A faster disbursement of the loans further enhances the restorative work of these loans to homes and businesses.

The adjustment of the collateral threshold and revision of the CET decreases the burden on borrowers to provide documentation that SBA must verify, resulting in savings in disaster staffing and training. The Agency expects that with the higher collateral threshold, the number of loans requiring collateral at original approval will decrease from 46.4 percent to 31 percent of approved disaster loans. SBA estimates the decrease in loan processing costs with the increased collateral threshold is \$20.33 per loan, generating \$203,300 in savings to the Agency for every 10,000 approved loans. Another example of cost savings is the reduction in property and vesting reports and other information for recording of liens, for which SBA currently contracts with a third-party vendor. A vesting report costs about \$25 per property, so a decrease from 46.4 percent to 31 percent of loans requiring this report reduces this particular expense by \$38,500 for every 10,000 approved loans.⁶

C. Costs of the Rule

Assessment of costs in this impact analysis includes those borne by borrowers and by the Agency. Excluding initial procurement costs of the ULP,⁷ learning the new application system with ULP is the initial cost for borrowers and for SBA. However, any loan application involves an application and as the revised system is expected to be more streamlined, SBA expects this burden to applicants to be lower than under the system it is to replace. SBA expects the reduction in application processing and portfolio management costs will outweigh costs of familiarization with the new system plus any costs of developing and

revising internal policies, procedures, and training.

The largest source of potential costs for SBA may result from the increase in loans without collateral following the increase in the collateral threshold in § 123.11. With this change, SBA estimates from its experience with loans after Hurricane Ian that 70.98 percent of home loans would be unsecured, an increase from the current unsecured home loan portfolio from Hurricane Ian of 55.3 percent. Based on historical data, this increase in unsecured loans may lead to more defaults, necessitating a higher subsidy rate. The Agency notes the cost savings from the new CET will offset at least some of this cost and with the additional cost savings from the ULP, SBA expects a decrease in the overall costs of the disaster loan program. In the event of default, SBA does expect an impact on the recovery rates from reduced collections from collateral liquidations, but this is in part limited even under current regulations because these disaster loans have been and will continue to be subordinated to existing mortgages.

To consider the impact of increased unsecured loan limits, SBA analyzed the activity from Hurricane Ian, a powerful Category 5 hurricane which made landfall on the west coast of Florida on September 28, 2022, and again in the Carolinas on September 30, 2022. Ian was responsible for 155 fatalities in the United States and caused an estimated \$113 billion dollars in damages.

SBA's analysis of Hurricane Ian suggests that if the unsecured home loan limit of \$50,000 had been in place, 9,286 of the 13,083 home loans from Hurricane Ian could be unsecured compared to the 7,235 that were at the unsecured threshold or less for that disaster. This represents an overall percentage increase of 15.68%. The increase in the unsecured portfolio for Ian home loans would be 35.50% of the dollar value compared to the actual 22.73% value of the active Ian portfolio. A similar percentage increase to the active home loan portfolio would increase the unsecured portion of home disaster loans by \$81,466,615, which is small when compared to the \$7.2 billion-dollar active home loan portfolio.

At an estimated subsidy rate of 19bps and a five-year average loan amount of \$39,300 for loans impacted by the collateral change, the estimated effect on the subsidy for each increase of 10,000 unsecured loans is \$746,700.

The following table represents Hurricane Ian home loans Secured vs Unsecured if the unsecured limit was

⁵ Collier, Ben and Ben Keys, *SBA-Wharton Partnership: Update on Findings*, March 2023 found a statistically significant reduction in bankruptcies among disaster loan borrowers in the years following a disaster.

⁶ $10,000 \times (.464 - .31) \times \$25 = \$38,500$.

⁷ SBA's acquisition of ULP is independent of a change in the collateral threshold. The procurement cost is therefore not a cost of CET or the increased threshold. The learning and familiarization costs are not entirely attributable to CET or the increased threshold, as ULP will be the platform for SBA's loan programs.

\$50,000 as a percentage of the active home loan portfolio and in dollars.

HURRICANE IAN HOME LOANS

Loan amounts	Number of active loans	Percentage of number of home loans	Total loan value	Percentage of total value of home loans
0–\$50,000	9,286	70.98	\$226,545,460	35.50
>\$50,000	3,797	29.02	411,660,300	64.5
Total	13,083	100	638,205,760	100

HURRICANE IAN BUSINESS LOANS

Loan amounts	Number of active loans	Percentage of number of business loans	Total loan value	Percentage of total value of business loans
0–\$50,000	1,099	55.76	\$26,308,000	8.93
>\$50,000	872	44.24	268,687,200	91.07
Total	1,971	100	294,695,200	100

The table of Hurricane Ian business loans shows that 1,099 of the business loans for Ian would have been unsecured if the limit was \$50,000 compared to the 828 approved for \$25,000 or less for that disaster. This represents an overall percentage increase of 13.75%. The increase in the total loan amounts in the unsecured portfolio for Ian business loans would be 8.93% compared to the 5.34% for this disaster. The dollar figure of unsecured business loans for Ian would only increase by \$10,557,300 or only 3.6% of the Ian business portfolio. A similar comparison to the current active portfolio finds that 3.6% would only be \$67,696,547 of the current \$1,880,459,649 disaster business loan portfolio.

Based on SBA’s analysis, the Agency determined that the changes enhance the efficiency of the administration and delivery of the Disaster Loan Program. For example, SBA anticipates increasing the unsecured threshold will allow SBA to disburse the majority of approved disaster loans within seven days of approval. Moreover, SBA anticipates the changes will have minimal impact on the overall cost of the Disaster Loan Program. Additionally, SBA expects the changes may motivate borrowers to make use of the disaster loan mitigation program, thereby reducing the extent of damages caused by future disasters. Furthermore, the changes aim to ensure fair and equal access to disaster assistance in underserved communities that may lack access to other sources of capital, requiring these borrowers to pledge collateral to SBA rather than forgoing collateral lien and seeking other sources of affordable capital.

D. Alternatives

The rule includes increasing the unsecured loan thresholds for physical and EIDL loans from current levels. The alternative may be to modify the increases at a lower or higher amount. By providing updates and adjustments in unsecured loan amounts, including aggregation of loans to one borrower, the Agency has optimized the disaster survivors’ options for recovery on more reasonable and equitable terms. SBA has determined that the increase to \$50,000 for unsecured disaster loans and the corresponding changes to the loan aggregation rules for a single borrower is the appropriate action. The Agency did not consider any alternative to the new CET, which brings consistency with general lending practices to the loan program and facilitates the implementation of ULP, which is an Agency priority.

For each 10,000 loans, the rule generates savings to the Agency of \$203,300 from reduced processing costs and \$38,500 from elimination of the recording of liens, for quantifiable savings of \$241,500 on each 10,000 unsecured loans. These quantifiable benefits are balanced against an estimated subsidy impact of \$746,700 for each 10,000 unsecured loans. Additionally, SBA expects the changes in the rule to make the disaster loans more widely available, which will generate additional benefits to the borrowers and their communities, further balancing the benefits against the costs.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

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

Executive Order 13175

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

Executive Order 14030

SBA was tasked with developing recommendations for improving how Federal financial management and reporting can incorporate climate-related financial risk, especially as that risk relates to Federal lending programs. The SBA Disaster Loan Program contains eligibility and additional loan

funds for mitigation measures that allow physical disaster loan recipients to obtain additional funds to install mitigating measures to protect homes and businesses and reduce future property damage.

Currently, only two percent of borrowers apply for mitigation funds. Increasing the unsecured threshold will encourage borrowers not only to make full use of funds available to complete not just repairs, but to also to access funds to mitigate future loss from subsequent disasters. This increases survivors' recovery and resiliency against future disasters and achieves the Agency's goal to increase the mitigation program utilization from two percent to 20 percent.

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

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

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

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

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, such as

when—among other exceptions—the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

For the reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

■ 2. Amend § 123.11 by revising paragraphs (a)(1) and (2) and (c) to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

(a) * * *

(1) *Economic injury disaster loans.* SBA generally will not require the borrower to pledge collateral to secure an economic injury disaster loan of \$50,000 or less.

(2) *Physical disaster home and physical disaster business loans.* (i) For Major Disasters declared under § 123.3(a)(1) or (2), SBA generally will not require the borrower to pledge collateral to secure a physical disaster home or physical disaster business loan of \$50,000 or less.

(ii) For SBA-declared disasters under § 123.3(a)(3) or (6), SBA generally will not require the borrower to pledge collateral to secure a physical disaster home or physical disaster business loan of \$14,000 or less.

* * * * *

(c) Sometimes a borrower, including affiliates as defined in part 121 of this title, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed the applicable unsecured threshold outlined in paragraph (a)(2) of this section and all economic injury disaster loans to see if they exceed \$50,000.

* * * * *

■ 3. Revise § 123.104 to read as follows:

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed eight (8) percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed four (4) percent per annum. Generally, credit elsewhere means that SBA believes you could obtain financing from non-Federal sources on reasonable terms subsequent to the declaration of a disaster. SBA may include the use of credit score to make this determination. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property.

■ 4. Amend § 123.507 by revising paragraph (c) to read as follows:

§ 123.507 Under what circumstances will SBA consider waiving the \$2 million loan limit?

* * * * *

(c) Your small business has used all reasonably available funds from the small business, its affiliates, its principal owners and all available credit elsewhere (as described in § 123.104) to alleviate the small business' economic injury.

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2024–16207 Filed 7–23–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1392; Airspace Docket No. 24–ASW–11]

RIN 2120–AA66

Establishment of Class E Airspace; Brenham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Brenham, TX. The FAA is taking this action to support new public instrument procedures.

DATES: Effective date 0901 UTC, October 31, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5874.

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 establishes Class E airspace extending upward from 700 feet above the surface at Wash Co Air 1 Base, Brenham, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2024-1392 in the **Federal Register** (89 FR 42826; May 16, 2024), proposing to establish the Class E airspace at Brenham, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

An FAA database review noted that the incorrect coordinates were used in the NPRM. This Final Rule replaces the incorrect coordinates with the correct coordinates : Lat 30°18'19" N, long 096°12'19" W. This action does not

change the airspace dimensions or operating requirements.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 6.1-mile radius of Wash Co Air 1 Base, Brenham, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

ASW TX E5 Brenham, TX [Establish]

Wash Co Air 1 Base, TX
(Lat 30°18'19" N, long 096°12'19" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Wash Co Air 1 Base.

* * * * *

Issued in Fort Worth, Texas, on July 17, 2024.

Steven Phillips,

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

[FR Doc. 2024-16103 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R08-OAR-2024-0318; FRL-12110-01-R8]

Clean Air Act Reclassification; Colorado; Reclassification of the Denver Metro/North Front Range 2015 Ozone Nonattainment Area to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is granting a request by the State of Colorado to reclassify the

Denver Metro/North Front Range ozone nonattainment area (“DMNFR”) from “Moderate” to “Serious” for the 2015 8-hour ozone national ambient air quality standards (NAAQS).

DATES: This rule is effective on July 24, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2024–0318. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, Air and Radiation Division, US EPA, Region 8, Mail-code 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6103, email address: singh.amrita@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “reviewing authority,” “we,” “us,” and “our” refer to the EPA.

I. Reclassification of the DMNFR Area to “Serious” Ozone Nonattainment

On October 1, 2015, the EPA strengthened the primary and secondary NAAQS for ozone to a level of 0.070 parts per million, to be assessed using the “design value” metric: the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years.¹ Effective August 3, 2018, based on what were then the three most recent years (2014–2016) of air monitoring data, EPA designated all areas that were violating the 2015 8-hour ozone NAAQS as nonattainment.² In that action, EPA designated the DMNFR Area as nonattainment and classified the area as “Marginal” based on the area’s design

value.³ As a general matter, higher-classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower-classified areas, but are allowed more time to attain the ozone NAAQS.⁴ States with areas designated as nonattainment and classified as “Marginal” were required to attain the 2015 8-hour ozone NAAQS as expeditiously as practicable, but no later than August 3, 2021, based on 2018–2020 monitoring data.⁵ Effective November 7, 2022, EPA determined that the DMNFR Area, among other areas, had failed to attain the 2015 8-hour ozone NAAQS by the applicable “Marginal” area attainment deadline, and accordingly reclassified the area as “Moderate”.⁶

On June 8, 2024, the State of Colorado requested that EPA reclassify the DMNFR Area from “Moderate” to “Serious”. We are approving Colorado’s reclassification request under the Act’s “voluntary reclassification” provisions: “The Administrator shall grant the request of any State to reclassify a nonattainment area in that State . . . to a higher classification.”⁷ Similarly, by regulation EPA has provided that a state “may request, and the Administrator must approve, a higher classification for any reason in accordance with CAA section 181(b)(3).”⁸ Because the plain language of the statute and regulation mandates that we approve this request, EPA is granting Colorado’s request for voluntary reclassification for the DMNFR Area for the 2015 ozone NAAQS, and accordingly is reclassifying the area from “Moderate” to “Serious”. As a result of this action, Colorado must now attain the 2015 ozone standard as expeditiously as practicable but no later than August 3, 2027, which is nine years from the area’s date of designation as nonattainment.

The EPA has determined that this action falls under section 553(b)(B) of the Administrative Procedure Act (APA), which authorizes agencies, upon finding “good cause,” to take rulemaking actions without public

notice and comment when these procedures are “impracticable, unnecessary or contrary to the public interest.” We have determined that public notice and comment procedures are unnecessary here because EPA’s action to approve voluntary reclassification requests under CAA section 181(b)(3) is nondiscretionary both in its issuance and in its content. Therefore, notice and comment rulemaking procedures would serve no useful purpose in connection with this action.

The EPA also finds that there is good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication. That section allows an effective date of less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.”⁹ The purpose of the 30-day waiting period generally prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements that would cause affected parties to need time to prepare before the rule takes effect. Applicable SIP requirements and deadlines associated with the reclassification will be addressed in a separate notice, which will include an opportunity for public comment. For this reason, EPA finds good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) this final action is not a “significant regulatory action” and therefore is not subject to a requirement for Executive Order 12866 review. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. For those reasons, this final action is also not subject to Executive Order 13211.

³ 40 CFR 50.19. EPA subsequently expanded the boundary of the Metro/North Front Range 2015 ozone NAAQS nonattainment area to include all of Weld County. Final rule, Additional Revised Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 86 FR 67864 (Nov. 30, 2021).

⁴ See generally CAA title I, part D, subpart 2.

⁵ See 40 CFR 51.1303 (defining Marginal attainment date as three years after the effective date of designation for the area).

⁶ Final rule, Determinations of Attainment by the Attainment Date, 87 FR 60897 (Oct. 7, 2022).

⁷ CAA section 181(b)(3), 42 U.S.C. 7511(b)(3).

⁸ 40 CFR 51.1103(b).

⁹ 5 U.S.C. 553(d)(3).

¹ Final rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

² Final rule, Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018).

“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2021).

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any Federal intergovernmental mandate.

This rule also does not have any tribal implications under Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In addition, tribes are not subject to implementation plan submittal deadlines that apply to states as result of reclassifications.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. It directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects on their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

This final action does not have federalism implications because it does not have substantial direct effects on the

states, on the relationship between the National Government, and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This rule is not subject to Executive Order 13045, “Protection of the Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because EPA interprets Executive Order 13045 as applying only to those regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that also concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children per the definition of “covered regulatory action” in section 2–202 of Executive Order 13045.

Reclassification actions do not involve technical standards, and thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an informative collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section I. of the preamble, including the basis for the finding. This action is not

a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuits by September 23, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 17, 2024

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.306, the table entitled “Colorado—2015 8-hour Ozone NAAQS [Primary and Secondary]” is amended by revising the entry “Denver Metro/ North Front Range, CO” to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—2015 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
Denver Metro/North Front Range, CO Adams County. Arapahoe County. Boulder County. Broomfield County.		Nonattainment	July 24, 2024	Serious.

COLORADO—2015 8-HOUR OZONE NAAQS—Continued

[Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
Denver County. Douglas County. Jefferson County. Larimer County (part). Including the portion of Rocky Mountain National Park therein and that portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.				
Weld County	12/30/ 2021			
* * * * *				

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is August 3, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2024–16123 Filed 7–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA–HQ–OPP–2024–0103; FRL–12080–01–OCSPP]**

Poly(oxy-1,2-ethanediyl), a-hydro-ω-hydroxy-, Ether With N-[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), a-hydro-ω-hydroxy-, ether with N-[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) when used as an inert ingredient in a pesticide chemical formulation. Spring Regulatory Sciences, on behalf of Heubach Colorants USA LLC., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act

(FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), a-hydro-ω-hydroxy-, ether with N-[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective July 24, 2024. Objections and requests for hearings must be received on or before September 23, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2024–0103, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional

information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this action apply to me?**

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal

Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2024-0103 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 23, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. See <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2024-0103, by one of the following methods.

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

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

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2024 (89 FR 20410) (FRL-11682-02-OCSP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN-11843) filed by Spring Regulatory Sciences, 6620 Cypresswood Dr, Suite 250, Spring, TX 77379 on behalf of Heubach Colorants USA LLC., 5500 77 Center Drive, Suite 120/140, Charlotte, NC 28217-0160. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4[bis(2hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1), (CAS# 1313600-46-2). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks

from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

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

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

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

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)

ethanaminium, benzenesulfonate (6:1:1) is not readily biodegradable (MRID 52132902).

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

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

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF₃- or longer chain length as listed in 40 CFR 723.250(d)(6).

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

The polymer's number average MW of 1,370 Daltons is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 (2.2%) and less than 25% oligomeric material below MW 1,000 (16.7%), and the polymer has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for the reactive functional groups listed in 40 CFR 723.250(e)(1)(ii)(B).

Thus, poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of poly(oxy-1,2-ethanediyl), a-hydro- ω -

hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) is 1,370 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) to share a common mechanism of toxicity with any other substances, and poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at [https://www.epa.gov/pesticide-science-and-](https://www.epa.gov/pesticide-science-and)

[assessing-pesticide-risks/cumulative-assessment-risk-pesticides](https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides).

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

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Due to the expected low toxicity of poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1).

VIII. Other Considerations

Analytical Enforcement Methodology

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

IX. Conclusion

Accordingly, EPA finds that exempting residues of poly(oxy-1,2-ethanediyl), a-hydro- ω -hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium,

benzenesulfonate (6:1:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

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

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

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

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 18, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.960, amend table 1 to § 180.960 by adding, in alphabetical order, the polymer “Poly(oxy-1,2-ethanediyl), a-hydro-ω-hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1), minimum number average molecular weight (in amu) of 1,370” to read as follows:

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

* * * * *

Polymer					CAS No.
*	*	*	*	*	*
Poly(oxy-1,2-ethanediyl), a-hydro-ω-hydroxy-, ether with N-[4-[bis[4-[bis(2-hydroxyethyl)amino]phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-2-hydroxy-N-(2-hydroxyethyl)ethanaminium, benzenesulfonate (6:1:1), minimum number average molecular weight (in amu) of 1,370					1313600–46–2
*	*	*	*	*	*

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 282****[EPA–R03–UST–2023–0204; FRL 10811–02–Region 3]****Pennsylvania: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's Underground Storage Tank (UST) program submitted by the Commonwealth of Pennsylvania (Pennsylvania or State). This action also codifies EPA's approval of Pennsylvania's State program and incorporates by reference (IBR) those provisions of Pennsylvania's regulations and statutes that EPA has determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective September 23, 2024, unless EPA receives significant negative comments opposing this action by August 23, 2024. If EPA receives significant negative comments opposing this action, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of September 23, 2024, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. **Email:** uybarreta.thomas@epa.gov.
Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2023–0204.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal website, <https://www.regulations.gov>, is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submissions, but if you are unable to submit electronically, please reach out to the EPA contact person listed in this document for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Publicly available materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814–2953, uybarreta.thomas@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division, EPA Region 3, Four Penn Center, 1600 John F. Kennedy Blvd., (Mailcode 3LD30), Philadelphia, PA 19103.

SUPPLEMENTARY INFORMATION:**I. Approval of Revisions to Pennsylvania's Underground Storage Tank Program****A. Why are revisions to State programs necessary?**

Section 9004 of RCRA authorizes EPA to approve State underground storage tank (UST) programs to operate in lieu of the Federal UST program. EPA may approve a State program if the State demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the State program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the State program is “no less stringent” than the Federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as Pennsylvania that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling Federal or State statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the Federal UST regulations and determined that States must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On March 24, 2022, in accordance with 40 CFR 281.51, Pennsylvania submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). Pennsylvania's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations. As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable State authorities; and copies of all relevant State statutes and regulations. EPA has reviewed the State Application and determined that the revisions to Pennsylvania's UST program are no less

stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that Pennsylvania's program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants Pennsylvania final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in Pennsylvania, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the

“Proposed Rules” section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives significant negative comments that oppose this approval, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Pennsylvania previously been approved?

On September 11, 2003, EPA finalized a rule approving Pennsylvania's UST program, effective that same day (68 FR 53520), to operate in lieu of the Federal program. On March 17, 2006, effective May 16, 2006 (71 FR 13769), EPA codified the approved Pennsylvania program, incorporating by reference the State's statutes and regulatory provisions that are subject to EPA's inspection and enforcement authorities under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other

applicable statutory and regulatory provisions.

G. What changes is EPA approving with this action?

On March 24, 2022, in accordance with 40 CFR 281.51, Pennsylvania submitted a complete application for final approval of its UST program revisions adopted on December 21, 2018, effective December 22, 2018. EPA has reviewed Pennsylvania's UST program requirements and determined that such requirements are no less stringent than the Federal regulations and that the criteria set forth in 40 CFR part 281, subpart C are met. As part of the State Application, the Attorney General for Pennsylvania certified that the laws and regulations of Pennsylvania provide adequate authority to carry out a program that is “no less stringent” than the Federal requirements in 40 CFR part 281. EPA is relying on this certification in addition to the analysis submitted by Pennsylvania in making our determination. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that Pennsylvania's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants Pennsylvania final approval for the following program changes:

Required Federal element	Implementing State authority
40 CFR 281.30, New UST Systems and Notification	25 Pa. Code 245.2(c), 245.21(a), 245.41, 232(a)(1), 245.403(b)–(d), 245.405, 245.421, 245.422(d), (e), 245.435(c)(1), 245.442(a), 245.443(1).
40 CFR 281.31, Upgrading Existing UST Systems	25 Pa. Code 245.403(d)(1), 245.422.
40 CFR 281.32, General Operating Requirements	25 Pa. Code 245.2(c)(3), 245.41, 245.405, 245.422, 245.425(4), 245.431, 245.432(a) and (c), 245.433–435, 245.437(a)(1)–(2), (b) and (c), 245.438.
40 CFR 281.33, Release Detection	25 Pa. Code 245.1, 245.304(a), (c)(1) and (3), 245.305(a) and (i), 245.403(b) and (d)(1), 245.437(a)(3), (b) and (c), 245.441, 245.442(a) and (b)(1) and (2), 245.443–445.
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	25 Pa. Code 245.1, 245.304(a), (b), (c)(1), (c)(3), 245.305(a) and (i).
40 CFR 281.35, Release Response and Corrective Action	25 Pa. Code 245.305(f) and (i), 245.306(a), (e), 245.306–309, 245.310(a)–(b), 245.311(a)–(c), 245.312, 245.313(a)–(b).
40 CFR 281.36, Out-of-service Systems and Closure	25 Pa. Code 245.451–454.
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum.	25 Pa. Code 245.435(a)–(b), (d), 245.704(a)–(c), 245.706, 977.31, 977.33(a).
40 CFR 281.38, Lender Liability	25 Pa. Code 245.2(a).
40 CFR 281.39, Operator Training	25 Pa. Code 245.411(d), 245.436, “Underground Storage Tank Class A and Class B Operator Training Courses” Document Number 263–2300–001, effective December 19, 2019.

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. Pennsylvania's lead implementing agency, the Pennsylvania Department of Environmental Protection (PADEP), has broad statutory and regulatory authority

with respect to USTs to regulate installation, operation, maintenance, closure and UST releases, and to the issuance of orders. The statutory and regulatory authority is found in Pennsylvania's Storage Tank and Spill Prevention Act of 1989 at sections 101 through 2105 (35 P.S. sections

6021.101–6021.2105), and in Pennsylvania's Regulations, Administration of the Storage Tank and Spill Prevention Program, Title 25, Chapter 245, Subchapters A–H (25 Pa. Code sections 245.1–245.708). The procedures the State will follow to prohibit deliveries are set forth in a

guidance document entitled “Storage Tank Product Delivery Prohibition,” Document Number 263–4000–001, effective September 8, 2012. In addition, the State’s guidance document entitled “Underground Storage Tank Class and Class Training Courses,” Document Number 263–2300–001, effective December 14, 2019, that mandates operator retraining (and is referenced in 25 Pa. Code section 245.411(d)) is part of the approved program. Should the State change this guidance in the future to make retraining non-mandatory, the approved program will continue to require operator retraining based on the December 2019 guidance.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following Pennsylvania requirements are considered “broader in scope” than the Federal program:

- The State regulates aboveground tanks. *See, e.g.*, 35 P.S. Chapters 3, 9, 11; 25 Pa. Code 245 Subchapters C, F, G.
 - The State *may* regulate substances in addition to those regulated under the Federal program. 35 P.S. Section 103(“Regulated substance”); 25 Pa. Code Section 245.1(“Regulated substance”).
 - The State regulates persons who are not owners or operators of USTs under corrective action requirements. *See, e.g.*, 25 Pa. Code 245 Subchapter D.
 - The State requires site-specific permits before installation and construction of new highly hazardous substance tanks and new field constructed tanks 25 Pa. Code Sections 245.231–.237.
 - The State requires that owners or operators of USTs obtain an operating permit. 25 Pa. Code Section 245.203.
 - The State charges fees for UST registration. 25 Pa. Code Sections 245.41–43.
 - The State requires contractor licensure and certification of persons other than installers. 35 P.S. Chapter 108; 25 Pa. Code 245 Subchapter B.
- In accordance with 40 CFR 281.12(a)(3)(ii), the additional coverage listed above is not part of the federally-approved program and is not federally enforceable.

Other Provisions

The State *may* exclude from its program underground storage tanks not

excluded under the Federal program. The State’s statutory and regulatory definitions of “underground storage tank” do not include any other tank excluded by policy or regulations promulgated under the Storage Tank and Spill Prevention Act. 35 P.S. section 6021.103(13); 25 Pa. Code section 245.1 (subparagraph (xvii) of “Underground storage tank”). Should Pennsylvania choose to exercise such authority and exclude tanks not currently excluded from its UST definition, its program scope of coverage could be rendered unacceptably narrower than the Federal program. Accordingly, EPA is not approving these two provisions as part of the federally-approved program. In its State Program Application (Program Description), Pennsylvania acknowledged that EPA would exclude these two provisions.

II. Codification

A. What is codification?

Codification is the process of placing a State’s statutes and regulations that comprise the State’s approved program into the Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve State UST programs to operate in lieu of the Federal program. EPA codifies its authorization of State programs in 40 CFR part 282 and incorporates by reference State statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of State authorized programs in the CFR should substantially enhance the public’s ability to discern the current status of the approved State program and State requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each State.

B. What is the history of codification of Pennsylvania’s UST program?

EPA incorporated by reference Pennsylvania’s approved UST program at 40 CFR 282.88 effective May 16, 2006 (71 FR 13769, March 17, 2006). In this document, EPA is revising 40 CFR 282.88 to include the approved revisions.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of provisions of Pennsylvania statutes

and regulations pertaining to USTs as described in sections I.G., I.H. and I.I.E. of this preamble that are applicable for Federal enforcement purposes. The specific requirements to be incorporated are set forth below in the amendments to 40 CFR part 282. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 3 office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Pennsylvania’s approved UST program. The codification reflects the State program that will be in effect at the time EPA’s approved revisions to Pennsylvania’s UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. This document incorporates by reference Pennsylvania’s UST statutes and regulations and clarifies which of these provisions are included in the approved and federally-enforceable program. By codifying the approved Pennsylvania program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the Pennsylvania program.

EPA is incorporating by reference the Pennsylvania approved UST program in 40 CFR 282.88. Section 282.88(d)(1)(i) incorporates by reference for enforcement purposes the State’s statutes and regulations.

Section 282.88 also references the Attorney General’s Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of Pennsylvania’s codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in Pennsylvania, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State’s authorized analogs to these provisions. Therefore,

EPA is not incorporating by reference such approved Pennsylvania's procedural and enforcement authorities. Section 282.88(d)(1)(ii) of 40 CFR lists those approved Pennsylvania authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Most of these provisions are not part of the RCRA Subtitle I program because they are "broader in scope" than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved State program has a greater scope of coverage than required by Federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.88(d)(1)(iii) lists for reference and clarity Pennsylvania's statutory and regulatory provisions that are "broader in scope" than the Federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are "broader in scope" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

In addition, as discussed above at I. H. of this preamble, EPA is not approving certain provisions in Pennsylvania's statutory and regulatory definitions of underground storage tank, because the exercise of the authority pursuant to either provision could render the State program scope narrower than the Federal program. 35 P.S. 6021.103(Underground storage tank, paragraph (13)), 25 Pa. Code 245.1(Underground storage tank, subparagraph (xvii)). EPA is not codifying either provision. By so doing, even if in the future Pennsylvania acts to exclude other tanks not already excluded from its UST definitions, the approved program will continue to exclude only those tanks currently excluded. Section 282.88(d)(1)(iii) also lists for reference and clarity these two provisions.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), because this action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action was not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.*, because this action authorizes State requirements pursuant to RCRA section 9004 and imposes no requirements beyond those imposed by State law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1501 *et seq.*, and does not significantly or uniquely affect small governments because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67429, November 9, 2000) because currently there are no federally recognized tribes in Pennsylvania. Thus, Executive Order 13175 does not apply to this action.

F. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State

requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive order. Therefore, this action is not subject to Executive Order 13045 because it approves a State program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the NTTAA, 15 U.S.C. 272 note, do not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations. Because this action approves pre-existing State rules that are no less stringent than existing Federal requirements and imposes no additional requirements beyond those imposed by State law, and there are no

anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report containing this document and other required information to each House of the Congress and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective September 23, 2024 because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Adam Ortiz,

Regional Administrator, EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.88 to read as follows:

§ 282.88 Pennsylvania State-Administered Program.

(a) The Commonwealth of Pennsylvania is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State’s program, as administered by Pennsylvania’s Department of Environmental Protection, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281. EPA approved Pennsylvania’s

underground storage tank program on September 11, 2003, and approval was effective on September 11, 2003. A subsequent program revision application was approved by EPA and became effective on September 23, 2024.

(b) Pennsylvania has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Pennsylvania must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Pennsylvania obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Pennsylvania has final approval for the following elements of its program application originally submitted to EPA and approved on September 11, 2003, and effective September 11, 2003, and the program revision application submitted to EPA on March 24, 2022, and approved by EPA, effective on September 23, 2024.

(1) *State statutes and regulations—(i) Incorporation by reference.* The provisions cited in paragraph (d)(1)(i) of this section, and listed in appendix A to part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For the availability of this information at the National Archives and Records Administration and at the EPA, see § 282.2(b). You may obtain copies of Pennsylvania’s regulations and statutes that are incorporated by reference in this paragraph (d)(1) from Pennsylvania Department of Environmental Protection, Bureau of Environmental Cleanup and Brownfields, Rachel Carson State Office Building, 400 Market Street, 14th Floor, Harrisburg, PA 17101; phone number 1–

800–428–2657 (within PA) or 1–717–772–5599 (outside of PA).

(A) Pennsylvania Statutory Requirements Applicable to the Underground Storage Tank Program, December 2017.

(B) Pennsylvania Regulatory Requirements Applicable to the Underground Storage Tank Program, December 2018.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but they are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) Storage Tank and Spill Prevention Act of 1989, Public Law 169, No. 32, 35 P.S. Sections: 6021.106(a); 6021.107; 6021.503(b); 6021.505; 6021.1301–1315.

(2) Title 35, Health and Safety; Chapter 44. Environmental Hearing Board Act, 35 P.S. Sections 7511–7516.

(3) Title 71, Part I, Ch. 2, Article IV. Organization of Departmental Administrative Boards and Commissions and of Advisory Boards and Commissions, 71 P.S. Section 180–1 Environmental Quality Board (Adm. Code section 471).

(4) Title 71, Part I, Ch. 2, Article XIX–A. Powers and Duties of the Department of Environmental Resources, its Officers and Departmental Advisory Boards and Commissions, 71 P.S. Sections: 510–17, 510–20.

(B) The regulatory provisions include:

(1) Pennsylvania Code, Title 25, Part I, Subpart D, Article VI, Chapter 245 Administration of the Storage Tank and Spill Prevention Program, Sections: 245.202; 245.203(f); 245.303.

(2) Pennsylvania Code Title 25, Chapter 1021 Practice and Procedure, Sections: 1021.81; 1021.122.

(3) Pennsylvania Rules of Civil Procedure: 2326, 2327, 2328, 2329, 2330.

(iii) *Provisions not incorporated by reference.* With two exceptions, the following statutory and regulatory provisions are “broader in scope” than the Federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable. In addition to the broader in scope provisions, one provision in statutory definition of “Underground storage tank” and one in the regulatory definition of “Underground storage tank” are not part of the approved program and are not incorporated by reference herein. These provisions are also not federally enforceable:

(A) Storage Tank and Spill Prevention Act of 1989, Public Law 169, No. 32, PS Sections: 6021.103 as to the definitions

of “Aboveground storage tank,” “Certified inspector,” “Small aboveground storage tank,” “Spill prevention and response plan,” “Stationary tank,” paragraph (13) of “Underground storage tank,” definitions of “Storage tank,” “Storage tank facility” and “Monitoring system” insofar as each definition includes aboveground storage tanks; paragraphs (1) and (2) of “Owner,” paragraph (3) of “Regulated substance,” 6021.105; 6021.106(b); 6021.108; 6021.110; 6021.301–306; 6021.501(a)(1), (a)(8), (a)(12), (a)(15), (c)(1), (c)(2) as to activities other than installation, (c)(3); 6021.502(a); 6021.503(a) as to fees and insofar as excludes tanks not excluded by the Federal program, (c); 6021.504; 6021.506–507; 6021.701(a) insofar as includes aboveground storage tanks; 6021.702–.713; 6021.901–.904; 6021.1101–.1102, 6021.2101.

(B) Pennsylvania Code, Chapter 245, Administration of the Storage Tank and Spill Prevention Programs, Sections: 245.1 definitions of “Aboveground field constructed metallic storage tank,” “Aboveground manufactured metallic storage tank,” “Aboveground nonmetallic storage tank,” “Aboveground storage tank,” “Aboveground storage tank system,” “Certification categories,” “Certified company,” “Certified inspector,” “Certified installer” insofar as encompasses activities other than installation, “Environmental audit,” “In-service inspection,” “Large aboveground storage tank,” “Large aboveground storage tank facility,” “Nontank handling project activities,” “Out-of-service inspection,” subparagraphs (i) and (ii) of “Owner,” “Pressure vessel,” “Process vessel,” subparagraph (iii) of “Regulated substance,” “Responsible party” insofar as it includes persons who are not owners or operators of underground storage tanks, “Small aboveground storage tank,” “Spill prevention response plan,” “Stationary tank,” subparagraph (xvii) of “Underground storage tank,” “Underground vault,” and subparagraph (ii) of “Change-in-service,” “Consumptive use,” “Emergency containment,” “Monitoring system,” “Storage tank,” “Storage tank facility,” and “Storage tank system” insofar as each definition includes aboveground storage tanks; 245.21(a) insofar as includes aboveground storage tanks, (b), (c), and (d) insofar as references permits; 245.31(a) and (f) insofar as each requires tests or evaluations be performed by a Department-certified individual, (e); 245.41(a) and (e) insofar as each

requires payment of fees, (b) insofar as includes aboveground storage tanks and excludes tanks not excluded by the Federal program, (c)(7), (d); 245.42; 245.43; 245.101–.142 (Subchapter B); 245.201–.237 (Subchapter C); 245.305(g); 245.306(b)(3) and (d); 245.411(a) as to certified inspector; 245.422(b)(1)(ii) as to certified tank liner; 245.423; 245.424(2); 245.425(5); 245.434(1); 245.436(c)(5); 245.441(a)(3)(i) and (ii); 245.501–.562 (Subchapter F); 245.601–.618 (Subchapter G).

(2) *Statement of legal authority.* “Attorney General’s Statement” signed by the General Counsel and Attorney General on January 27, 2022, and February 14, 2022, respectively, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Adequate Enforcement Procedures” submitted as part of the program revision application for approval on March 24, 2022, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the program revision application for approval on March 24, 2022, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and Pennsylvania Department of Environmental Protection, signed by the EPA Regional Administrator on April 25, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Amend appendix A by revising the entry for Pennsylvania to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Pennsylvania

(a) The statutory provisions include:

(1) Pennsylvania Storage Tank and Spill Prevention Act of 1989, Public Law 169, No. 32.

35 P.S. Section 6021.101. Short title.

35 P.S. Section 6021.102. Legislative Findings.

35 P.S. Section 6021.103. Definitions, except “Aboveground storage tank,” “Certified inspector,” paragraphs (1) and (2) of “Owner,” paragraph (3) of “Regulated substance,” “Small aboveground storage tank,” “Spill prevention and response plan,” “Stationary tank,” paragraph (13) of “Underground storage tank,” and “Monitoring system,” “Storage tank,” and “Storage tank facility” insofar as each definition includes aboveground storage tanks.

35 P.S. Section 6021.109. Construction.

35 P.S. Section 6021.501. Underground storage tank requirements, except subparagraphs (a)(1), (a)(8), (a)(12), (a)(15), (c)(1), (c)(3), subparagraph (c)(2) as to activities other than installation.

35 P.S. Section 6021.502. Interim requirements and discontinued use, except paragraph (a).

35 P.S. Section 6021.503. Registration, except paragraph (a) as to fees and insofar as excludes tanks not excluded by the Federal program, paragraph (c).

35 P.S. Section 6021.701. Financial Responsibility, except paragraph (a) insofar as includes aboveground storage tanks.

35 P.S. Section 6021.2102. Saved from Repeal, except insofar as includes aboveground storage tanks.

35 P.S. Section 6021.2103. Severability.

35 P.S. Section 6021.2104. Repeals.

35 P.S. Section 6021.2105. Effective date.

(b) The regulatory provisions include: Pennsylvania Code, Chapter 245, Administration of the Storage Tank and Spill Prevention Programs

Section 245.1. Definitions, except “Aboveground field constructed metallic tank,” “Aboveground manufactured metallic storage tank,” “Aboveground nonmetallic storage tank,” “Aboveground storage tank,” “Aboveground storage tank system,” “Certification categories,” “Certified company,” “Certified inspector,” “Certified installer” insofar as encompasses activities other than installation, “Environmental audit,” “In-service inspection,” “Out-of-service inspection,” subparagraphs (i) and (ii) of “Owner,” “Large aboveground storage tank,” “Large aboveground storage tank facility,” “Nontank handling project activities,” “Pressure vessel,” “Process vessel,” subparagraph (iii) of “Regulated substance,” “Responsible party” insofar as includes persons who are not owners or operators of underground storage tanks, “Small aboveground storage tank,” “Spill prevention response plan,” “Stationary tank,” subparagraph (xvii) of “Underground storage tank,” “Underground vault,” and subparagraph (ii) of “Change-in-service,” “Consumptive use,” “Emergency containment,” “Monitoring system,” “Storage tank,” “Storage tank facility,” and “Storage tank system” insofar as each definition includes aboveground storage tanks.

Section 245.2. General.

Section 245.21. Tank handling and inspection activities, *except paragraph (a) as to aboveground storage tanks, paragraphs (b)–(c), paragraph (d) as to permits.*

Section 245.31. Underground storage tank tightness testing requirements, *except paragraphs (a) and (f) insofar as each requires tests or evaluations be performed by a Department-certified individual, paragraph (e).*

Section 245.41. Tank Registration requirements, *except paragraphs (a) and (e) as to fees, paragraph (b) as to aboveground storage tanks and insofar as excludes tanks not excluded by the Federal program, paragraphs (c)(7) and (d).*

Section 245.301. Purpose.

Section 245.302. Scope.

Section 245.304. Investigation and reporting of suspected releases.

Section 245.305. Reporting releases, *except paragraph (g).*

Section 245.306. Interim remedial actions, *except paragraphs (b)(3) and (d).*

Section 245.307. Affected or diminished water supplies.

Section 245.308. Onsite storage of contaminated soil.

Section 245.309. Site characterization.

Section 245.310. Site characterization report.

Section 245.311. Remedial action plan.

Section 245.312. Remedial action.

Section 245.313. Remedial action completion report.

Section 245.314. Professional seals.

Section 245.401. Purpose.

Section 245.402. Scope.

Section 245.403. Applicability.

Section 245.404. Variances.

Section 245.405. Codes and Standards.

Section 245.411. Inspection frequency, *except paragraph (a) as to certified inspector.*

Section 245.421. Performance standards for underground storage tank systems.

Section 245.422. Upgrading of existing underground storage tank systems, *except subparagraph (b)(1)(ii) as to certified tank liner.*

Section 245.424. Standards for new field constructed tank systems, *except paragraph (2).*

Section 245.425. Reuse of removed tanks, *except paragraph (5).*

Section 245.431. Spill and overfill control.

Section 245.432. Operation and maintenance including corrosion protection.

Section 245.433. Compatibility.

Section 245.434. Repairs allowed, *except paragraph (1).*

Section 245.435. Reporting and recordkeeping.

Section 245.436. Operator training, *except paragraph (c)(5).*

Section 245.437. Periodic testing.

Section 245.438. Periodic operation and maintenance walkthrough inspections.

Section 245.441. General requirements for underground storage tank systems, *except subparagraphs (a)(3)(i) and (ii).*

Section 245.442. Periodic monitoring requirements for petroleum underground storage tank systems.

Section 245.443. Requirements for hazardous substance underground storage tank systems.

Section 245.444. Methods of release detection for tanks.

Section 245.445. Methods of release detection for piping.

Section 245.446. Release detection recordkeeping.

Section 245.451. Temporary removal from service (out-of-service).

Section 245.452. Permanent closure and changes-in-service.

Section 245.453. Assessing the site at closure or change-in-service.

Section 245.454. Applicability to previously closed underground storage tank systems.

Section 245.455. Closure records.

Section 245.701. Purpose.

Section 245.702. Scope.

Section 245.703. Owner or operator financial responsibility.

Section 245.704. General requirements.

Section 245.705. Owner and operator liability.

Section 245.706. Underground storage tanks not covered by USTIF.

Section 245.707. Coverage amounts for financial responsibility.

Section 245.708. Failure to maintain financial responsibility.

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[FR Doc. 2024–16058 Filed 7–23–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240719–0200]

RIN 0648–BM90

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Fishing Year 2024 Recreational Management Measures

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

ACTION: Final rule.

SUMMARY: This rule implements changes to fishing year 2024 recreational management measures for Gulf of Maine (GOM) cod and GOM haddock. The measures are necessary to ensure the recreational fishery achieves, but does not exceed, fishing year 2024 catch limits for GOM cod and GOM haddock. Recreational measures for Georges Bank (GB) cod will remain unchanged in fishing year 2024.

DATES: This rule is effective July 24, 2024.

ADDRESSES: To review the **Federal Register** documents referenced in this rule, you can visit: [https://](https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan)

www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Policy Analyst, (978) 281–9145.

SUPPLEMENTARY INFORMATION:

Background

Measures for the GOM

The recreational fishery for GOM cod and GOM haddock is managed under the Northeast Multispecies Fishery Management Plan (FMP). The multispecies fishing year starts on May 1 and runs through April 30 of the following calendar year. The FMP sets sub-annual catch limits (sub-ACL) for the recreational fishery each fishing year for both stocks. These sub-ACLs are a fixed proportion of the overall catch limit for each stock. The FMP also includes proactive recreational accountability measures (AM) to prevent the recreational sub-ACLs from being exceeded and reactive AMs to correct the cause, or mitigate the effects, of an overage if one occurs.

The proactive AM provision in the FMP provides a process for the Regional Administrator, in consultation with the New England Fishery Management Council (Council), to develop recreational management measures for the upcoming fishing year to ensure that the recreational sub-ACL is achieved, but not exceeded. The provisions governing this action can be found in the FMP's implementing regulations at 50 CFR 648.89(f)(3).

The 2024 recreational sub-ACL for GOM cod, established by Framework Adjustment 63 (87 FR 42375, July 15, 2022), is 192 metric tons (mt), and remains the same as the 2023 recreational sub-ACL. The 2024 recreational sub-ACL for GOM haddock, established by Framework Adjustment 66 (89 FR 35755, May 2, 2024), is 759 mt, which is a 4-percent reduction from the 2023 sub-ACL of 793 mt.

The proposed rule for this action (89 FR 43364, May 17, 2024) included information about the bio-economic model simulations that were shared with the Council, its Recreational Advisory Panel (RAP), and its Groundfish Oversight Committee (Committee). That information, and details about the Council, Committee, and RAP discussions, are not described further in this rule.

The RAP, the Committee, and the Council agreed on preferred measures and the Council formally recommended a suite of measures to NMFS on February 2, 2024. The Council recommended maintaining the GOM

cod open season and 1-fish bag limit, and increasing the minimum fish size from 22 inches (55.9 centimeters (cm)) to 23 inches (58.4 cm); combined with maintaining the GOM haddock open season, increasing the minimum GOM haddock fish size from 17 inches (43.2 cm) to 18 inches (45.7 cm) for private recreational vessels, and increasing the GOM haddock bag limit from 10 fish to 15 fish for private recreational vessels. These changes make the recreational	GOM haddock measures the same for all recreational vessels, rather than having different bag limits and minimum fish sizes for private vessels and for-hire vessels, as was implemented for the 2023 fishing year. The model projected that maintaining that suite of measures for GOM haddock measures would not sufficiently constrain catch to the quota. The new measures are expected to adequately constrain recreational catch of GOM cod and GOM haddock, based	on the bio-economic model estimates. NMFS is implementing this rule upon our determination that the Council recommendations comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements that management measures be based in the best available science for GOM cod and GOM haddock for fishing year 2024 (table 1).

TABLE 1—SUMMARY OF GOM STATUS QUO MEASURES AND FINAL 2024 MEASURES, WITH MODEL ESTIMATES OF CATCH AND THE PROBABILITY OF CATCH REMAINING BELOW THE SUB-ACLS

	GOM haddock							GOM cod				
	For hire possession limit	Private angler possession limit	For hire minimum size inches (cm)	Private angler minimum size inches (cm)	Open season	Projected catch (mt)	% Simulations under haddock sub-ACL	Possession limit	Minimum size inches (cm)	Open season	Projected catch (mt)	% Simulations under cod sub-ACL
Status Quo Measures	15	10	18 (45.7)	17 (43.2)	May 1–February 28/29 and April 1–April 30.	577.87	100	1	22 (55.9)	September 1–October 31.	200.21	34
Final 2024 Measures ..	15		18 (45.7)		May 1–February 28/29 and April 1–April 30.	517.68	100	1	23 (58.4)	September 1–October 31.	181.69	63

Measures for GB

This rule also announces that the current recreational measures for GB cod will remain in place for fishing year 2024. The Council reviewed the GB cod recreational catch and effort information provided by NMFS. This information shows that maintaining the status quo measures for GB cod would likely keep recreational catches close to the catch target of 113 mt in fishing year 2024, consistent with regulations for establishing GB cod recreational measures at 50 CFR 648.89(g).

Comments and Responses

NMFS received two comments on the proposed rule from one individual and from the Massachusetts Division of Marine Fisheries (MADMF).

Comment 1: One individual commented that the possession limits applied to for-hire vessels should be further considered and limited to eight fish per person fishing on a vessel because allowing possession of fish by adding the captain and mate to the possession limit can exceed the possession limit based on the number of paying customers.

Response: NMFS is approving the measures as proposed.

The measures in this rule are intended to allow the recreational fishery to achieve, but not exceed, the recreational sub-ACLs. The possession limit for a vessel is calculated based on the number of individuals aboard the vessel, including a vessel's captain or crew on a for-hire vessel, or non-fishing passengers on a private vessel. The bio-economic model used to analyze recreational measures accounts for potential possession by a captain or crew and includes all catch. Thus, the measures are designed to constrain catch to the limit or target, even accounting for captain or crew possession. Nevertheless, available data suggest for-hire vessels typically do not fully harvest the possession limit on every trip.

Comment 2: MADMF submitted a letter supporting the proposed measures. In particular, MADMF supported setting uniform recreational regulations for GOM haddock across all recreational fishing modes. MADMF highlighted that recreational measures that differ by mode may affect the uncertainty of catch estimates derived from the Marine Recreational Information Program.

MADMF also raised a concern regarding delays in annual revisions to

recreational measures that result in implementing recreational measures after the start of the fishing year. MADMF suggested setting regulatory measures for periods of 2 to 3 years.

Response: The proposed measures are appropriate for fishing year 2024, and NMFS is implementing the measures as proposed.

NMFS will continue to work to publish a final recreational rule prior to the start of the fishing year. As noted by MADMF in its comment, analyzing recreational measures relies on updating the bio-economic model with catch data from the most recent fishing year. Those data are not available until late in the calendar year. As a result, it is challenging to develop potential measures, consult with the Council, and implement changes prior to the start of the fishing year on May 1.

The Council and its RAP could investigate alternative approaches to setting recreational measures for multiple years. The FMP sets sub-ACLs for the recreational fishery for each fishing year. These sub-ACLs have the potential to differ year to year, based on the most recent science, and static recreational measures may not be sufficient to ensure that the recreational sub-ACL is achieved, but not exceeded. However, there may be approaches to developing recreational measures that may stay in place for multiple years.

Changes From the Proposed Rule

This rule implements regulations outlined in the proposed rule, and there are no changes from the proposed measures in this final rule.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the MSA. In a previous action taken pursuant to section 304(b), the FMP was designed to specify the process for NMFS to take this action pursuant to MSA section 305(d). See 50 CFR 648.89(f)(3) and (g). The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, the MSA, and other applicable law.

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the date of effectiveness for this action. This final rule must be implemented as soon as possible to reduce the potential for overfishing and avoid regulatory confusion. The regulations governing development and

implementation of these measures are designed to facilitate implementation in a timely way for annual and seasonal measures. The fishing year begins May 1 each year, but catch data necessary to update the bio-economic model is not available until late in the previous calendar year. Using the updated model to evaluate potential measures, and the public process for developing such measures, at times can result in implementing measures after May 1, as happened here. Due to timing constraints resulting from the Council-recommend measures being finalized on January 31, 2024, NMFS was unable to publish a proposed rule until May 17, 2024 (89 FR 43364). The comment period for that rule ended on June 3, 2024. NMFS required additional time to consider the comments received and develop this final rule.

Recreational measures also often include seasonal restrictions or modifications designed with timing requirements essential to meeting their conservation and management goals and objectives. A delay in the implementation of measures may result in overages or overfishing. For GOM haddock, less restrictive status quo measures for private recreational fishing vessels have been in effect since May 1, 2024, potentially increasing catch above the levels predicted in the bio-economic model, and raising the likelihood of an overage. GOM haddock is subject to overfishing and these recreational measures are part of the overall set of measures designed for commercial and recreational fishing to prevent overfishing.

Furthermore, anglers and for-hire operators who are subject to this action expect timely implementation to provide regulatory certainty, prevent overages and overfishing, and prevent adverse economic impacts that would arise from an overage. This final rule follows a process for setting yearly measures that is familiar to, and anticipated by, fishery participants. During the development of this rule, and, in particular, after the proposed rule comment period ended, state natural resource agencies sought information from NMFS about the status and timing of the implementation of these measures, because of their need to revise state measures to match Federal measures and to inform their state rulemaking processes. They regularly urged NMFS to finalize the measures as quickly as practicable.

The open season for GOM cod does not begin until September 1. As a result, there will be more than 30 days after publication of this rule before members of the recreational fishing community will be affected by the change to the minimum size for GOM cod and state resource agencies will have greater than 30 days after publication of this rule to follow their state processes for revising recreational measures.

For these reasons, a 30-day delay in the date of effectiveness for this final rule is unnecessary, impracticable, and contrary to the public interest.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification, which was published in

the proposed rule, has not changed and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 19, 2024.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 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. Amend § 648.89, by revising table 1 to paragraph (b)(1) and table 2 to paragraph (c)(1)(i) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (b)(1)

Species	Charter/party minimum size		Private minimum size		Maximum size	
	inches	cm	inches	cm	inches	cm
Cod:						
Inside GOM Regulated Mesh Area ¹	23	58.4	23	58.4	N/A	N/A
Outside GOM Regulated Mesh Area ¹	23	58.4	23	58.4	N/A	N/A
Haddock:						
Inside GOM Regulated Mesh Area ¹	18	45.7	18	45.7	N/A	N/A
Outside GOM Regulated Mesh Area ¹	18	45.7	18	45.7	N/A	N/A
Pollock	19	48.3	19	48.3	N/A	N/A
Witch Flounder (gray sole)	14	35.6	14	35.6	N/A	N/A
Yellowtail Flounder	13	33.0	13	33.0	N/A	N/A
American Plaice (dab)	14	35.6	14	35.6	N/A	N/A
Atlantic Halibut	41	104.1	41	104.1	N/A	N/A
Winter Flounder (black back)	12	30.5	12	30.5	N/A	N/A
Redfish	9	22.9	9	22.9	N/A	N/A

¹ GOM Regulated Mesh Area specified in § 648.80(a).

* * * * *

(i) * * *

(c) * * *

(1) * * *

TABLE 2 TO PARAGRAPH (c)(1)(i)

Stock	Open season	Possession limit	Closed season
GB Cod	September 1–April 30; May 1–31	5	June 1–August 31.
GOM Cod	September 1–October 31	1	May 1–August 31; November 1–April 30.
GB Haddock	All Year	Unlimited	N/A.
GOM Haddock	May 1–February 28 (or 29); April 1–30	15	March 1–March 31.
GB Yellowtail Flounder	All Year	Unlimited	N/A.
SNE/MA Yellowtail Flounder	All Year	Unlimited	N/A.
CC/GOM Yellowtail Flounder	All Year	Unlimited	N/A.
American Plaice	All Year	Unlimited	N/A.
Witch Flounder	All Year	Unlimited	N/A.
GB Winter Flounder	All Year	Unlimited	N/A.
GOM Winter Flounder	All Year	Unlimited	N/A.
SNE/MA Winter Flounder	All Year	Unlimited	N/A.
Redfish	All Year	Unlimited	N/A.
White Hake	All Year	Unlimited	N/A.
Pollock	All Year	Unlimited	N/A.

TABLE 2 TO PARAGRAPH (c)(1)(i)—Continued

Stock	Open season	Possession limit	Closed season
Northern Windowpane Flounder	CLOSED	No retention	All Year.
Southern Windowpane Flounder	CLOSED	No retention	All Year.
Ocean Pout	CLOSED	No retention	All Year.
Atlantic Halibut	See paragraph (c)(3) of this section.		
Atlantic Wolffish	CLOSED	No retention	All Year.

Proposed Rules

Federal Register

Vol. 89, No. 142

Wednesday, July 24, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1893; Project Identifier MCAI-2023-01050-T]

RIN 2120-AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. This proposed AD was prompted by reported events of annunciated horizontal stabilizer trim actuator (HSTA) jams occurring at the end of the cruise phase of flight. This proposed AD would require lubricating the HSTA using an improved method, at a reduced interval, as specified in a Transport Canada 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 September 9, 2024.

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](https://www.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](https://www.regulations.gov) under Docket No. FAA-2024-1893; 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 Transport Canada material identified in this proposed AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this material on the Transport Canada website at tc.canada.ca/en/aviation.

- 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:

Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email Mark.Taylor@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-2024-1893; Project Identifier MCAI-2023-01050-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](https://www.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 Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email Mark.Taylor@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-2023-68R1, dated April 30, 2024 (Transport Canada AD CF-2023-68R1) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD-500-1A10 and BD-500-1A11 airplanes. The MCAI states there have been reported events of annunciated horizontal stabilizer trim actuator (HSTA) jams occurring at the end of the cruise phase of flight. Investigation revealed water intrusion in the primary ball nut and/or secondary nut housing of the HSTA ballscrew assembly. Water intrusion and subsequent freezing has caused jamming of the HSTA, resulting in the loss of pitch trim capability. Loss of pitch trim capability could result in loss of control of the airplane.

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* under Docket No. FAA–2024–1893.

Material Incorporated by Reference Under 1 CFR Part 51

Transport Canada AD CF–2023–68R1 specifies improved procedures for lubricating the HSTA and repeating the lubrication at a reduced interval. 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 Transport Canada AD CF–2023–68R1 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 Transport Canada AD CF–2023–68R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with Transport Canada AD CF–2023–68R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by Transport Canada AD CF–2023–68R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1893 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 100 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
Up to 2 work-hours × \$85 per hour = \$170	\$0	Up to \$170	Up to \$17,000.

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 Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Docket No. FAA–2024–1893; Project Identifier MCAI–2023–01050–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2023–68R1, dated April 30, 2024 (Transport Canada AD CF–2023–68R1).

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reported events of announced HSTA jams occurring at the end of the cruise phase of flight. Investigation revealed water intrusion in the primary ball nut and/or secondary nut housing of the HSTA ballscrew assembly. The FAA is issuing this AD to address water intrusion and subsequent freezing, which causes jamming of the HSTA, resulting in the loss

of pitch trim capability. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF-2023-68R1.

(h) Exceptions to Transport Canada AD CF-2023-68R1

(1) Where Transport Canada AD CF-2023-68R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF-2023-68R1 refers to hours air time, this AD requires using flight hours.

(3) Where Paragraph A of Part I of Transport Canada AD CF-2023-68R1 specifies an initial compliance time for performing the lubrication of the HSTA, for this AD, the initial compliance time is at the earlier of the times specified in paragraphs (h)(3)(i) and (ii) of this AD.

(i) Within 1,100 flight hours after the effective date of this AD.

(ii) Within 12 months after the date of the most recent HSTA lubrication task, or within 5 days after the effective date of this AD, whichever occurs later.

(4) Where Paragraph B of Part I of Transport Canada AD CF-2023-68R1 specifies an initial compliance time for performing the lubrication of the HSTA, for this AD, the initial compliance time is at the later of the times specified in paragraphs (h)(4)(i) and (ii) of this AD.

(i) Within 1,100 flight hours or 12 months, whichever occurs first, since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness.

(ii) Within 5 days after the effective date 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@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 Transport Canada; or Airbus Canada Limited Partnership's Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email Mark.Taylor@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF-2023-68R1, dated April 30, 2024.

(ii) [Reserved]

(3) For Transport Canada AD CF-2023-68R1, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888-663-3639; email TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca. You may find this Transport Canada AD on the Transport Canada website at tc.canada.ca/en/aviation.

(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 at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on July 16, 2024.

Peter A. White,

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

[FR Doc. 2024-16041 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1894; Project Identifier MCAI-2024-00036-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 supersede Airworthiness Directive (AD) 2023-21-02, which applies to certain Airbus SAS Model A330-200 series, A330-200 Freighter series, A330-300 series, A330-800 series, and A330-900 series airplanes. AD 2023-21-02 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023-21-02, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023-21-02 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, 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 September 9, 2024.

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-2024-1894; 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 EASA material, 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.

- You may view this material at the FAA, Airworthiness Products Section,

Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1894.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email vladimir.ulyanov@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–2024–1894; Project Identifier MCAI–2024–00036–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](https://www.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 Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email vladimir.ulyanov@faa.gov. Any

commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–21–02, Amendment 39–22574 (88 FR 76107, November 6, 2023) (AD 2023–21–02), for certain Airbus SAS Model 330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841 and –941 airplanes. AD 2023–21–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0187, dated September 13, 2022 (EASA AD 2022–0187) and AD 2023–0015, dated January 19, 2023 (EASA AD 2023–0015) (which correspond to FAA AD 2023–21–02), to correct an unsafe condition.

AD 2023–21–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2023–21–02 to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane.

Actions Since AD 2023–21–02 Was Issued

Since the FAA issued AD 2023–21–02, EASA superseded AD 2022–0187 and EASA AD 2023–0015 and issued EASA AD 2024–0011, dated January 10, 2024 (EASA AD 2024–0011), for all Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841 and –941 airplanes. EASA AD 2024–0011 states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after October 20, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD

docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1894.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0011. This material specifies new or more restrictive airworthiness limitations for airplane structures.

This proposed AD would also require EASA AD 2022–0187 and EASA AD 2023–0015, which the Director of the Federal Register approved for incorporation by reference as of December 11, 2023 (88 FR 76107, November 6, 2023).

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 and service information 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 retain all requirements of AD 2023–21–02. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2024–0011 already described, as proposed for incorporation by reference. Any differences with EASA AD 2024–0011 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) 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 retain the IBR of EASA AD 2022–0187 and EASA AD 2023–0015 and incorporate EASA AD 2024–0011 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0011, EASA AD 2022–0187, and EASA AD 2023–0015 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 2022–0187, EASA 2023–0015, or EASA AD 2024–0011 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 2024–0011. Service information required by EASA AD 2024–0011 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–1894 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.*, inspections), or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional AD Provisions.” This new format includes a “New Provisions for Alternative and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 126 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–21–02 to be \$7,650 (90 work-hours × \$85 per work-hour).

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

The FAA estimates the total cost per operator for the new proposed actions 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

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:
- a. Removing Airworthiness Directive (AD) 2023–21–02, Amendment 39–22574 (88 FR 76107, November 6, 2023); and
 - b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–1894; Project Identifier MCAI–2024–00036–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 9, 2024.

(b) Affected ADs

This AD replaces AD 2023–21–02, Amendment 39–22574 (88 FR 76107, November 6, 2023) (AD 2023–21–02).

(c) Applicability

This AD applies to Airbus SAS airplanes, identified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 20, 2023.

- (1) Model A330–201, –202, –203, –223, and –243 airplanes.
- (2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, and corrosion in principle structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2023–21–02, with new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 18, 2022: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0187, dated September 13, 2022 (EASA AD 2022–0187), and AD 2023–0015, dated January 19, 2023 (EASA AD 2023–0015); as applicable. Where EASA AD 2023–0015 affects the same airworthiness limitations as those in EASA AD 2022–0187, the airworthiness limitations referenced in EASA AD 2023–0015 prevail. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0187 and EASA AD 2023–0015, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–21–02, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0187 and of EASA AD 2023–0015.

(2) Paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015 specifies revising “the AMP” within 12 months after the respective EASA AD’s effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after December 11, 2023 (the effective date of AD 2023–21–02).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015 is at the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0187 and of EASA AD 2023–0015, or within 90 days after

December 11, 2023 (the effective date of AD 2023–21–02), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2022–0187.

(5) Where EASA AD 2022–0187 defines “The ALS,” replace the text “Airbus A330 Airworthiness Limitations Section (ALS) Part 2 Revision 05,” with “Airbus A330 Airworthiness Limitations Section (ALS) Part 2 Revision 05 Issue 02.”

(6) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2023–0015.

(7) This AD does not require incorporating Section 4, “Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,” of “the ALS” specified in EASA AD 2022–0187 and in EASA AD 2023–0015.

(8) This AD does not adopt the “Remarks” section of EASA AD 2022–0187 and of EASA AD 2023–0015.

(i) Retained Provisions for Alternative Actions and Intervals, With New Exception

This paragraph restates the provisions of paragraph (l) of AD 2023–21–02, with a new exception. Except as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0187 or of EASA AD 2023–0015.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0011, dated January 10, 2024 (EASA AD 2024–0011). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2024–0011

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0011.

(2) Paragraph (3) of EASA AD 2024–0011 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0011 is at the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2024–0011, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2024–0011.

(5) This AD does not adopt the “Remarks” section of EASA AD 2024–0011.

(6) This AD does not require incorporating Section 4, “Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,” of “the ALS” specified in EASA AD 2024–0011.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2024–0011.

(m) 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 manager of the International Validation Branch, mail it to the address identified in paragraph (n) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(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.

(n) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email vladimir.ulyanov@faa.gov.

(o) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0011, dated January 10, 2024.

(ii) [Reserved]

(4) The following material was approved for IBR on December 11, 2023 (88 FR 76107, November 6, 2023).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0187, dated September 13, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0015, dated January 19, 2023.

(5) For EASA AD 2022–0187, EASA AD 2023–0015, and EASA AD 2024–0011, 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 these EASA ADs on the EASA website at ad.easa.europa.eu.

(6) 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.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on July 16, 2024.

Peter A. White,

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

[FR Doc. 2024–15959 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1895; Project Identifier MCAI–2023–01240–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 supersede Airworthiness Directive (AD) 2022–08–08, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–08–08 requires repetitive special detailed inspections of certain double joggle areas on the fuselage and applicable on-condition actions. This proposed AD continues to require the actions in AD 2022–08–08 and would add airplanes to the applicability, 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 September 9, 2024.

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](https://www.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](https://www.regulations.gov) under Docket No. FAA–2024–1895; 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 EASA material, 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.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1895.

FOR FURTHER INFORMATION CONTACT:

Timothy 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–2024–1895; Project Identifier MCAI–2023–01240–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](https://www.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 Timothy 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 that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–08–08, Amendment 39–22011 (87 FR 23755, April 21, 2022) (AD 2022–08–08), for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2022–08–08 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0227, dated October 11, 2021 (EASA AD 2021–0227) (which corresponds to FAA AD 2022–08–08), to correct an unsafe condition.

AD 2022–08–08 requires repetitive special detailed inspections of certain areas and applicable on-condition actions. The FAA issued AD 2022–08–08 to address cracks in the double joggle areas at frame (FR) 16 and FR20, right-hand and left-hand sides, which, if not detected and corrected, could reduce the structural integrity of the fuselage.

Actions Since AD 2022–08–08 Was Issued

Since the FAA issued AD 2022–08–08, EASA superseded AD 2021–0227 and issued EASA AD 2023–0212, dated December 6, 2023 (EASA AD 2023–0212) (referred to after this as the MCAI), for certain Airbus SAS Model A318–111, –112, –121, –122 airplanes; Model 319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. The MCAI states that the unsafe condition may also exist on Airbus SAS A318/A320/A321 “NEO” airplanes (*i.e.*, Airbus SAS Model A318–151N, –153N, and –171N; A320–251N, –252N, –253N, –271N, –272N, and –273N; and A321–251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes), so these airplanes will be added to the applicability. In addition, Airbus has developed additional, new structural repair manual (SRM) tasks that are considered additional alternative methods to the Airbus repair designs originally required by EASA AD 2021–0227 for the airplanes affected by that AD.

The FAA is proposing this AD to address cracks in the double joggle areas at FR16 and FR20 in the nose forward fuselage, which could reduce the structural integrity of the fuselage. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1895.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–08–08, this proposed AD would retain all of the requirements of AD 2022–08–08 and expands the applicability to include Airbus SAS

A318/A320/A321 NEO airplanes. Those requirements are referenced in EASA AD 2023–0212, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Material Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0212. This material specifies procedures for repetitive special detailed inspections for cracking of double joggle areas at FR16 and FR20, right-hand and left-hand sides, applicable on-condition actions (repair) and an optional modification of the double joggle area, which terminates the repetitive inspections. The modification includes a rotating probe inspection of certain fastener holes for cracks, a check of the fastener holes for a minimum diameter, and applicable on-condition actions. EASA AD 2023–0212 also specifies that new SRM tasks have been developed that are acceptable for compliance with the corrective actions required by AD 2022–08–08 for airplanes affected by that AD. 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 retain all requirements of AD 2022–08–08. This proposed AD would expand the

applicability to include Airbus SAS A318/A320/A321 NEO airplanes. This proposed AD would require accomplishing the actions specified in EASA AD 2023–0212 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 2023–0212 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0212 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 2023–0212 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 2023–0212. Material required by EASA AD 2023–0212 for compliance will be available at [regulations.gov](https://www.regulations.gov) by searching for and locating Docket No. FAA–2024–1895 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,755 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
Up to 55 work-hours × \$85 per hour = Up to \$4,675	\$0	Up to \$4,675	Up to \$8,204,625.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
60 work-hours × \$85 per hour = \$5,100	\$1,624	\$6,724

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–08–08, Amendment 39–22011 (87 FR 23755, April 21, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–1895; Project Identifier MCAI–2023–01240–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 9, 2024.

(b) Affected ADs

(1) This AD replaces AD 2022–08–08, Amendment 39–22011 (87 FR 23755, April 21, 2022) (AD 2022–08–08).

(2) This AD affects AD 2023–13–10, Amendment 39–22495 (88 FR 50005, August 1, 2023) (AD 2023–13–10).

(c) Applicability

This AD applies to Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0212, dated December 6, 2023 (EASA AD 2023–0212).

(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.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that, during inspections accomplished as specified in certain airworthiness limitation items (ALIs), cracks were detected in the double joggle areas at frame (FR) 16 and FR20 in the nose forward fuselage. The unsafe condition, if not addressed, could result in reduced structural integrity of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0212.

(h) Exceptions to EASA AD 2023–0212

(1) Where paragraphs (2) and (3) of EASA AD 2023–0212 specify "Airbus approved repair instructions," or "post-repair inspection instructions approved by Airbus,"

for this AD, to be acceptable for credit, the repair instructions or post-repair inspection instructions must be approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA authorized signature.

(2) Where paragraph (4) of EASA AD 2023–0212 specifies to "contact Airbus for approved repair instructions and, within the compliance time specified therein, accomplish those instructions accordingly" if any cracks are detected, for this AD if any cracking is detected, the cracking must be repaired before further flight 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) This AD does not adopt the "Remarks" section of EASA AD 2023–0212.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0212 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Terminating Action for Certain Requirements in AD 2023–13–10

Accomplishing the actions required by this AD terminates ALI Tasks 531153–02–1, 531153–02–2, 531155–02–1, and 531155–02–2, as required by paragraph (o) of AD 2023–13–10 only for the airplanes identified in paragraph (c) of this AD.

(k) 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 manager of the International Validation Branch, mail it to the address identified in paragraph (l) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov.

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

(ii) AMOCs approved previously for AD 2022–08–08 are approved as AMOCs for the corresponding provisions of EASA AD 2023–0212 that are required by paragraph (g) of this AD.

(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 DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety

Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3667; email Timothy.P.Dowling@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023-0212, dated December 6, 2023.

(ii) [Reserved]

(3) For EASA AD 2023-0212, 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 at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on July 17, 2024.

Suzanne Masterson,

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

[FR Doc. 2024-16049 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1885; Project Identifier AD-2023-00995-E]

RIN 2120-AA64

Airworthiness Directives; General Electric Company Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) Model CF34-10E2A1, CF34-10E6, CF34-10E6A1, CF34-10E7, and CF34-10E7-B engines having certain high-pressure turbine (HPT) front rotating air seals installed. This proposed AD was prompted by a report of cracks found in the HPT front rotating air seal. This proposed AD would require performing repetitive fluorescent penetrant

inspections (FPIs) to detect indications or linear indications (any indication which is four times longer than the width of that same indication) in the HPT front rotating air seal and, if necessary, replacement of the HPT front rotating air seal or HPT rotor disk with parts eligible for installation as applicable. This proposed AD also includes an optional terminating action to the repetitive FPIs. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 9, 2024.

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-2024-1885; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552-3272; email: aviation.fleetssupport@ge.com; website: ge.com.

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

FOR FURTHER INFORMATION CONTACT:

Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7178; email: alexei.t.marqueen@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-2024-1885; Project Identifier AD-2023-00995-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report of indications found in certain HPT front rotating air seals at the rabbet surface where the affected part interacts with the HPT rotor disk tabs. The manufacturer investigated and determined that the indications were caused by a high edge of contact stress between the HPT rotor disk and the rabbet surface of the HPT front rotating air seal. This condition, if not addressed, could result in uncontained release of the HPT front rotating air seal

or HPT rotor disk, damage to the engine, and damage to the airplane.

FAA's Determination

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

Related Material Under 1 CFR Part 51

The FAA reviewed GE CF34–10E Service Bulletin 72–0341 R02, dated September 24, 2021. This material provides procedures for repetitive FPIs and eddy current inspections of certain HPT front rotating air seals for

indications or linear indications and, if necessary, replacing the affected HPT front rotating air seals or the HPT rotor disk with parts eligible for installation. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require, at the next piece-part exposure, repetitive FPIs to detect indications (indications) or linear indications (any indication which is four times longer than the

width of that same indication) in the HPT front rotating air seal and, if necessary, replacement of the HPT front rotating air seal or HPT rotor disk with parts eligible for installation as applicable. Additionally, replacing the HPT front rotating air seal with an updated design part constitutes optional terminating action for the repetitive FPI.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 300 engines, installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
FPI of the HPT front rotating air seal.	8 work-hours × \$85 per hour = \$680	\$0	\$680	\$204,000

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspections. The agency has no way of determining the

number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPT front rotating air seal.	8 work-hours × \$85 per hour = \$680	\$332,000	\$332,680
Replace HPT rotor disk.	8 work-hours × \$85 per hour = \$680	\$341,800	\$342,480

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:

General Electric Company: Docket No. FAA–2024–1885; Project Identifier AD–2023–00995–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) Model CF34–10E2A1, CF34–10E6, CF34–10E6A1, CF34–10E7, CF34–10E7–B engines with an installed high-pressure turbine (HPT) front rotating air seal having a part number (P/N) 1865M49P04, 2448M30P02, or 2448M30P03.

(d) Subject

Joint Aircraft System Component (JASC)
Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in the HPT rotating air front seal. The FAA is issuing this AD to detect indications and linear indications (any indication which is four times longer than the width of that same indication) of the HPT front rotating air seal. The FAA is issuing this AD to prevent failure of the HPT front rotating air seal or HPT rotor disk. The unsafe condition, if not addressed, could result in uncontained release of the HPT front rotating air seal or HPT rotor disk, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the next piece-part exposure of the HPT rotor assembly and each piece-part exposure thereafter, after the effective date of this AD, perform a fluorescent penetrant inspection (FPI) of the HPT front rotating air seal for indications or linear indications in accordance with paragraphs 3.B.(1)(a) through (f), of GE CF34–10E Service Bulletin (SB) 72–0341 R02, dated September 24, 2021 (CF34–10E SB 72–0341 R02).

(2) If during any FPI required by paragraph (g)(1) of this AD, there are any indications greater than 0.015 in. (0.38mm) or any linear indications, before further flight, remove the HPT front rotating air seal from service and replace with a part eligible for installation, in accordance with paragraphs 3.B.(1)(g) and (h) of CF34–10E SB 72–0341 R02.

(3) If during any FPI required by paragraph (g)(1) of this AD, there are any indications that extends beyond the rabbet diameter M, as specified in paragraph 3.B.(1)(i), Figure 1, and Figure 4 (Sheet 2) of CF34–10E SB 72–0341 R02, before further flight remove the HPT rotor disk from service and replace with a part eligible for installation, in accordance with paragraph 3.B.(1)(i)2 of CF34–10E SB 72–0341 R02.

(h) Optional Terminating Action

Replacing the HPT front rotating air seal with an HPT front rotating air seal having P/N 2929M57P01 constitutes terminating action for the inspections required by paragraph (g)(1) of this AD.

(i) Definitions

(1) For the purpose of this AD, a “piece-part exposure” is when the HPT front rotating air seal is disassembled from the HPT rotor assembly.

(2) For the purpose of this AD, a “linear indication” is any indication whose length is at least four times greater than its width.

(3) For the purpose of this AD, a “part eligible for installation” is defined as the following, as applicable:

(i) An HPT front rotating air seal that is eligible for installation is an HPT front rotating air seal having P/N 1865M49P04, P/N 2448M30P02, or P/N 2448M30P03 that

has passed the inspection required by paragraph (g)(1) of this AD, or an HPT front rotating air seal having P/N 2929M57P01.

(ii) An HPT rotor disk that is eligible for installation is an HPT rotor disk having P/N 1865M51P03 or P/N 1865M51P04 that has not been removed from service as a result of the actions required by paragraph (g)(3) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov.

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

(k) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7178; email: alexei.t.marqueen@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) General Electric Company CF34–10E Service Bulletin 72–0341 R02, dated September 24, 2021.

(ii) [Reserved]

(3) For material identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: aviation.fleetssupport@ge.com; website: ge.com.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on July 8, 2024.

Peter A. White,

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

[FR Doc. 2024–16061 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2024–1934; Airspace
Docket No. 23–AAL–60]

RIN 2120–AA66

**Amendment of United States Area
Navigation Route Q–8 and Revocation
of United States Area Navigation Route
Q–18 in Alaska**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) Route Q–8 and revoke RNAV Route Q–18 in Alaska. The FAA is proposing this action to resolve an issue involving rejected automated flight plans.

DATES: Comments must be received on or before September 9, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1934 and Airspace Docket No. 23–AAL–60 using any of the following methods:

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

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

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

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

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation

Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

United States Area Navigation Routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

RNAV route Q–8 currently extends between the Anchorage, AK, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Galena, AK, VOR/DME. The FAA is proposing to amend Q–8 by extending the route beyond Galena VOR/DME to the Barrow, AK, VOR/DME. This extension would serve to mitigate the proposal to revoke Q–18.

Q–18 extends between the Galena VOR/DME and the Barrow VOR/DME. The route identifier Q–18 is used both in the United States airspace system and the European airspace system. Due to this, flight plans that are intended to

contain Q–18 in the United States are routinely rejected by the automated flight plan system. Attempts to resolve the flight plan conflicts have been unsuccessful. The FAA is proposing to revoke Q–18 in its entirety. The proposed amendment to Q–8 would extend the route to directly overlie Q–18.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend United States Area Navigation (RNAV) Route Q–8 and revoke RNAV Route Q–18 in Alaska.

Q–8: Q–8 currently extends between the Anchorage VOR/DME and the Galena VOR/DME. The FAA is proposing to extend Q–8 to overlie the current track of Q–18. This extension would mitigate the FAA’s proposal to revoke Q–18 in its entirety. As amended, Q–8 would extend between the Anchorage VOR/DME and the Barrow VOR/DME.

Q–18: Q–18 currently extends between the Galena VOR/DME and the Barrow VOR/DME. The FAA is proposing to revoke Q–18 in its entirety.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:
Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–8 Anchorage, AK (TED) to Barrow, AK (BRW) [Amended]

Anchorage, AK (TED)	VOR/DME	(lat. 61°10′04″ N, long. 149°57′37″ W)
Galena, AK (GAL)	VOR/DME	(lat. 64°44′17″ N, long. 156°46′38″ W)
Barrow, AK (BRW)	VOR/DME	(lat. 71°16′24″ N, long. 156°47′17″ W)

* * * * *

Q–18 Galena, AK (GAL) to Barrow, AK (BRW) [Removed]

* * * * *

Issued in Washington, DC, on July 18, 2024.

Frank Lias,
Manager, Rules and Regulations Group.
[FR Doc. 2024–16186 Filed 7–23–24; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133850–13]

RIN 1545–BN93

Interest Capitalization Requirements for Improvements to Designated Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–133850–13) published in the **Federal Register** on May 15, 2024, containing proposed regulations that would remove the associated property rule and similar rules from the existing regulations on the interest capitalization requirements for improvements to designated property.

DATES: Written or electronic comments were to be received by July 15, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Livia Piccolo of the Office of Associate Chief Counsel (Income Tax and Accounting), at (202) 317–7007 (not

a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–133850–13) that is the subject of this correction is under section 263A of the Code.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–133850–13) that is the subject of FR Doc. 2024–10579, published on May 15, 2024, is corrected on page 42405, in the third column, by correcting the third line from the bottom of the column to read, “amendments to § 1.263A–11(e) to”.

Oluwafunmilayo A. Taylor,
Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–16214 Filed 7–23–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124593–23]

RIN 1545–BR07

Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–124593–23) published in the **Federal Register** on June 18, 2024, containing proposed regulations that would identify certain partnership related party basis adjustment transactions and substantially similar transactions as transactions of interest, a type of reportable transaction.

DATES: Written or electronic comments are still being accepted and must be received by August 19, 2024.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–124593–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section of the notice of proposed rulemaking published on June 18, 2024 (89 FR 51476). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–124593–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth Zanet of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–6007 (not a toll-free number); concerning submissions of comments or the public hearing, the Publications and Regulations Section, (202) 317–6901

(not toll-free number) or by email to publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–124593–23) that is the subject of these corrections is under section 6011 of the Code.

Correction of Publication

In proposed rule FR Doc. 2024–13282, beginning on page 51476 in the issue of June 18, 2024, make the following corrections:

1. On page 51477, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT** the sixth line of the paragraph is corrected to read “or the hearing, the Publications and Regulations Section, (202) 317–”.

2. On page 51479 in the first column, the first line of the column is corrected to read “provided under section 732(a)(2), section 732(a)(1)”.

3. On page 51483, in the third column, in the twelfth line of the second full paragraph the language “reduces” is corrected to read “reduce”.

4. On page 51488, in the first column, in the second full paragraph, the second line from the bottom of the paragraph is corrected to read “free number) by September 12,”.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–15719 Filed 7–23–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AS12

Servicemembers’ Group Life Insurance Traumatic Injury Protection Program Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations that govern the Servicemembers’ Group Life Insurance (SGLI) Traumatic Injury Protection (TSGLI) program to correct an unintended amendment that was made in a recent rulemaking amending the TSGLI Schedule of Losses for payments for inability to perform at least two activities of daily living (ADL) as a result of a traumatic injury other than a traumatic brain injury.

DATES: Comments must be received on or before September 23, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on www.regulations.gov as soon as possible after they have been received. VA will not post on Regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period’s closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this proposed rule is available at Regulations.gov, under RIN 2900–AS12.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Insurance Specialist, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: TSGLI provides up to \$100,000 of traumatic injury coverage to all servicemembers enrolled in SGLI, and the coverage provides a financial benefit to seriously injured SGLI insureds to assist them with expenses incurred during long periods of recovery and rehabilitation.

On March 15, 2023, VA published a final rule in the **Federal Register**, 88 FR 15,907, that amended its regulations governing the TSGLI program. Among other things, VA recodified the schedule and amended the eligibility standards for certain losses covered under the schedule. Following publication of the final rule, VA discovered that it had inadvertently changed the Schedule of Losses for inability to perform at least two ADLs as a result of a traumatic injury other than a traumatic brain injury. Neither the preamble to the proposed rule nor the preamble to the final rule addressed this change to the

TSGLI regulation. See 85 FR 50,973; 88 FR 15,907.

The current TSGLI Schedule of Losses, as published in the 2023 final rule referenced above, includes a new interval for payment at the 15th consecutive day of ADL loss. 38 CFR 9.21(c)(20) (a “[t]raumatic injury, other than traumatic brain injury, resulting in inability to perform at least 2 activities of daily living . . . [is] payable at the 15th consecutive day of ADL loss [at] \$25,000”). The payment schedule retains the original text for the tiered eligibility standards for payments at the 30th, 60th, and 90th consecutive-day intervals, but it does not include payment at the 120th consecutive-day interval.

VA implemented the TSGLI program in December 2005 (see 70 FR 75,940, 75,947), and from that time until the 2023 final rule, VA had applied the same tiered schedule for amounts payable under the TSGLI schedule for an inability to perform at least two ADLs as a result of a traumatic injury other than a traumatic brain injury: \$25,000 at the 30th consecutive day of the inability to perform ADLs, with additional payments of \$25,000 each at the 60th, 90th, and 120th consecutive day intervals thereafter. This scheduled loss was initially codified at 38 CFR 9.20(e)(7)(xlv), and although the scheduled loss was recodified in subsequent amendments to the TSGLI regulations, VA did not intend to change the tiered schedule for TSGLI payments for an inability to perform ADLs as a result of a traumatic injury other than a traumatic brain injury.

In its recent review of the TSGLI regulation prior to the 2023 final rule, VA determined that the TSGLI payment range for the scheduled losses did not warrant amendment, noting that the then-existing payment amounts in the regulation exceeded payouts under many commercial accidental death and dismemberment insurance policies on which VA’s schedule was based and was consistent with Congress’s intent concerning VA’s administration of the program. See 88 FR 15,908 (discussing VA’s decision not to change the TSGLI payment schedule).

VA has considered but declines to adopt the changed tiered schedule for payments based on the loss of ADLs due to traumatic injury other than brain injury listed in current 38 CFR 9.21(c)(20), which is the result of VA’s inadvertent error. As an initial matter, we note that the 30-, 60-, 90-, and 120-day intervals under the Schedule of Losses were intended for general applicability under this program, unless otherwise specified. Revisions to the

time periods prescribed for the tiered payments for this scheduled loss currently allow for payments higher than intended and may also potentially result in higher payout amounts to individuals with severe but temporary injuries than those paid to injured servicemembers who have permanent injuries.

VA is also obligated to manage TSGLI according to sound actuarial principles (38 U.S.C. 1980A(e)(4) and (5)). See 70 FR 75,940. Further, Congress has expressed its desire that the TSGLI premium remain minimal (151 Cong. Rec. S4095 (2005) (statement of Sen. Craig)). Reducing the first prescribed interval for the most common loss payout under the schedule would substantially increase the benefit costs under the program—which is funded by servicemembers' premiums—and jeopardize the actuarial soundness of the program by placing upward pressure on the TSGLI premium. If the premiums are no longer sufficient to cover program costs, the only way for the program to avoid a funding loss is to increase the premium. See 38 U.S.C. 1980A(a) and (e).

Finally, VA does not have the authority to make unilateral revisions to regulations that govern coverage for loss due to traumatic injury. See 38 U.S.C. 1980A(j) (requiring VA to consult with the Secretary of Defense when promulgating regulations which govern coverage for loss due to traumatic injury). During both the TSGLI Year-One Review and the TSGLI Year-Ten Review, VA consulted, as required by law, with the uniformed services as well as VA, military, and private medical professionals on this issue. VA findings from this consultation confirmed the 30, 60, 90, and 120-day payment intervals. Therefore, VA has determined that it is necessary to correct this error instead of retaining the erroneous amendment containing the currently reduced time periods.

For the reasons explained, VA proposes to amend 38 CFR 9.21(c)(20) to reinstate the tiered schedule for payments for an inability to perform at least two ADLs as a result of a traumatic injury other than a traumatic brain injury beginning at 30 consecutive days, with additional payments at 60, 90, and 120 consecutive days.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is because the regulation affects only individuals and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of sections 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Although this proposed rule contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for 38 CFR 9.21 is currently approved by the Office of Management

and Budget (OMB) and have been assigned OMB control number 2900–0919.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 17, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Amend § 9.21 by revising paragraph (c)(20)(i) through (iv) to read as follows:

§ 9.21 Schedule of Losses.

* * * * *

(c) * * *

* * * * *

(20) Traumatic injury, other than traumatic brain injury, resulting in inability to perform at least 2 activities of daily living (ADL):

(i) The amount payable at the 30th consecutive day of ADL loss is \$25,000.

(ii) The amount payable at the 60th consecutive day of ADL loss is an additional \$25,000.

(iii) The amount payable at the 90th consecutive day of ADL loss is an additional \$25,000.

(iv) The amount payable at the 120th consecutive day of ADL loss is an additional \$25,000.

* * * * *

[FR Doc. 2024–16238 Filed 7–23–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63****[EPA-HQ-OAR-2004-0022; FRL-11253-01-OAR]****RIN 2060-AW06****National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors Malfunction and Electronic Reporting Amendments****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Hazardous Waste Combustors (HWC) to remove the exemptions and revise other provisions associated with emission standard exemptions for periods of malfunction, to add electronic reporting provisions, to amend emergency safety vent provisions, and to correct other minor provisions. The removal of the exemption for periods of malfunction is predicated on the previous vacatur of emission standard exemptions for periods of startup, shutdown, and malfunction (SSM) from the applicable general provisions. We are also proposing to remove or revise some associated requirements that are unnecessary, inappropriate, or redundant in the absence of the malfunction exemption, such as in recordkeeping and reporting. Emission standards will apply during periods of malfunction as required under the Clean Air Act (CAA). The addition of electronic reporting provisions will provide for simplified reporting by sources and will enhance the availability of data on sources to the EPA and the public. In addition, the EPA is proposing amendments to emergency safety vent provisions and one correction to the rule to correct an inadvertent error in the Code of Federal Regulations (CFR) related to the use of Method 23 to determine compliance with the dioxin and furan standards.

DATES: Comments must be received on or before September 9, 2024. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 23, 2024.

Public hearing: If anyone contacts us requesting a public hearing on or before

July 29, 2024, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2004-0022, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2004-0022 in the subject line of the message.
- **Fax:** (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2004-0022.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2004-0022, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact U.S. EPA, Attn: Rachel Smoak, Mail Drop: E143-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-0253; and email address: smoak.rachel@epa.gov.

SUPPLEMENTARY INFORMATION:
Participation in virtual public hearing.

To request a virtual public hearing, contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. If requested, the hearing will be held via virtual platform on August 8, 2024. The hearing will convene at 11 a.m. Eastern Time (ET) and will conclude at 3 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at [https://www.epa.gov/stationary-sources-air-](https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous)

[pollution/hazardous-waste-combustors-national-emission-standards-hazardous](https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous).

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than one (1) business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous> or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be August 5, 2024. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have four (4) minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to smoak.rachel@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372-8699 or by email at SPPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by July 31, 2024. The EPA may not be

able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2004-0022. All documents in the docket are listed in <https://www.regulations.gov/>. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0022. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to <https://www.regulations.gov/> any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA

recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov/>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park,

North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2004-0022. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HWC hazardous waste combustor(s)
ICR information collection request
MACT maximum achievable control technology
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NIC notice of intent to comply
NOC notification of compliance
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PDF portable document format
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SSM startup, shutdown, and malfunction
UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows:

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- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated

industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. State, local, and Tribal government entities would not be affected by this proposed action. The source category that is the subject of this proposal is hazardous waste combustors (HWC) regulated under 40 CFR part 63, subpart EEE, the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC NESHAP). The HWC NESHAP includes hazardous waste combusting sources from five initial source categories: hazardous waste incinerators, Portland cement manufacturing, clay products manufacturing (including lightweight aggregate kilns), industrial boilers, and hydrochloric acid production furnaces. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-

030, July 1992), the Hazardous Waste Incineration source category is any source that incinerates hazardous waste in “any furnace, or other device, used in the process of burning waste for the primary purpose of reducing the volume of the waste by removing combustible matter.” The Portland Cement Manufacturing source category includes “any facility engaged in manufacturing Portland cement by either the wet or dry process.” The Clay Products Manufacturing source category includes lightweight aggregate kilns and is defined as “any facility engaged in manufacturing of clay products such as brick, vitrified clay pipe, structural clay tile, and clay refractories.” The Industrial Boilers source category, “includes boilers used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, and/or electricity.” The Hydrochloric Acid Production Furnace source category includes “any facility engaged in the production of hydrochloric acid.” Hazardous waste combusting sources from these source categories are regulated as hazardous waste combustors under 40 CFR part 63, subpart EEE, the HWC NESHAP.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code ¹
Petroleum and coal products manufacturing	40 CFR part 63, subpart EEE	3241
Chemical manufacturing	40 CFR part 63, subpart EEE	325
Cement and concrete product manufacturing	40 CFR part 63, subpart EEE	3273
Other nonmetallic mineral product manufacturing	40 CFR part 63, subpart EEE	3279
Hazardous waste treatment and disposal	40 CFR part 63, subpart EEE	562211
Remediation and other waste management services	40 CFR part 63, subpart EEE	5629

¹ North American Industry Classification System (NAICS).

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 63, subpart EEE proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2004-0022). Following

signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>.

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control

technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the “residual risk review.” In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years and revise the standards as necessary taking into account any “developments in practices, processes, or control technologies.” This review is commonly referred to as the “technology review”. This action proposes to amend the current rule to remove an exemption that is inconsistent with the statute and to update the reporting requirements in preparation for conducting the required residual risk and technology reviews.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

Hazardous waste combustors are incinerators, cement kilns, lightweight aggregate kilns, boilers, or hydrochloric acid production furnaces that combust hazardous waste for the purpose of waste reduction, thermal energy recovery, and/or production of a product. The HWC NESHAP covers hazardous air pollutant emissions from hazardous waste combustors at major and area sources. The key pollutants the EPA regulates from these sources include polychlorinated dibenzodioxins and furans (PCDD/PCDF), mercury, cadmium, lead, arsenic, beryllium, chromium, hydrogen chloride, chlorine, other hydrocarbon HAP, and non-enumerated metal HAP.

The HWC NESHAP was first promulgated in 1999 and regulated hazardous waste incinerators, cement kilns, and lightweight aggregate kilns.¹ These standards were amended and standards for hazardous waste solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces were added in 2005.² Subsequent amendments to the HWC NESHAP were made in 2005, 2006, and 2008.³ The EPA sought and received a full voluntary remand of the rule in 2009 to reexamine the rule in its totality.⁴

In a 2008 decision (*Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008)), the United States Court of Appeals for the District of Columbia Circuit (the court) vacated portions of two provisions in the NESHAP General Provisions governing the emissions of HAP during periods of SSM. Specifically, the court vacated NESHAP General Provisions language that exempted sources from HAP non-opacity and opacity emission standards contained in 40 CFR 63.6(f)(1) and (h)(1). The court held that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that “the SSM exemption violates the CAA’s requirement that some section 112 standards apply continuously.”

III. Proposed Actions

A. What actions are we proposing, and what is the rationale for those actions?

In this proposal, we are proposing the following revisions to the HWC NESHAP: (1) removal or revision of provisions associated with emission limit exemptions for periods of malfunction, including some recordkeeping and reporting requirements and General Provisions applicability; (2) amendment to emergency safety vent provisions, including recordkeeping requirements; (3) addition of electronic reporting provisions; and (4) a technical correction related to the use of Method 23 to determine compliance with the PCDD/PCDF standards. The proposed decisions, as well as the rationale for those decisions, are presented below.

1. Periods of malfunction

We are proposing revisions to the malfunction provisions of the NESHAP in order to ensure that they are consistent with the decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), in which the court vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We are proposing the elimination of the malfunction exemption in this rule which appears at 40 CFR 63.1206(b)(1)(i), (c)(2)(v), and (c)(4)(i). The EPA is in the process of gathering and evaluating data about startup and shutdown to evaluate whether sources can meet the normal operations standards during periods of startup and shutdown or if alternative standards for these periods are warranted and, if alternative standards are warranted, to develop them. Due to the amount of time needed for these activities, the removal of the startup and shutdown exemptions along with revisions to associated recordkeeping and reporting provisions will be undertaken in a subsequent planned rulemaking action.

With the issuance of the mandate in *Sierra Club v. EPA*, on October 16, 2009, the vacatur became effective and the regulatory provisions contained in 40 CFR 63.6(f)(1) and (h)(1) became null and void. The EPA amended 40 CFR 63.6(f)(1) and (h)(1) on March 11, 2021, to reflect the court order and correct the CFR to remove the SSM exemption.⁵ We are removing any cross-references to the vacated provisions in the regulatory

language to conform to the court’s order in *Sierra Club v. EPA*.

We are also proposing several revisions to the General Provisions Applicable to Subpart EEE table (table 1 to subpart EEE) in the HWC NESHAP as is explained in more detail below. We also are proposing to revise certain recordkeeping and reporting requirements related to the malfunction exemption as further described below.

We are not proposing changes to the emissions limits of the HWC NESHAP even though we are removing the exemption from emission limits during periods of malfunction. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source’s operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2) (Definition of malfunction). The EPA has interpreted CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. This reading has been upheld as reasonable by the D.C. Circuit since at least 2016. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (D.C. Cir.) (2016). Although no statutory language compels the EPA to set different standards for periods of malfunction, we have the discretion to do so where feasible.

2. Recordkeeping and Reporting Requirements and General Provisions Applicability

Because we are proposing amendments to 40 CFR part 63, subpart EEE, we are also proposing related revisions to the recordkeeping and reporting requirements and to table 1 to subpart EEE.

a. Section 63.1206(b)(1) General Duty

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(1)(i), which describes the general duty to minimize emissions. Some of the language in that section is no longer either necessary or appropriate considering the elimination of the malfunction exemption. We are proposing instead to add regulatory text at 40 CFR 63.1206(b)(1) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by a malfunction exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of malfunction. With the elimination of the malfunction exemption, there is no need

¹ 64 FR 52828 (September 30, 1999).

² 70 FR 59402 (October 12, 2005).

³ 70 FR 75042 (December 19, 2005); 71 FR 62388 (October 25, 2006); and 73 FR 64068 (October 28, 2008).

⁴ *Sierra Club v. EPA*, Docket No. 05–1441 (consolidated with Docket Nos. 05–1442, 05–1443, 05–1445, 05–1449) (D.C. Cir.).

⁵ 86 FR 13819 (March 11, 2021).

to differentiate between normal operations and malfunction events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.1206(b)(1) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(1)(ii). Section 63.6(e)(1)(ii) imposes requirements that are no longer necessary with the elimination of the malfunction exemption or are redundant with the general duty requirement being added at 40 CFR 63.1206(b)(1).

b. SSM Plan

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.6(e) by removing the applicability of 40 CFR 63.6(e)(3)(i)(A), which requires owners or operators to satisfy the general duty to minimize emissions at all times. The cross-reference to the general duty requirement is redundant with the general duty requirement being added at 40 CFR 63.1206(b)(1).

c. Compliance With Standards

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.6(f) by removing the applicability of 40 CFR 63.6(f)(1), which requires that non-opacity emission standards apply at all times except as otherwise specified in an applicable subpart. Consistent with *Sierra Club*, the EPA amended 40 CFR 63.6(f)(1) and (h)(1) on March 11, 2021, to reflect the mandate and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(f)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the malfunction exemption.

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.6(h) by removing the applicability of 40 CFR 63.6(h)(1), which requires that opacity and visible emission standards apply at all times except as otherwise specified in an applicable subpart. Consistent with *Sierra Club*, the EPA amended 40 CFR 63.6(h)(1) on March 11, 2021, to reflect the mandate and correct the CFR to remove the SSM exemption. However, the second sentence of 40 CFR 63.6(h)(1) contains language that is premised on the existence of an exemption and is inappropriate in the absence of the malfunction exemption.

d. Section 63.1207(g) Performance Testing

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.7(e) by removing the applicability of

40 CFR 63.7(e)(1), which describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.1207(g). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the malfunction exemption and language that precluded operations during periods of SSM periods from being considered “representative” for purposes of performance testing. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during periods of SSM because conditions may not be representative of normal operating conditions. The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation; conducting performance testing under operating conditions representative of the extreme range of normal conditions is consistent with this requirement. The language in 40 CFR 63.7(e) requires that the owner or operator make available to the Administrator such records “as may be necessary to determine the condition of the performance test” but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.8(c) by removing the applicability of 40 CFR 63.8(c)(1)(i), which requires that owners or operators maintain and operate each continuous monitoring system in compliance with the general duty requirement. The cross-reference to the general duty requirement in that subparagraph is not necessary considering other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

f. Section 63.1211(a) Reporting

We are also proposing to revise 40 CFR 63.1211(a), which summarizes reporting requirements, by adding language that requires sources that fail to meet an applicable standard at any

time to report the information concerning such events in both the excessive emissions and continuous monitoring system performance report and summary report already required under this rule. We are proposing that the report must contain the start date, start time, end date, end time, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

g. Section 63.1211(e) Recordkeeping

We are proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(i), which describes the recordkeeping requirements during startup and shutdown. It will continue to be important to know when such startup and shutdown periods begin and end in order to determine compliance with the appropriate standard for normal operations. We are proposing to add recordkeeping requirements to 40 CFR 63.1211(e) that require recordkeeping of startup and shutdown events and require reporting related to all exceedances.

We are also proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(ii), which describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.1211(e). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is proposing that sources record the start date, start time, end date, end time, and cause (including an unknown cause, if applicable) of any event in which an affected source fails to meet an applicable standard. The EPA is also

proposing to add a requirement that sources keep records that includes the affected source or equipment, whether the failure occurred during a period of SSM, actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are also proposing to revise the table 1 to subpart EEE entry for 40 CFR 63.10 by removing the applicability of 40 CFR 63.10(b)(2)(iv)(B), which requires sources to record actions to minimize emissions and record corrective actions. This requirement is now applicable by reference to 40 CFR 63.1211(e).

3. Emergency Safety Vent Operating Plan

We are proposing revisions to the emergency safety vent openings provisions to remove the requirement for an emergency safety vent operating plan in 40 CFR 63.1206(c)(4)(ii) and bolster the associated reporting requirements. With the elimination of the exemption for periods of malfunction, affected units are subject to an emission standard during openings of emergency safety events that occur outside of periods of startup and shutdown. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus emergency safety vent operating plans are no longer necessary.

4. Electronic Reporting

The EPA is proposing that owners or operators of hazardous waste combustor facilities submit electronic copies of required notices of intent to comply (NIC), notifications of compliance (NOC), notifications of changes that may adversely affect compliance, compliance progress reports, excessive emissions and continuous monitoring system performance reports and summary reports, performance test reports,

performance evaluation reports, and periodic SSM reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in the docket for this action. The proposed rulemaking requires that the owner or operator submit performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website⁶ at the time of the test in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and it requires that the owner or operator submit other performance test results in portable document format (PDF) using the attachment module of the ERT. Similarly, the proposed rulemaking requires the owner or operator to submit performance evaluation results of continuous emissions monitoring systems (CEMS) measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT at the time of the test in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website, and it requires that the owner or operator submit other performance evaluation results in PDF using the attachment module of the ERT. The proposed rulemaking requires the owner or operator to submit NOC, NIC, compliance progress reports, excessive emissions and continuous monitoring system performance reports and summary reports, periodic SSM reports, and notifications of changes that may adversely affect compliance as a PDF upload in CEDRI.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. These circumstances are: (1) outages of the EPA's CDX or CEDRI which preclude an owner or operator from accessing the system and submitting required reports, and (2) force majeure events, which are defined as events that will be or have been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevent an owner or operator from complying with

the requirement to submit a report electronically. Examples of force majeure events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility. The EPA is providing these potential extensions to protect owners or operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated State, local, Tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan⁷ to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy⁸ developed in response to the White House's Digital Government Strategy.⁹ For more information on the benefits of electronic reporting, see the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for*

⁷ EPA's Final Plan for Periodic Retrospective Reviews, August 2011. Available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154>.

⁸ E-Reporting Policy Statement for EPA Regulations, September 2013. Available at: <https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf>.

⁹ Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>.

⁶ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

Hazardous Air Pollutants (NESHAP) Rules, referenced earlier in this section.

5. Technical Correction

On March 20, 2023, 40 CFR part 63, subpart EEE was updated to remove the requirement for Administrator approval to use EPA Method 23 in compliance demonstrations for PCDD/PCDF, reflecting revisions to EPA Method 23 made in March 2023.¹⁰ The reference to requiring Administrator approval for such measurements in 40 CFR 63.1207(f)(1)(xv) was inadvertently retained in the rule, and so we propose to remove the requirement and reserve 40 CFR 63.1207(f)(1)(xv).

B. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

The EPA is proposing to allow 180 days from the date of the final rule for compliance with the malfunction exemption removal, emergency safety vent operating plan removal, recordkeeping and reporting and General Provisions revisions, and electronic reporting requirements other than performance test and performance evaluation reports. The EPA is proposing to allow 90 days from the date of the final rule for compliance with electronic submission of performance test and performance evaluation results. Because the proposed technical correction is non-substantive, the EPA is proposing to make it effective immediately upon promulgation of the final rule.

The EPA is proposing changes that affect ongoing compliance for this subpart, namely removing the provisions that provide an exemption from the requirements to meet the standard during periods of malfunction, removing the requirement for an emergency safety vent operating plan, adding electronic reporting provisions, and updating recordkeeping and reporting requirements and General Provisions applicability in keeping with the proposed revisions. Our experience with other similar industries shows that such facilities generally require a period of 180 days to read and understand the amended rule requirements, to evaluate their operations for any changes needed to meet the revised requirements, and to update their operations to reflect their revised requirements.

In contrast, the EPA is proposing no changes to the content of performance test and performance evaluation reports, only the method of reporting. Our experience with requiring electronic reporting of performance tests and

performance evaluations in other industries shows that as the ERT has been in use by source testing companies since 2004, less time is necessary for its implementation, and that facilities generally require a period of 90 days to understand and become familiar with the process of submitting performance test and performance evaluation results electronically through the EPA's CEDRI. Accordingly, we propose that 90 days would be sufficient time for facilities with hazardous waste combustors to complete these tasks.

IV. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The hazardous waste combustor source category comprises incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that combust hazardous waste. Currently, the EPA has identified 177 hazardous waste combustors at 96 facilities owned by 82 corporate entities. Of these, 70 are incinerators, 67 are liquid fuel boilers, 17 are hydrochloric acid production furnaces, 14 are cement kilns, 7 are solid fuel boilers, and 2 are lightweight aggregate kilns. We estimate that four new hazardous waste combustors may begin operations in the next five years.

B. What are the air quality impacts?

We do not anticipate that the proposed amendments to this subpart will impact air quality. The addition of electronic reporting provisions, amendments to the emergency safety vent provisions, and correction of inadvertent errors do not affect the stringency of the standards in 40 CFR part 63, subpart EEE. Because malfunctions are, by definition, not reasonably preventable, we do not expect the removal of the emissions limit exemption for periods of malfunction to impact hazardous air pollutant emissions or, subsequently, air quality.

C. What are the cost impacts?

The EPA estimated costs for this proposed action based on the results of the analysis for information collection activities, as presented in the Paperwork Reduction Act (PRA) section, Economic Impact Analysis memorandum, and accompanying Information Collection Request (ICR) documents in the docket. The EPA estimated the incremental industry costs of the rule to be \$2,600 per unit in the first year and \$840 in each of the subsequent years. Total incremental industry costs of the rule

are estimated to be \$470,000 in the first year and \$150,000 in each of the subsequent years. These costs are small relative to the estimated revenue of the hazardous waste treatment and disposal industry (approximately \$9 billion in 2021).

D. What are the economic impacts?

Because of the low costs, relatively small number of affected existing units (fewer than 200) and because the EPA anticipates 4 affected new sources in the next 5 years, the EPA expects minimal economic impacts under the final rule.

E. What are the benefits?

The proposed amendments require electronic submittal of performance tests, deviation reports, and annual compliance reports, which will streamline reporting for affected sources and increase the usefulness of the data and improve data accessibility for the public. The electronic reporting requirements will, therefore, further assist in the protection of public health and the environment and will ultimately result in less burden on the regulated community. No air quality benefits are expected, quantified, or monetized.

F. What analysis of environmental justice did we conduct?

For purposes of analyzing regulatory impacts, the EPA relies upon its June 2016 "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis," which provides recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time, resource constraints, and analytical challenges will vary by media and circumstance. The Technical Guidance states that a regulatory action may involve potential EJ concerns if it could: (1) create new disproportionate impacts on communities with EJ concerns; (2) exacerbate existing disproportionate impacts on communities with EJ concerns; or (3) present opportunities to address existing disproportionate impacts on communities with EJ concerns through this action under development.

The EPA's EJ technical guidance states that "[t]he analysis of potential EJ concerns for regulatory actions should address three questions: (A) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline? (B) Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s)

¹⁰ 88 FR 16732 (March 20, 2023).

under consideration? (C) For the regulatory option(s) under consideration, are potential EJ concerns created or mitigated compared to the baseline?”¹¹

The environmental justice analysis is presented for the purpose of providing the public with as full as possible an understanding of the potential impacts of this proposed action. The EPA notes that analysis of such impacts is distinct from the determinations proposed in this action under CAA section 112, which are based solely on the statutory factors the EPA is required to consider under that section.

To examine the potential for any EJ concerns that might be associated with HWC NESHAP facilities, we performed a proximity demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 km (~3.1 miles) and 50

km (~31 miles) of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups. It should be noted that proximity to affected facilities does not indicate that any exposures or impacts will occur and should not be interpreted as a direct measure of exposure or impact. This limits the usefulness of proximity analyses when attempting to answer questions from EPA's EJ Technical Guidance.

The results show that for populations within 5 km of the 96 hazardous waste combustor facilities, the following demographic groups were above the national average: Black (19 percent versus 12 percent nationally), Hispanic/Latino (21 percent versus 19 percent nationally), people age 0 to 17 years (24 percent versus 22 percent nationally), people living below the poverty level

(19 percent versus 13 percent nationally), people below two times the poverty level (38 percent versus 29 percent nationally), and people over the age of 25 without a high school diploma (15 percent versus 12 percent nationally).

The results show that for populations within 50 km of the 96 hazardous waste combustor facilities, the percent of the population that is Black is above the national average (14 percent versus 12 percent nationally).

A summary of the proximity demographic assessment performed is included as Table 2 of this preamble. The methodology and the results of the demographic analysis are presented in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Waste Combustor NESHAP Facilities*, which is available in the docket for this action.

TABLE 2—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR HAZARDOUS WASTE COMBUSTORS

Demographic group	Nationwide average for reference	Population within 50 km of 96 facilities	Population within 5 km of 96 facilities
Total Population	329,824,950	55,520,566	1,772,399
Race and Ethnicity by Percent			
White	60	62	53
Black	12	14	19
American Indian	0.6	0.3	0.3
Hispanic or Latino (includes white and nonwhite)	19	14	21
Other and Multiracial	9	8	7
Age by Percent			
Age 0 to 17 years	22	22	24
Age 18 to 64 years	62	62	62
Age ≥65 years	16	16	14
Income by Percent			
Below Poverty Level	13	12	19
Below 2× Poverty Level	29	28	38
Education by Percent			
Over Age 25 and without a High School Diploma	12	10	15
Linguistically Isolated by Percent			
Linguistically Isolated	5	4	5

Notes:

Nationwide population and demographic percentages are based on Census' 2016–2020 American Community Survey 5-year block group averages and include Puerto Rico. The total population counts are based on the 2020 Decennial Census block populations. To avoid double counting, the “Hispanic or Latino” category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic or Latino, regardless of race.

G. What analysis of children's environmental health did we conduct?

Because the EPA does not expect this action to impact air quality, this action

is not relevant to human health and the EPA's *Policy on Children's Health* does not apply. This action also does not concern an environmental health risk or

safety risk, so Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply.

¹¹ Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, U.S. EPA, June 2016. Section 3—Key Analytic

Considerations, page 11. Available at: [https://www.epa.gov/environmentaljustice/technical-](https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis)

[guidance-assessing-environmental-justice-regulatory-analysis](https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis).

V. Request for Comments

We solicit comments on this proposed action. The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the malfunction exemption. We are specifically seeking comment on whether we have successfully done so. The EPA is also soliciting comment on whether a work practice standard for periods of malfunction for reasons of safety should be set for hazardous waste combustors and, if yes, what the work practice standard should comprise.

The EPA also solicits comment on the proposed compliance dates, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and is therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rulemaking have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2803.01. You can find a copy of the ICR in the docket for this proposed rulemaking, and it is briefly summarized here.

The goal of this information collection request (ICR) is to collect new monitoring, reporting and recordkeeping data from hazardous waste combustors (HWC) subject to emission standards under 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. The key revisions to this subpart are the removal of exemptions for emissions during malfunction periods in response to *Sierra Club v. EPA*, 551 F.3d 1019, 1028 (D.C. Cir. 2008) and the addition

of e-reporting using the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) to replace physically mailing many of the reports and notifications required under this subpart. These revisions require modifications to the monitoring, reporting, and recordkeeping requirements of the rule. The information collected in this ICR will be used to ensure compliance with this subpart. All information submitted to the agency in response to the ICR will be managed in accordance with applicable laws and the EPA's regulations governing treatment of confidential business information at 40 CFR part 2, subpart B. Any information determined to constitute a trade secret will be protected under 18 U.S.C. 1905.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of hazardous waste combustors subject to emission standards under 40 CFR part 63, subpart EEE.

Respondent's obligation to respond: Mandatory under the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (40 CFR part 63, subpart EEE).

Estimated number of respondents: 96.

Frequency of response: Semiannually, quarterly.

Total estimated burden: 2,560 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$257,000 (per year), includes \$0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rulemaking. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at 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. OMB must receive comments no later than August 23, 2024.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses in the NESHAP and industrial source categories listed in Table 1 operating hazardous waste combustors. The Agency has determined that, in the 2025 analysis year, 9 potentially affected small entities operating 18 units at 9 facilities may experience an impact of less than 1 percent of revenue under the proposed rulemaking. Details of this analysis are presented in the document titled *Economic Impact Analysis for the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors Malfunction and Electronic Reporting Amendments*.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed \$100 million or more.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. The EPA is not aware of any hazardous waste combustor unit owned or operated by Tribal governments. This action will not have substantial direct costs or impacts 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. As stated in section IV.F of this preamble, we performed a proximity demographic analysis for 96 existing facilities with hazardous waste combustors that are currently subject to 40 CFR part 63, subpart EEE. A total of 1.8 million people live within 5 kilometers (approximately 0.1 miles) of these facilities. The proportion of demographic groups living near these hazardous waste combustors are above the national average for Black, Hispanic or Latino, people aged 0 to 17 years, people below the poverty level, people below two times the poverty level, and people over the age of 25 and without a high school diploma. See section IV.F of this preamble for further results of the analysis.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. The EPA does not anticipate that the proposed amendments to the subpart will impact air quality because

the EPA does not expect any of the proposed provisions to affect hazardous air pollutant emissions, and so is not likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. Because malfunctions are, by definition, not reasonably preventable, we do not expect the removal of the emissions limit exemption for periods of malfunction to impact hazardous air pollutant emissions or, subsequently, air quality. The addition of electronic reporting provisions, amendments to the emergency safety vent provisions, and correction of inadvertent errors are primarily changes to recordkeeping and reporting requirements, and so do not impact hazardous air pollutant emissions.

The information supporting this Executive Order review is contained in section IV.F of this preamble. The demographic analysis is presented in the document titled *Analysis of Demographic Factors for Populations Living Near Hazardous Waste Combustor NESHAP Facilities*, which is available in the docket for this action, EPA–HQ–OAR–2004–0022.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

[FR Doc. 2024–15840 Filed 7–23–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2023–0204; FRL 10811–01–Region 3]

Pennsylvania: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Commonwealth of Pennsylvania’s Underground Storage Tank (UST) program submitted by the Commonwealth of Pennsylvania (Pennsylvania or State). This action is

based on EPA’s determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA’s approval of Pennsylvania’s state program and to incorporate by reference those provisions of Pennsylvania’s regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA’s inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. In the “Rules and Regulations” section of this issue of the **Federal Register**, EPA is approving this action by a direct final rule. If no significant negative comment is received, EPA will not take further action on this proposed rulemaking, and the direct final rule will be effective 60 days from the date of publication in this **Federal Register**. If you want to comment on EPA’s proposed approval of Pennsylvania’s revisions to its state UST program, you must do so at this time.

DATES: Send written comments by August 23, 2024.

ADDRESSES: Submit any comments, identified by Docket ID No. EPA–R03–UST–2023–0204, by one of the following methods:

1. *Federal eRulemaking Portal:*
<https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* uybarreta.thomas@epa.gov.
Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2023–0204. EPA’s policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal website, <https://www.regulations.gov>, is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone. You can review and copy the documents that form the basis for this proposed action and associated publicly available materials through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas UyBarreta, (215) 814-2953, uybarreta.thomas@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division, EPA Region 3, Four Penn Center, 1600 John F. Kennedy Blvd., (Mailcode 3LD30), Philadelphia, PA 19103.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information see the direct final rule published in the “Rules and Regulations” section of this issue of the **Federal Register**.

Authority: This proposed rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Adam Ortiz,

Regional Administrator, EPA Region 3.

[FR Doc. 2024-16057 Filed 7-23-24; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3025 and 3052

[Docket No. DHS-2024-0022]

RIN 1601-AB13

Homeland Security Acquisition Regulation, Restrictions on Foreign Acquisition Update (HSAR Case 2024-002)

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: Proposed rule.

SUMMARY: DHS is proposing to amend the Homeland Security Acquisition Regulation (HSAR) provisions that relate to the Kissell Amendment, a section of the American Recovery and Reinvestment Act of 2009 that deals with the acquisition of certain clothing, canvas or textile products and natural and synthetic fabrics. DHS believes these proposed changes would help reduce confusion and provide clarity to the requirements under the Kissell Amendment.

DATES: Comments on the proposed rule should be submitted in writing to one of the addresses shown below on or before September 23, 2024, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by HSAR Case 2024-002, Restrictions on Foreign Acquisition Update, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by entering “HSAR Case 2024-002” under the heading “Enter Keyword or ID” and select “Search.” Select the link “Submit a Comment” that corresponds with “HSAR Case 2024-002.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “HSAR Case 2024-002” on your attached document.

- *Fax:* (202) 447-0520.
- *Mail:* Department of Homeland Security, Office of the Chief Procurement Officer, MS 0080, ATTN: Ms. Nancy Harvey, 6595 Springfield Center Dr., Springfield, VA 20598-0080.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Nancy Harvey, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, at (202) 282-8000 or email at HSAR@hq.dhs.gov. Include HSAR Case 2024-002 in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

The Buy American Act of 1933, as amended (BAA), addresses preferences

in Federal procurement.¹ The BAA provides a preference for the purchase of domestic supplies (or domestic end products) and domestic construction materials.²

In 2009, the American Recovery and Reinvestment Act of 2009 (Recovery Act), was enacted.³ Section 604 of the Recovery Act is also, known as the Kissell Amendment.⁴ The Kissell Amendment requires, with limited exceptions, that funds appropriated or otherwise available to DHS may not be used for the procurement of certain textiles, clothing and footwear, if that item is directly related to the national security interests of the United States, unless the item is grown, reprocessed, reused, or produced in the United States.⁵ One of the exceptions is a De Minimis Exception, which allows the Secretary of Homeland Security to accept delivery of the aforementioned textiles, clothing and footwear “that contain non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.”⁶

The Kissell Amendment further requires DHS to apply it in a manner consistent with United States obligations under international agreements.⁷ As DHS has explained in prior notices, this includes free trade agreements and the World Trade Organization Agreement on Government Procurement.⁸ These requirements apply with respect to contracts entered into by DHS on or after August 16, 2009.⁹

The implementing regulations for the BAA are in the Federal Acquisition Regulation (FAR).¹⁰ Chapter 30 of 48 CFR, known as the Homeland Security Acquisition Regulation (HSAR), applies specifically to DHS.¹¹

In 2009, DHS published an interim rule with request for comments (“2009 Interim Rule”) amending the HSAR at 48 CFR part 3025, Foreign Acquisitions, and part 3052, Solicitation Provisions and Contract Clauses, incorporating the Kissell Amendment requirements.¹² In

¹ See 41 U.S.C. 8301-8305.

² See e.g., 41 U.S.C. 8302.

³ See Public Law 111-5, 123 Stat. 115, 165-166 (Feb. 17, 2009).

⁴ Section 604 of the Recovery Act is codified at 6 U.S.C. 453b.

⁵ See 6 U.S.C. 453b(a)-(g).

⁶ See 6 U.S.C. 453b(d).

⁷ See 6 U.S.C. 453b(k).

⁸ See, e.g., 75 FR 32676, (June 9, 2010).

⁹ See 6 U.S.C. 453b(l).

¹⁰ See Title 48, Chapter 1 of the CFR.

¹¹ See 48 CFR Chapter 30.

¹² See *Revision of Department of Homeland Security Acquisition Regulation; Restrictions on*
Continued

2010, DHS published a final rule (“2010 Final Rule”) adopting the 2009 Interim Rule as final without change.¹³ The 2009 Interim Rule made amendments to the HSAR “to add solicitation provisions, contract clauses and related policy statements implementing these requirements and exceptions for certain DHS contracts, option exercises and orders.”¹⁴ The provisions of 48 CFR 3025.70 were limited to “exercising of an option and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009.”¹⁵

The 2009 Interim Rule, among other changes, also created regulatory definitions, such as the term “end product” which, for purposes of 48 CFR 3025.70, and under 48 3052.225–70 “means supplies delivered under a line item of a contract.”¹⁶ The term ‘end product’ was further referenced throughout these parts.¹⁷

The regulations also provide a list of the types of textile items included in the restriction (such as certain yarn, wool, and cotton), explain the specific application of trade agreements, and require, with some exceptions, the use of domestic goods for procurement of Kissell-covered items.¹⁸ One such exception is for “incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product.”¹⁹

DHS notes that the DHS Chief Procurement Officer can issue HSAR deviations when necessary to allow components to deviate from the HSAR.²⁰ On March 5, 2013, DHS issued a deviation regarding the applicability of the Kissell Amendment (Deviation 13–01).²¹ As discussed above, the

provisions of 48 CFR 3025.70 were limited to “exercising of an option and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009.”²² Under Deviation 13–01, DHS deviates from the language of 48 CFR 3025.7000 that restricted application of certain Kissell provisions to those actions with funds appropriated or otherwise provided on or before February 17, 2009.²³

In addition, on March 14, 2013, DHS issued an amendment to Deviation 13–01 (“Deviation Amendment 1”).²⁴ Under Deviation Amendment 1, the De Minimis Exception described above was to be read as applying to “incidental amounts of non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item”²⁵ Deviation 13–01 and Deviation Amendment 1 were both effective immediately at the time of their publication in 2013 and are still in effect.²⁶

DHS is proposing amendments to the HSAR at 48 CFR part 3025, Foreign Acquisitions, and at 48 CFR part 3052, Solicitation Provisions and Contract Clauses, to codify guidance in Deviation 13–01 and Deviation Amendment 1, and make additional revisions consistent with it.

II. Discussion and Analysis

DHS is proposing to amend the HSAR to better clarify how DHS complies with

the Kissell Amendment, including proposing to codify certain guidance from Deviation 13–01 and Deviation Amendment 1.

DHS is also proposing to define the term ‘end item’ to mean “supplies delivered under a line item of a contract.” See proposed 48 CFR 3025.7001(c). DHS notes the proposed definition of ‘end item’ is the current regulatory definition of end product. DHS is further proposing to replace the term “end product” with “end item” throughout 48 CFR part 3025 to reduce potential confusion through use of terminology consistent with the Kissell Amendment. As “end item” is the term used in the Kissell Amendment, DHS believes that defining and using the statutory term ‘end item’ instead of the term ‘end product’ in the HSAR provisions applicable to the Kissell Amendment would also provide clarity.

DHS is further proposing to amend 48 CFR 3025.7000, to explain that this provision applies to the Kissell Amendment, the subject of this subpart; and it would also amend the description of the type of funds to which the Kissell Amendment applies consistent with current practice and Deviation 13–01. The Kissell Amendment applies “with respect to contracts entered into by the Department of Homeland Security 180 days after February 17, 2009.”²⁷ However, DHS, as part of the 2009 Interim Final Rule interpreted the restriction as applying to contracts, options and orders entered into on or after August 16, 2009, with funds appropriated or otherwise provided on or before February 17, 2009. This meant that DHS applied the restriction to only those awards supported by funding appropriated or otherwise made available to DHS on or before February 17, 2009, including those funds that were no-year or multi-year.²⁸ After reevaluating DHS’s prior interpretation, DHS determined initial assessment of the funds to which the restriction applies was too limiting and excluded contracts that could be covered by the statute. DHS issued Deviation 13–01 on March 5, 2013, announcing DHS would deviate from the current HSAR and that the Kissell Amendment would apply to “contracts, exercising of an option and

Foreign Acquisition (HSAR Case 2009–004), 74 FR 41346 (Aug. 17, 2009).

¹³ See *Revision of Department of Homeland Security Acquisition Regulation; Restrictions on Foreign Acquisition* (HSAR Case 2009–004), 75 FR 32676 (June 9, 2010).

¹⁴ See 74 FR 41346 (Aug. 17, 2009).

¹⁵ See 48 CFR 3025.7000.

¹⁶ See 48 CFR 3025.7001(c) and 3052.225–70(a)(3).

¹⁷ See e.g., 48 CFR 3025.7001(a)–(b), (d), 3025.7002–2(g); see also 48 CFR 3052.225–70(a)(1)–(2).

¹⁸ See, e.g., 48 CFR 3052.225–70.

¹⁹ See 48 CFR 3052.225–70(d)(2).

²⁰ See HSAR Deviations, available at: <https://www.dhs.gov/publication/current-hsar-deviations> (last accessed May 31, 2024).

²¹ See HSAR class deviation, 13–01, *Applicability of the “Kissell Amendment” to Department of Homeland Security Acquisitions* (Mar. 5, 2013) (“Deviation 13–01”) available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0_0_0_0.pdf (last accessed May 31, 2024).

²² See 48 CFR 3025.7000.

²³ “Effective immediately, the scope of the subpart 3025.70 shall apply as follows This subpart contains restrictions on the acquisition of certain foreign textile products imposed by the American Recovery and Reinvestment Act of 2009 on contracts, exercising of an option and orders entered into on or after August 16, 2009.”

See Deviation 13–01, available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0_0_0_0.pdf (last accessed May 31, 2024).

²⁴ See HSAR class deviation, 13–01, *Amendment 1, Homeland Security Acquisition Regulation 3052.225–70, Requirement for Use of Certain Domestic Commodities*, (March 14, 2013) (“Deviation Amendment 1”), available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01%E2%80%9393amendment1_0_0_0_0_0.pdf (last accessed May 31, 2024).

²⁵ The clause would not apply to “incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product.”

²⁶ See Deviation 13–01, available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0_0_0_0_0.pdf (last accessed Apr. 23, 2024); see also Deviation Amendment available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01%E2%80%9393amendment1_0_0_0_0_0.pdf (last accessed May 31, 2024).

²⁷ See 6 U.S.C. 453b(l).

²⁸ No Year Appropriations are appropriations available for obligations for an indefinite period of time without fiscal year limitation and are available until they are used up. Multi-Year Appropriations are appropriations available for obligation for a definite period in excess of one fiscal year. See U.S. House of Representatives Glossary of Terms, available at <https://www.house.gov/the-house-explained/open-government/statement-of-disbursements/glossary-of-terms> (last accessed May 30, 2024).

orders entered into on or after August 16, 2009.”²⁹

Therefore, DHS is proposing to amend HSAR section 3025.7000, to remove the regulatory text added by the 2009 Interim Rule that restricted applicability of the Kissell Amendment to contracts, options and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009. This proposed change is consistent with current practice and Deviation 13–01.

DHS is also proposing to revise the introductory text of 48 CFR 3025.7002–1, Restrictions, to codify that the Kissell Amendment applies to all contracts, options and orders entered into on or after August 16, 2009. This proposed change is consistent with current practice and Deviation 13–01.

Similar to the proposed changes discussed above to replace the term ‘end product’ with ‘end item’ DHS is proposing to amend 48 CFR 3025.7002–2, and update the provisions impacting the De Minimis Exception. As discussed above, the De Minimis Exception uses the term end item.³⁰ But the 2009 Interim Rule uses the term ‘end product’ in the regulatory provisions that apply to the De Minimis Exception.³¹ Since Deviation Amendment 1 was effective, DHS has read the provision as using the term ‘end item’. To reduce confusion, DHS is proposing to replace the term ‘end product’ with ‘end item’ and also make additional changes consistent with Deviation Amendment 1. See proposed 48 CFR 3025.7002–2(g) and 3052.225–70(d)(2). Therefore, DHS is

proposing these to reduce confusion and codify the current practice as directed by Deviation Amendment 1.

In addition DHS is proposing to make a technical amendment, amending 48 CFR 3025.7002–2(h), to fix a typographical error, and reference 48 CFR 3025.7003–3 when mentioning the regulatory provision for specific application of trade agreements.³²

III. Regulatory Analyses

A. Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

Need for the Rule

This proposed rule would codify requirements as set forth in the Deviation 13–01 and Deviation Amendment 1. To provide clarity and consistency, DHS proposes this HSAR revision to align with existing DHS practice. DHS is not newly implementing the Kissell Amendment, but is, as described above, amending the existing regulation to clarify the type of funds to which the Kissell Amendment, including the De Minimis Exception, applies.

Benefits and Costs of the Proposed Rule

The benefits and costs of a regulation are generally measured against a no-action baseline, which is a reasonable forecast of the way the world would look absent the regulatory action being assessed.³³ This proposed rule would not result in new costs since DHS has implemented the proposed changes through Deviation 13–01 and Deviation Amendment 1, both issued in 2013. The proposed changes would promote clarity and fuller understanding of the Kissell Amendment regulatory requirements by agency contracting officers as well as potential DHS vendors. This additional clarity would be a benefit to industry as improved contracting officer understanding of the regulatory requirements helps ensure that DHS applies standards similarly across contracting actions, making it easier for industry to comply with DHS requirements. A summary of the costs and benefits of the rule is shown below in Exhibit 1.

EXHIBIT 1—SUMMARY OF PROPOSED RULE CHANGES AND ECONOMIC IMPACTS OF THE PROPOSED RULE

Proposed CFR provision	Description of the proposed change	Costs	Benefits
48 CFR 3025.7000 Scope of Subpart; and CFR 3025.7002–1 Restrictions.	Corrects language to clarify that Kissell Amendment applies to all contracts, options and orders entered into on or after August 16, 2009, and removes appropriation date from the scope criteria.	No new costs since DHS has already implemented the proposed changes via Deviation 13–01 issued in March 2013.	Provides clarification on applicability and ensures consistency between the HSAR and existing DHS practice.
48 CFR 3025.7001 Definitions; 48 CFR 3025.7002–1 Restrictions; 48 CFR 3025.7002–2 Exceptions; 48 CFR 3052.225–70 Requirement for Use of Certain Domestic Commodities.	Changes terminology from “end product” to “end item” to consistently reflect Kissell Amendment applicability of 10% De Minimis Exception.	No new costs since DHS has already incorporated the proposed “end item” definition through Deviation Amendment 1 issued in March 2013.	Provides clarity on terminology and ensures consistency between the HSAR and existing DHS practice.
48 CFR 3025.7002–2 Exceptions ..	Editorial correction to CFR reference relating to application of trade agreements.	No cost	Provides clarification.

²⁹ See Deviation 13–01, available at: https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0_0_0_0.pdf (last accessed May 31, 2024).

³⁰ See 6 U.S.C. 453b(d).

³¹ See 48 CFR 3025.7002–2 and 3052.225–70; see also 74 FR 41346 (Aug. 17, 2009).

³² See 48 CFR 3025.7002–2(h) (which currently states “see (HSAR) 48 CFR 3025.7003–2 for specific application of trade agreements”).

³³ See OMB Circular A–4, p. 11 (Nov. 9, 2023) (accessible at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000. The proposed rule would provide clarity and consistency between the HSAR and existing DHS practice as set forth in Deviation 13–01 and Deviation Amendment 1. This proposed rule does not directly mandate any actions or requirements that would result in burdens for small entities. Therefore, DHS certifies this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DHS invites comments from members of the public regarding potential direct economic impacts on small entities.

C. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–35210).

D. National Environmental Policy Act

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended, requires Federal agencies to evaluate the impacts of a proposed major Federal action that may significantly affect the human environment, consider alternatives to the proposed action, provide public notice and opportunity to comment, and properly document its analysis. DHS and its agency components analyze proposed actions to determine whether NEPA applies to them and, if so, what level of documentation and analysis is required.

DHS Directive 023–01, Rev. 01 and DHS Instruction Manual 023–01–001–01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality regulations for

implementing NEPA codified in 40 CFR parts 1500–1508. The CEQ regulations allow Federal agencies to establish, in their implementing procedures, with CEQ review and concurrence, categories of actions (“categorical exclusions”) that experience has shown do not, individually or in the aggregate, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(e)(2)(ii). Appendix A of the Instruction Manual lists the DHS categorical exclusions.

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The proposed rule, if finalized, would amend the HSAR to better clarify how DHS complies with the Kissell Amendment. This would include codifying certain guidance from Deviation 13–01 and Deviation Amendment 1 that is currently in effect.

DHS is not aware of any significant impact on the environment, or any change in environmental effect that will result from this proposed rule. DHS finds promulgation of the rule clearly fits within categorical exclusion A3, established in the Department’s NEPA implementing procedures.

This proposed rule is a standalone rule and is not part of any larger action. This proposed rule would not result in any major Federal action that would significantly affect the quality of the human environment. Furthermore, DHS has determined that no extraordinary circumstances exist that would create the potential for significant environmental effects. Therefore, this proposed rule is categorically excluded from further NEPA review and documentation.

List of Subjects in 48 CFR Parts 3025 and 3052

Government procurement.

Accordingly, for the reasons set forth in the preamble, DHS proposes to amend 48 CFR parts 3025 and 3052 as follows:

PART 3025—FOREIGN ACQUISITION

■ 1. The authority citation for part 3025 continues to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1303, 41 U.S.C. 1707, 41 U.S.C. 1702, and 48 CFR subpart 1.3.

■ 2. Revise section 3025.7000 to read as follows:

3025.7000 Scope of subpart.

This subpart implements section 604 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5.

■ 3. In section 3025.7001 revise paragraphs (a) through (d) to read as follows:

3025.7001 Definitions.

* * * * *

(a) “Commercial,” as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end item or component, that meets the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

(b) “Component” means any item supplied to the Government as part of an end item or of another component.

(c) “End item” means supplies delivered under a line item of a contract.

(d) “Non-commercial,” as applied to an item described in (HSAR) 48 CFR 3025.7002–1, means an item of supply, whether an end item or component, that does not meet the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

* * * * *

■ 4. Revise the introductory text to read as follows:

3025.7002–1 Restrictions.

The following restrictions implement section 604 of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, and they apply to all contracts, options and orders entered into on or after August 16, 2009. Except as provided in (HSAR) 48 CFR 3025.7002–2, do not acquire, either as end items or components, any item listed in paragraphs (a) or (b) of this section, if the item is directly related to the national security interests of the United States and the item has not been grown, reprocessed, reused, or produced in the United States:

* * * * *

■ 5. In section 3025.7002–2 revise paragraphs (d), (g), and (h) to read as follows:

3025.7002–2 Exceptions.

* * * * *

(d) Acquisitions of items listed in (FAR) 48 CFR 25.104.

* * * * *

(g) The acquisition of covered items in 3052.7002–1 (a) and (b) containing non-compliant fibers when the total value of

the non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002–1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR subpart 25.4 are not covered by these restrictions; see (HSAR) 48 CFR 3025.7002–3 for specific application of trade agreements.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for part 3052 continues to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 41 U.S.C. 1303(a)(2), 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

■ 7. In section 3052.225–70 revise the clause, date, paragraphs (a)(1) through (4), (b) introductory text, (c) introductory text, and (d)(2) to read as follows:

3052.225–70 Requirement for Use of Certain Domestic Commodities.

* * * * *

Requirement for Use of Certain Domestic Commodities (DATE)

* * * * *

(a) * * *

(1) “Commercial,” as applied to an item described in paragraph (b) of this clause, means an item of supply, whether an end item or component, that meets the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

(2) “Component” means any item supplied to the Government as part of an end item or of another component.

(3) “End item” means supplies delivered under a line item of this contract.

(4) “Non-commercial,” as applied to an item described in paragraphs (b) or (c) of this clause, means an item of supply, whether an end item or component, that does not meet the definition of “commercial item” set forth in (FAR) 48 CFR 2.101.

* * * * *

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end items or components, that

have been grown, reprocessed, reused, or produced in the United States:

* * * * *

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end items or components, that have been grown, reprocessed, reused, or produced in the United States:

* * * * *

(d) * * *

(2) To the covered items in paragraphs (b) and (c) of this Clause containing non-compliant fibers when the total value of the non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item; or

* * * * *

Paul Courtney,

Chief Procurement Officer, U.S. Department of Homeland Security.

[FR Doc. 2024–15559 Filed 7–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 240718–0199; RTID 0648–XR134]

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Alabama Shad as Threatened or Endangered Under the Endangered Species Act

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

ACTION: 90-Day petition finding; request for information, and initiation of a status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the Alabama shad (*Alosa alabamae*) as threatened or endangered under the Endangered Species Act (ESA). The petitioners also request that we designate critical habitat. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are initiating a status review of the Alabama shad to determine whether listing under the ESA is warranted. To support a comprehensive status review, we are soliciting scientific and commercial information regarding this species from any interested party.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by September 23, 2024.

ADDRESSES: You may submit scientific and commercial information relevant to our review of the status of Alabama shad, identified by “Alabama shad Petition” or by the docket number, NOAA–NMFS–2024–0052 by the following method:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0052 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

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

Interested persons may obtain a copy of the petition online at the NMFS website: <https://www.fisheries.noaa.gov/endangered-species-conservation/candidate-species-under-endangered-species-act>.

FOR FURTHER INFORMATION CONTACT:

Calusa Horn, NMFS Southeast Region, at Calusa.Horn@noaa.gov, (727) 551–5782; or Heather Austin, NMFS Office of Protected Resources, at Heather.Austin@noaa.gov, (301) 427–8422.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 2024, we received a petition from the Center for Biological Diversity, the Miccosukee Tribe of Indians, Alabama Rivers Alliance, American Whitewater, Black Warrior Riverkeeper, Cahaba Riverkeeper, Chattahoochee Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Forest Keeper, Healthy Gulf, Healthy Oceans Coalition, Mobile Baykeeper, and Pearl Riverkeeper (Petitioners) to list the Alabama shad (*Alosa alabamae*) as an endangered or threatened species under the ESA, and to designate critical habitat concurrent with the listing. The petition asserts that

Alabama shad is threatened by all five of the ESA section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms to address identified threats; and (5) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)). The petition is available online (see **ADDRESSES**, above).

This is the second petition we have received from the Center for Biological Diversity to list the Alabama shad under the ESA. The first petition was received on April 20, 2010. On February 17, 2011, we published a negative 90-day finding (76 FR 9320) stating that the petition did not present substantial scientific or commercial information indicating that the petitioned action to list Alabama shad may be warranted. On April 28, 2011, in response to the negative 90-day finding, the Center for Biological Diversity filed a notice of intent to sue the Department of Commerce and NMFS for alleged violations of the ESA in making its finding. The Center for Biological Diversity filed the lawsuit in the U.S. District Court for the District of Columbia on January 18, 2012. On June 21, 2013, Center for Biological Diversity and Department of Commerce settled the lawsuit. We agreed to reevaluate the original listing petition, as well as information in our files, and publish a new 90-day finding. On September 19, 2013, we published a 90-day finding with our determination that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted (78 FR 57611). On January 12, 2017, we determined that listing Alabama shad as threatened or endangered under the ESA was not warranted and published a 12-month finding in the **Federal Register** (82 FR 4022).

ESA Statutory, Regulatory, and Policy Provisions, and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When

it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination must address a species, which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, “the Services”) policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms to address identified threats; or any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(h)(1)(i)) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or commercial information in support of the petitioner’s claims such that a

reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.” In reaching the initial (90-day) finding on the petition, we will consider the information described in 50 CFR 424.14(c), (d), and (g) (if applicable). Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. *See* 50 CFR 424.14(d).

If the petitioners provide supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received. *See* 50 CFR 424.14(g).

We may also consider information readily available at the time the determination is made (50 CFR 424.14(h)(1)(ii)). We are not required to consider any supporting materials cited by the petitioners if the petitioners do not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*,

publications, maps, reports, and letters from authorities). See 50 CFR 424.14(c)(6).

The “substantial scientific or commercial information” standard must be applied in light of any prior reviews or findings we have made on the listing status of the species that is the subject of the petition (50 CFR 424.14(h)(1)(iii)). Where we have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action—such as a final listing determination, 90-day not-substantial finding, or 12-month not-warranted finding—a petitioned action will generally not be considered to present substantial scientific and commercial information indicating that the action may be warranted unless the petition provides new information or analysis not previously considered.

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners’ sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners’ assertions. In other words, conclusive information indicating the species may meet the ESA’s requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we evaluate

whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a “species” eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk such that listing, delisting, or reclassification may be warranted; this may be indicated in information expressly discussing the species’ status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that, not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by such organizations or made under other Federal or State statutes may be informative, but such classification alone will not provide sufficient basis for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species’ conservation status do not constitute a recommendation by NatureServe for listing under the ESA,

because NatureServe assessments have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide (<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Alabama Shad Species Description

Alabama shad belong to the family Clupeidae and are closely related to, as well as similar in appearance and life history, to skipjack herring (*A. chrysochloris*) which occur in the same areas as Alabama shad. The Alabama shad is an anadromous species, carrying out life stages in both marine and freshwater environments. Alabama shad are found in the Gulf of Mexico, although there is very little information about their marine habitat use. As part of their anadromous life cycle, adult Alabama shad leave the Gulf of Mexico, sometimes migrating several hundred kilometers, and move into freshwater rivers in the spring to spawn (Coker 1930; Lee *et al.* 1980; Buchanan *et al.* 1999; Kreiser and Schaeffer 2009). Alabama shad appear to be philopatric and return to the same rivers to spawn, resulting in slight genetic differences among river drainages (Meadows 2008; Mickle *et al.* 2010). Spawning typically occurs in moderate current near sandbars, limestone outcrops, or over sand substrate with water temperatures ranging from 19 to 23 °C (66 to 73 °F) (Laurence and Yerger 1967; Mills 1972; Mettee and O’Neil 2003). The Alabama shad is relatively short lived, up to 6 years (Mettee and O’Neil 2003). They are generalist insect feeders (Mickle *et al.* 2010). Age-2 and age-3 Alabama shad are the most prevalent age class of spawning adults (Laurence and Yerger 1967; Mettee and O’Neil 2003; Ingram 2007). Individuals may spawn more than once in a lifetime (Laurence and Yerger 1967; Mettee and O’Neil 2003; Ingram 2007; Mickle *et al.* 2010). Laurence and Yerger (1967) indicated that 35 percent of Alabama shad were likely repeat spawners and noted that 2–4 year old males from the Apalachicola-Chattahoochee-Flint (ACF) River system had spawning marks on their scales.

Mills (1972) also observed 35–38 percent repeat spawners (mostly age-3) as well as discernable spawning marks on scales from the ACF population. In addition, Mettee and O'Neil (2003) noted that many Alabama shad collected from the Choctawhatchee River were repeat spawners, with age-3 and age-4 females comprising the majority of repeat spawners in 1994–1995, and age-2 and age-3 females the majority in 1999–2000. In contrast, Ingram (2007) has not observed spawning marks on the scales of ACF population and most fish in that system may die after spawning (Smith *et al.* 2011). Annual fecundity ranges from approximately 16,000 to 360,000 eggs per female (Mettee and O'Neil 2003; Ingram 2007). First-year (age-0) juvenile Alabama shad typically inhabit upriver freshwater environments until late summer or fall, after which they migrate downstream toward the Gulf of Mexico (Mettee and O'Neil, 2003; Mickle *et al.* 2010).

Analysis of the Petition

We first evaluated whether the petition presented the information indicated in 50 CFR 424.14(c) and (d). We find that the petitioners presented the required information in 50 CFR 424.14(c) and sufficient information requested in § 424.14(d) to allow us to review the petition. The petition contains information on the Alabama shad, including the biological information, current and historical distribution, population status, and threats contributing to the species' status. The petitioners include new literature but also rely heavily on expert opinion and personal communications with State biologists and researchers. The petitioners provide an assessment of new information that has become available since our previous finding (82 FR 4022). The petitioners assert that the new information provides substantial scientific and commercial information indicating that Alabama shad have been extirpated from 90 percent of its historical riverine habitats and is threatened by modification of habitat and curtailment of its range, overexploitation, disease, pollution, climate change, and inadequacy of existing regulatory measures. As previously stated, the substantial scientific or commercial information standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species. Therefore, we will consider the new information provided in the petition and any new information readily available in our files to determine whether a reasonable person

conducting an impartial review would conclude it presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

New Information on Abundance and Population Trends

The petitioners assert that NMFS was incorrect in determining that low population numbers were due to challenges in Alabama shad detectability and general lack of targeted survey and sampling efforts. The petitioners also assert that detection probability and the timing and sampling methods cannot be the sole cause of estimated low abundances. To support this claim, the petitioners reference biologists and researchers who also suggest that the low numbers of Alabama shad are suggestive of long-term declining trends in abundance, rather than an artifact of high natural variability or challenges with species detectability (Rider *et al.* 2021; Schaefer, pers. comm. October 13, 2023; Quinn, pers. comm. October 17, 2023). The petitioners reference new targeted survey efforts that suggest Alabama shad have been extirpated from many river systems. In river systems where they still occur, they occur in very low numbers (Rider *et al.* 2021; Rider, pers. comm. November 3, 2023; Ingram, pers. comm. December 10, 2023; NOAA Fisheries and U.S. Fish and Wildlife Records: Georgia, Florida, Alabama, Mississippi, Louisiana, Oklahoma, Arkansas, 2023). The petitioners claim the new survey information, together with the historical data, indicate that the species has declined significantly over the last decade and has been extirpated throughout much of its historical range (Etnier and Starnes 1993; Gunning and Suttkus 1990; Musik *et al.* 2000; Ross 2001; Mettee and O'Neil 2003; Boschung and Mayden 2004; Sammons *et al.* 202; Rider *et al.* 2021). In the following section, we summarize the new information relative to the species abundance and status for Alabama, Florida, Georgia, Mississippi, Missouri, and Arkansas.

For Alabama, our previous determination concluded that it is unknown whether the lack of or low numbers of Alabama shad reported for many river systems (including the Mobile Basin, Conecuh River, and Choctawhatchee River) accurately reflects the abundance in those systems, or whether the lack of or low numbers of Alabama shad is indicative of the lack of targeted studies (82 FR 4022). At that time, directed studies and contemporary abundance data for Alabama shad were lacking for riverine systems in Alabama.

Therefore, we concluded the status of Alabama shad within most riverine systems in Alabama was unknown and that low capture rates were likely due in part to sampling bias (82 FR 4022).

The petitioners provide new information that indicates that Alabama shad are largely extirpated from Alabama. Alabama shad historically occurred in the Mobile Basin (*i.e.*, Tombigbee, Black Warrior, Cahaba, Coosa, and Alabama rivers) and the Conecuh-Escambia, Yellow, and Choctawhatchee Rivers. Notably, the second largest Alabama shad population occurs in the Choctawhatchee River (Mettee and O'Neil 2003; Ely *et al.* 2008; Young *et al.* 2012). The petitioners present a new study (Rider *et al.* 2021) that provides status information for the species in the State and importantly also directly addresses the sampling and survey bias concerns identified in our previous determination (82 FR 4022). Rider *et al.* (2021) initiated a multiyear study to assess the population status of Alabama shad with targeted sampling efforts in the major river systems of its historical occurrence in Alabama. To account for potential bias, Rider *et al.* (2021) sampled during months when Alabama shad were most likely to be present (*i.e.*, spring spawning migration) and used electrofishing, which is considered to be the most effective method to collect Alabama shad. These directed survey efforts found no Alabama shad in the Mobile River Basin (*i.e.*, Alabama and Tombigbee Rivers) and only one individual was collected from the Conecuh River (Rider *et al.* 2021). Rider *et al.* (2021) indicates that Alabama shad have largely been extirpated from the Mobile River Basin, with the only remaining Conecuh River population being “severely depressed.” Additionally, the authors determined that the Choctawhatchee River population is on the verge of extirpation, which is cause for concern as this population was once considered to have the second largest Alabama shad population behind the ACF population. Rider *et al.* (2021) determined that Alabama shad in the Choctawhatchee River have experienced a precipitous decline by 71 percent and 98 percent from 1999/2000 to 2011 and 2018, respectively. In summary, the petitioners provide new information that indicates that the species has largely become extirpated from the State of Alabama, with two remaining populations on the cusp of collapse.

For Florida and Georgia, our previous determination recognized the importance of the ACF population to the viability of the species, stating that, because the spawning population in the

ACF River system is large relative to other systems, migrants from the ACF River system may make greater contributions as compared to shad from smaller populations. The loss of the largest spawning population of Alabama shad would leave only smaller populations of Alabama shad and could make the species as a whole less resilient to environmental perturbations, including catastrophic events (82 FR 4022). The petitioners assert that Alabama shad have declined by greater than 90 percent in the ACF River system, which connects Florida and Georgia to the Gulf of Mexico. The petitioners attribute population decline due to the cessation of conservation locking at Jim Woodruff Lock and Dam (JWLD). Located 300 meters (984 feet) downstream of the confluence of the Flint and Chattahoochee Rivers, JWLD serves as the first upstream barrier to the ACF population, blocking access to all potential spawning habitat in both tributary rivers, which is approximately 78 percent of historical riverine habitat in the ACF River system (Marbury *et al.* 2021). Historically, the ACF population has been the largest (Mettee and O'Neil 2003; Ely *et al.* 2008; Young *et al.* 2012; 82 FR 4022) and most intensively studied population of Alabama shad (Laurence and Yerger 1967; Ely *et al.* 2008; Ingram *et al.* 2009; Young *et al.* 2012; Kerns 2016). The petitioners provide some new catch per unit effort data (CPUE) from 2016–2023 as well as information we previously considered. The petitioners assert that the ACF population crashed from an estimated population size of 122,578 in 2012 to an estimated population size of 324 in 2015. While no new population estimates were provided, the petition cites new survey information presented as CPUE to consider: in 2016 the CPUE was 0 (no fish were collected), in 2017 the CPUE was 4.2, in 2021 the CPUE was 2.9, and in 2022 the CPUE was 18.5 (Georgia Department of Natural Resources, Alabama shad survey and CPUE data 2007–2023). No information was provided for 2018, 2019, and 2021. The most recent CPUE in 2022 is higher than previous years. For comparison, the CPUE for the year with the highest estimated population (2012; 122,578 individuals) was 100.6 and the CPUE for the year with the lowest estimated population (2015; 324 individuals) was 6.8 (Georgia Department of Natural Resources, Alabama shad survey and CPUE data 2007–2023). The more recent CPUE data seem to suggest that CPUE ranged from 0 fish to 18.5 in 2016 and 2022; however, the data are incomplete and do not allow us to estimate

population size or trends. While CPUE can be used as an indirect measure of abundance, the information provided is lacking and does not allow us to estimate population size or the extent of the purported declining trends. However, it does suggest some cause for concern, and warrants further consideration in a status review.

In summary, the petitioners provide several lines of evidence that suggest that the ACF population may be declining based on new but incomplete survey data and the cessation of conservation locking at the JWLD (See The Present or Threatened Destruction, Modification, or Curtailment of the Alabama Shad Habitat or Range), which is blocking migration and preventing access to important spawning habitats.

For Mississippi, the petitioners assert that the Alabama shad have experienced a 50 percent decline in distribution. In our previous determination (82 FR 4022), we found that Pascagoula River, which is a relatively free-flowing river system, had one of the remaining spawning populations of Alabama shad. The petitioners claim that the species is now extirpated from the Tombigbee River (a major tributary of the Mobile River) and the Pearl River, with the remaining population located in the Pascagoula River in decline. Rider *et al.* (2021) conducted directed sampling for Alabama shad on the Tombigbee River in 2012 but collected no Alabama shad. Additionally, other recent sampling efforts in the Tombigbee River have been unable to collect or observe any Alabama shad (Dattilo 2017; S. Rider, Alabama Dept. Wildlife and Fisheries, Unpublished data, as cited in Rider *et al.* 2021). The petitioners also cite a personal communication with a biologist that indicates that the Alabama shad population in the Pearl River has collapsed with targeted sampling from 2006–2011 and recent “general surveys” having recorded few individuals over the last decade (Schaefer, pers. comm. October 13, 2023). Lastly the petitioners note that while Alabama shad still persist in the Pascagoula River, factors other than damming are likely driving declines in that system (Ellwanger, pers. comm. October 24, 2023).

In summary, the new information suggests that the Tombigbee River population may be extirpated, which is cause for concern. While the petitioners assert that the Pearl River population has also collapsed, they did not provide the supporting information. The petition does not include any new survey or status information that was not previously considered by us for Pascagoula River.

For Missouri, our previous determination (82 FR 4022), concluded that Alabama shad likely still spawned in the Missouri River, including several tributaries (*i.e.*, Gasconade, Osage, and Meramec Rivers). We acknowledged that the Missouri River and its tributaries probably supported the greatest number of Alabama shad in the State, but noted the general lack of information and potential for sampling bias. The petitioners summarize Alabama shad records from the lower Mississippi, Missouri, Meramec, Gasconade, and Osage Rivers. The petitioners state that Alabama shad can now only be found in the Meramec and Gasconade Rivers. The petitioner's reference several new studies (Dunn *et al.* 2018; Dunn *et al.* 2021; Pherigo 2019) that they claim show the species can no longer be found in the majority of Missouri's major tributaries. For example, Dunn *et al.* (2018) conducted 38 fish surveys across 11 large tributaries (*i.e.*, Black River, Blackwater River, Lamine River, Lower Gasconade River, Upper Gasconade River, Lower Grand River, Upper Grand River, Lower Meramec River, Upper Meramec River, Osage River, and Salt River) and only found Alabama shad in the Gasconade and Meramec Rivers. Alabama shad were not recorded on any other river sampled. Dunn *et al.* (2018) concluded that the Gasconade and Meramec Rivers are now the northernmost systems providing spawning and rearing habitat for this species. In addition, Dunn *et al.* (2021) evaluated tributary use patterns of riverine fishes in the Grand and Meramec Rivers, which are two large tributaries of the Missouri and Upper Mississippi Rivers, and yielded only 21 age-0 Alabama shad from the Meramec River, suggesting spawning habitat. Lastly, Pherigo (2019) sampled fish assemblages in the Osage River and Gasconade River and collected only four juveniles in the Gasconade River. None were recorded in the Osage River.

In summary, these findings indicate that the Gasconade and Meramec Rivers likely now represent the only two northernmost systems that provide spawning and habitat for Alabama shad, which is cause for concern. While these studies were not limited to Alabama shad, the studies did occur in the spring, summer, and fall when both juvenile and adult Alabama shad would have been present, and the studies used sampling techniques (*i.e.*, electrofishing, trawls, and seines) that are appropriate for sampling Alabama shad.

For Arkansas, the petitioners state that Alabama shad have not been recorded in the Arkansas reach of the Mississippi River or the Arkansas River

Basin in more than a century. In our previous determination (82 FR 4022), we concluded that the status of Alabama shad in Arkansas was unknown due to the lack of information and lack of targeted surveys needed to inform whether low numbers reflected low abundance or sampling bias. However, we noted that Alabama shad likely continued to spawn in Arkansas because spawning adults and hundreds of juvenile fish were documented in 1997 and 1998 in both the Ouachita and Little Missouri Rivers (Buchanan 1999; Buchanan *et al.* 1999). The petitioners assert that despite claims of annual spawning migrations in several rivers within Arkansas, the majority of records for the State are now limited to the Ouachita River. The petitioners provide new information from a five-year study (2017–2021) to assess the status and distribution of Alabama shad in Arkansas Rivers (Quinn *et al.* 2023). The study focused on survey efforts on the Ouachita River and the Little Missouri River, where Alabama shad have historically been collected (*i.e.*, Buchanan *et al.* (1999) reported collecting more than 300 juveniles from six localities in the Ouachita and Little Missouri rivers). Despite these directed sampling efforts, Quinn *et al.* (2023) collected one adult Alabama shad and no juveniles in the Ouachita River. Yet, an unrelated study targeting American eel recorded 16 juvenile Alabama shad on the Ouachita River in 2021/2022, suggesting some successful spawning occurred (Quinn *et al.* 2023). The new information suggests that, while some spawning is occurring in the Ouachita River, overall very few Alabama shad were recorded, even with five years of targeted sampling in the Ouachita and Little Missouri Rivers, which is cause for concern.

In summary, the new information presented in the petition indicates potentially significant population declines in the ACF River system in Florida and Georgia and the Choctawhatchee River in Alabama. These two major river systems have long been observed to have the highest abundance of Alabama shad within the species range (Burkaloo *et al.* 1993; Ely *et al.*, 2008; Mettee and O'Neil 2003; Young 2010). The new information on purported declines of these two important populations, especially as it relates to the viability of the species, is particularly concerning, and thus further investigation is warranted. The new information also suggests population declines in Ouachita, Little Missouri, and Conecuh-Escambia, and possible extirpation in the Mobile Basin

in Alabama, both of which are also concerning, considering the declines noted in the ACF and Choctawhatchee Rivers. Overall, the petitioners provide several lines of credible new information suggesting that the species' current status and trends indicate that listing may be warranted.

Analysis of ESA Section 4(a)(1) Factors

The petitioners assert that Alabama shad is threatened by all five of the ESA section 4(a)(1) factors: present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial and recreational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and other natural or manmade factors. Information in the petition and readily available in our files indicates that the primary threat facing the species is modification of its habitat, and we find that listing the Alabama shad as a threatened or endangered species under the ESA may be warranted based on this threat alone. Therefore, we focus our discussion below on the evidence of this particular threat. However, we note that, in the status review for this species, we will evaluate all ESA section 4(a)(1) factors to determine whether any one factor or a combination of these factors are causing declines in the species or are likely to substantially negatively affect the species within the foreseeable future to such a point that the Alabama shad is at risk of extinction or likely to become so in the foreseeable future.

The Present or Threatened Destruction, Modification, or Curtailment of the Alabama Shad's Habitat or Range

According to information cited in the petition and readily available in our files, the greatest threats to the Alabama shad are the dams that occur on almost all the major river systems throughout its range. The petitioners assert that over the last century at least 85 dams have been built on rivers within the Alabama shad's historical range. The petitioners provide historical information, new personal communications, relevant literature, and maps that illustrate the prevalence of the dams on rivers throughout the species range. The petitioners further summarize threats within individual rivers, which include changes in temperature, low spring and summer stream flows, passage blockages, droughts, increased sediment, degraded water quality, and poor riparian conditions. For example, the petitioners claim that changes in the flow-regime in the ACF River system have disrupted mainstream and floodplain habitats, modifying features

essential for spawning and early life stages (Mickle *et al.* 2010; Alabama Shad Restoration and Management Plan for the Apalachicola-Chattahoochee-Flint River Basin 2008). The petitioners did not provide any new information that was not previously considered by us regarding the threats to Alabama shad resulting from habitat modification or degradation caused by dams and hydropower projects.

The petitioners provide new information indicating riverine habitat connectivity has been severed by several dams that had previously provided Alabama shad passage through conservation locking regimes that are no longer in place (Williams, pers. comm. December 7, 2023; Rider, pers. comm. December 7, 2023). Most notable is the cessation of conservation locking at the JWLD, which the petitioners implicate in population collapses in that system. In our previous determination, we concluded that conservation locking is making a tremendous contribution to Alabama shad in the ACF River system, the bulk of the Alabama shad population in the ACF River system is spawning in the Flint River, and juvenile Alabama shad are able to successfully move downstream to contribute to the adult stock. We also concluded that the conservation locking was providing upstream migration to higher quality spawning and juvenile rearing habitat, which has potentially improved recruitment and led to population increases. At that time when conservation locking occurred, the locks were operated twice a day to correspond with the natural movement patterns of migrating fish during spawning seasons (February through May). In addition, we also noted that the low population estimates recorded from 2013–2015 were in part due to that fact that conservation locking did not occur in 2013 and 2014, and thus Alabama shad did not pass upstream during this period (unless they were transported by researchers), resulting in the subsequent population declines, thus indicating further that conservation locking is needed to maintain the viability of this population.

The petitioner's state that NMFS relied too heavily on the positive effects of conservation locking at the JWLD for the Alabama shad population and that we incorrectly assumed that conservation locking would continue into the foreseeable future. They present new information indicating that conservation locking at the JWLD has largely ceased and therefore Alabama shad are no longer able to access upstream spawning habitat and return to their marine habitats post spawning

(i.e., JWLD Lockage Logs 2017–2022). According to the petitioners, from 2017–2020, there were a total of 167 lock openings on the JWLD, none of which were for fish passage or conservation locking (JWLD Lockage Log 2017–2020). From 2021–2022, records indicate that 14 lock openings took place, none of which were intended for conservation locking or fish passage (JWLD Lockage Log 2021–2022). We also found information in our files that indicates that the locks at JWLD have not been opened for conservation locking from 2017 to 2022, which is cause for concern. While the locks are occasionally opened for vessel passage, those openings are increasingly rare, as the locks are in disrepair. In addition, the lockage logs (JWLD Lockage Log 2017–2022) show that the locks have been opened during this time period to allow for vessel passage; however, these events were sporadic (e.g., very few or none occurred during spawning seasons) and limited in duration (e.g., almost all were less than 45 minutes from open to close) suggesting that any passive fish passage during migration has likely been severely restricted.

The petitioners also assert that conservation locking regime and spillways at the Claiborne and Millers Ferry Locks and Dam are not an effective conservation strategy for Alabama shad (Cromwell 2022). The Claiborne and Millers Ferry Locks and Dam is part of the Alabama-Coosa-Tallapoosa River system and separates the Cahaba River from the Lower Alabama River, Mobile Delta, and the Gulf of Mexico. In our previous determination, we determined that conservation locking at Claiborne and Millers Ferry Locks and Dam would likely provide access to spawning habitat enhancing Alabama shad populations in the river system. The petitioners reference a study that examined fish passage the Claiborne and Millers Ferry Locks and Dams for the smallmouth buffalo, paddlefish, and other migratory fish species (McKee 2019). The author found that migrating fish in general did not use the locks due to low water levels and lack of attraction flow to encourage fish to move into and exit lock chambers. In addition, they found that the crested spillway is only submerged during flooding events and passage is restricted to fish species that are considered strong swimmers (McKee 2019; Cromwell 2022; Williams, pers. comm. November 14, 2023). The petitioners and a referenced biologist claim passage at the spillway is highly unlikely for Alabama shad because they are not strong swimmers and are

generally unable to use the spillways as passage (Aunins *et al.* 2013; Quinn, pers. comm. October 17, 2023).

The petitioners assert that oil spills, leaking wells, and oil infrastructure pose a threat to the Alabama shad in the Gulf of Mexico. The petitioner's include information on two of the largest spills known to have occurred in the Gulf of Mexico, Deepwater Horizon (DWH) spill that occurred in 2010 and Main Pass oil spill that occurred in 2023.

The petitioners included new information on the Main Pass oil spill that released at least 1.1 million gallons into the Gulf of Mexico, the second-largest oil spill after the DWH spill that released 134 million gallons (Budryk 2023; NOAA 2023). The Main Pass oil spill occurred offshore near the Mississippi Delta in the Gulf of Mexico in November 2023. Alabama shad occur in the Mississippi Delta, which serves as their overwintering habitat before they make spring spawning runs (Mickle *et al.* 2010; Smith *et al.* 2010). The petitioners and several biologists indicate that Alabama shad were likely impacted by the Main Pass oil spill as the species uses the Mississippi Delta as overwintering habitat and the spill occurred while the species would have been present (Quinn *et al.* 2023; Ingram, pers. comm. December 9, 2023; Sammons, pers. comm. December 13, 2023). The petitioners summarize information related to the chronic adverse effects that oil exposure can have on fish survival, growth, reproduction, as well as disruptions or changes to migratory behavior (Fodrie and Heck 2011; Snyder *et al.* 2015; NOAA 2014) inferring that Alabama shad would experience similar impacts as a result of the Main Pass oil spill. In addition, while the petitioners recognize that no studies have been conducted on the direct effects to Alabama shad resulting from the DWH oil spill, they claim that Alabama shad were likely impacted and have not recovered since (Ingram, pers. comm. December 9, 2023). The petitioners note that while Alabama shad were upriver when the spill occurred, they were likely exposed upon their return to the marine environment because their range overlaps with the area impacted by the spill. To support their claim, the petitioner's reference personal communications from biologists noting that Alabama shad collected in the ACF River system after the DWH oil spill had lesions, and that their progeny did not return from the Gulf of Mexico in subsequent years (Ingram, pers. comm. December 9, 2023; Quinn *et al.* 2023). Our previous finding determined that the cause of lesions were unexplained,

and while the lesions were observed in 2010, 2011, and 2013, no lesions were observed on fish captured after 2013 (T. Ingram, Georgia DNR, pers. comm. to K. Shotts, NMFS, June 6, 2016). Lastly, the petitioners include descriptions of general threats (e.g., climate change, dissolved oxygen, hurricanes, dredging, pollution, and conductivity) to riverine and marine habitats and how they may affect Alabama shad (Mettee *et al.* 1996; Robinson and Buchanan 2020; Rider *et al.* 2021).

In summary, the information provided in the petition and in our files, indicates that conservation locking at the JWLD is no longer occurring, which is likely prohibiting spawning migration of AFC population of Alabama shad that we had previously indicated likely contribute to the viability of the species as a whole because of its large relative size and potential role in enhancing other river populations through outmigration (82 FR 4022). Thus, the cessation of conservation locking at the JWLD is especially concerning as the ACF population is potentially important to the species overall viability. Similarly, it also appears that the conservation locking system at the Claiborne and Millers Ferry Locks and Dams is ineffective at passing Alabama shad due to low water levels and lack of attraction flow. In addition, while the crested spillway may be successful at passing other fish species during flooding events, they do not appear to be effective at passing Alabama shad. The petitioners also provide new information suggesting that species may have been impacted by the Main Pass oil spill while overwintering in the Mississippi Delta. While this information is incomplete, it is cause for concern and warrants further consideration in the status review report. Overall, the information provided by the petitioners and briefly summarized here regarding threats to the Alabama shad from habitat loss, degradation, and modification leads us to conclude that listing the species as threatened or endangered may be warranted.

Petition Finding

After reviewing the petition, the literature cited in the petition, and other information readily available in our files, we find that listing Alabama shad (*A. alabamae*) as a threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(h)(2)), we will commence a status review of this species. During the status review, we will determine

whether Alabama shad is in danger of extinction (endangered) or likely to become so in the foreseeable future (threatened) throughout all or a significant portion of its range. As required by section 4(b)(3)(B) of the ESA, within 12 months of the receipt of the petition (January 9, 2024), we will make a finding as to whether listing the Alabama shad as an endangered or threatened species is warranted. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting comments and information from interested parties on the status of the Alabama shad. Specifically, we are soliciting information in the following areas:

- (1) Species abundance;
- (2) species productivity;
- (3) species distribution or population spatial structure;
- (4) genetic connectivity of historical and contemporary populations;
- (5) habitat conditions and associated limiting factors and threats for both the marine and freshwater environments;
- (6) data concerning the status and trends of identified limiting factors or threats;
- (7) information concerning the impacts of environmental variability and climate change on survival, recruitment, distribution, and/or extinction risk;
- (8) the adequacy of existing regulatory mechanisms and whether protections are being implemented and are proving effective in conserving the species;
- (9) ongoing or planned efforts to protect and restore the species and its habitat; and
- (10) other new information, data, or corrections including, but not limited to, identification of erroneous information in the previous listing determination.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above. We will base our findings on a review of the best available scientific and commercial data, including relevant information received during the public comment period.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2024.

Samuel D. Rauch, III,

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

[FR Doc. 2024–16253 Filed 7–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[RTID 0648–XD487]

Amendment 8 Revisions to Essential Fish Habitat in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species

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

ACTION: Announcement of availability of a fishery management plan amendment; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) submitted to NMFS Amendment 8 to the Fishery Management Plan (FMP) for the U.S. West Coast Highly Migratory Species (HMS) July 15, 2024. If approved by the Secretary of Commerce (Secretary), these Amendments would update essential fish habitat (EFH) provisions in the existing HMS FMP. This Amendment is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) which requires periodic review and revision of EFH components of FMPs as warranted based on available information.

DATES: Comments on the Amendments must be received by September 23, 2024.

ADDRESSES: You may submit comments on this document, identified NOAA–NMFS–2024–0013 by the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

<https://www.regulations.gov> and enter NOAA–NMFS–2024–0013 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Eric Chavez, NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA–NMFS–2024–0013” in the comments.

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

FOR FURTHER INFORMATION CONTACT:

Nicole Nasby-Lucas at (858) 334–2826, nicole.nasby-lucas@noaa.gov, or Eric Chavez at (562) 980–4064, eric.chavez@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the HMS fisheries off the U.S. Pacific Coast under the HMS FMP. The MSA requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary (16 U.S.C. 1854(a)). The MSA also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment (16 U.S.C. 1854(a)(1)(B)). The Council has submitted the Amendment to the Secretary for review. This notice announces that the proposed Amendment is available for public review and comment.

The MSA mandates that each FMP describe and identify EFH for the fishery (16 U.S.C. 1853(7)). EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity” (16 U.S.C. 1802(10)). Under this authority, NMFS and the Council have

developed a comprehensive strategy to conserve EFH. This includes incorporating EFH into each of the Council's FMPs, identifying fishing and non-fishing impacts and associated conservation recommendations, and other required EFH elements. EFH requirements and the process for periodic EFH reviews are described in the EFH regulations at 50 CFR 600.815(a).

The HMS FMP was approved in 2004 and has been amended seven times. The HMS FMP includes three species of pelagic shark (common thresher, shortfin mako, and blue) five species of tunas (albacore, bigeye, Pacific bluefin, skipjack, and yellowfin), striped marlin, swordfish, and dolphinfish (dorado) as species in the management unit. EFH components for each management unit species (MUS) were included in appendix A to the Final Environmental Impact Statement when NMFS approved the HMS FMP and have not been reviewed since that time.

The Council's relevant advisory bodies engaged in the EFH review process and provided recommendations to the Council at their September 2023 Council meeting. The Council considered these recommendations when adopting a draft FMP Amendment for public review. The Council took final action at its November 2023 meeting, adopting the proposed amendment to the HMS FMP.

The proposed amendment would not add any new reporting requirements and would not change any regulatory requirements. This action would only add to or update HMS EFH provisions in the HMS FMP.

HMS FMP Amendment 8

Based on recommendations from the Council, NMFS proposes to amend the HMS FMP to update the EFH provisions to ensure compliance with the requirements of the MSA. This FMP amendment includes eight major components that would (1) update the description and identification of EFH, (2) include new maps for each MUS in the HMS FMP, (3) update information on life history, (4) update information on fishing impacts, (5) update information on non-fishing impacts and conservation measures, (6) update text on habitat areas of particular concern (HAPCs), (7) update research and information needs and (8) add a reference to Council's Operating Procedure 22 as a description of the review and revision process. The revised FMP text and appendix F include supporting information and rationale for the modifications adopted by the Council. The supporting

information and rationale relevant to the major EFH components are briefly described below.

Description and Identification of EFH. EFH descriptions including information on distributions by life stage were updated in appendix F and the FMP. Proposed modifications to the description and identification of EFH for HMS species were informed by using current fishery-independent information that was not available when the original EFH descriptions were adopted.

Maps. New maps reflecting EFH spatial extent and global distribution were developed. EFH maps were developed based on species distribution data acquired from existing species distributions in the eastern North Pacific from published sources, expert opinion and a review of fisheries data. For many of the species, the use of fishery-independent data shifted the EFH boundary closer to shore to encompass nearshore distribution for all life stages. For the warm-water species (*i.e.*, skipjack, bigeye, and yellowfin tunas), Point Conception, the northern edge of the Southern California Bight (SCB), was selected as the northern EFH boundary. Global range maps were also developed to provide additional supporting information. Additional information on the development of the maps can be found in section 1.1, Review of Methods, in appendix F.

Life History Summaries. Information on life histories summaries are proposed, based on historic and recent information. The revised HMS FMP appendix F contains the descriptions of overall species distributions, life history summaries, trophic interactions, primary prey species, proposed EFH descriptions, and maps.

Fishing Impacts. Updated text contains information on potential adverse effects of fishing activities including potential impacts resulting from removal of prey species, derelict gear/ghost fishing, and vessel discharges. Details on these potential impacts and minimization measures are included in chapter 7.4 of the revised FMP text.

Non-Fishing Impacts and Conservation and Enhancement Measures. In addition to the list of non-fishing impacts and conservation measures currently described in the HMS FMP, numerous additional non-fishing activities that may adversely affect HMS EFH along with their associated conservation measures were included based on a recent NMFS publication.

Habitat Areas of Particular Concern (HAPC). The HMS FMP does not currently include any HAPCs, and none

are proposed based on the current EFH review. Shark pupping and nursery areas within the SCB were considered for HAPC designation, based primarily on the prevalence of juveniles in the region. Migratory routes were also considered as potential HAPCs. However, the review of new information did not generate information that would allow for more precise mapping of such habitats or provide a thorough qualitative description of the HAPC boundaries. There was also insufficient information to describe the physical, chemical, or biological characteristics of the HAPC in detail. Therefore, HAPCs were not recommended for adoption. Rather, additional research is being recommended to collect more information that could inform consideration of HAPCs in the future. Additional details and rationale can be found in the revised FMP chapter 7.3.

Research and Information Needs. The Council adopted several Research and Information (R&I) Needs, which are required to be identified by the EFH regulations. These include research useful for identifying HAPCs, and better understanding habitat associations and the dynamic nature of HMS habitat, migratory corridors and habitat dependency, including benthic habitats, and potential impacts to EFH from fishing activities. These R&I Needs are described more fully in chapter 7.7 of the revised HMS FMP.

Review and Revision Process. The EFH regulations require that FMPs include a description of the EFH review and revision process. The Council's Operating Procedure 22 (COP 22; <https://www.pcouncil.org/documents/2023/07/current-operating-procedures.pdf>) describes a process to guide all EFH reviews. This process is referenced in FMP chapter 7.1.

All comments received by the end of the comment period on the Amendments (see **DATES** and **ADDRESSES** above) will be considered in the Secretary's decision to approve, disapprove, or partially approve this amendment. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: July 18, 2024.

Lindsay Fullenkamp,

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

[FR Doc. 2024-16239 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 89, No. 142

Wednesday, July 24, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Reinstatement

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and reinstatement under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by August 23, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Department of Agriculture

Office of the Chief Information Officer

Title: USDA Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0503–0021.

Summary of Collection: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Need and Use of the Information: Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the

degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Description of Respondents:

Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Number of Respondents: 30,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,750.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–16228 Filed 7–23–24; 8:45 am]

BILLING CODE 3410-KR-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by August 23, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Department of Agriculture

Office of the Chief Information Officer

Title: USDA Generic Solution for Solicitation for Funding Opportunity Announcements.

OMB Control Number: 0503–0028.

Summary of Collection: The U.S. Department of Agriculture (USDA) conducts a pre-clearance consultation program to provide the public and Federal agencies an opportunity to comment on proposed, revised, and continuing information collections before submitting them to the Office of Management and Budget (OMB).

This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Periodically USDA solicits grant applications on <http://grants.gov> by issuing a Funding Opportunity Announcement, Request for Applications, Notice of Funding Announcement, Notice of Solicitation of Applications, [Grants.gov](http://grants.gov) announcement, or other funding announcement type. To ensure grants are awarded to the applicant(s) best suited to perform the functions of the grant, applicants are generally required to submit an application. The first part of USDA grant applications consists of submitting the application form(s), which includes the Standard Form 424, Application for Federal Assistance and may include additional standard grant application forms. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work or selection criteria and other related information as specified in the funding announcement. Following the grant award, the grant awardee may also be required to provide progress reports or additional documents.

Need and Use of the Information: The information collected in response to solicitations for grant applications has been and will be used by the USDA for issuing grants to the applicants most suited for fulfilling the mission of the grant.

Description of Respondents: State, Local, and Tribal Governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Number of Respondents: 1,000,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,000,000.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–16229 Filed 7–23–24; 8:45 am]

BILLING CODE 3410-KR-P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Current Population Survey (CPS) Voting and Registration Supplement

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 15, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Current Population Survey, Voting and Registration Supplement.

OMB Control Number: 0607–0466.

Form Number(s): There are no forms. All interviews are conducted using computers.

Type of Request: Regular submission, Request for Reinstatement, without Change of a previously approved collection for which approval has expired.

Number of Respondents: 44,000.

Average Hours Per Response: 1.5 minutes.

Burden Hours: 1,100.

Needs and Uses: This survey has provided statistical information for tracking historical trends of voter and nonvoter characteristics in each Presidential or Congressional election since 1964. The November CPS

supplement is the only federal survey that provides a comprehensive set of voter and nonvoter characteristics. Federal, state, and local election officials use these data to formulate policies relating to the voting and registration process. Academic researchers, political party committees, think tanks, and other private organizations also use the voting and registration data.

Affected Public: Households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C. Sections 8(b), 141, and 182.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0466.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–16272 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–07-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–827, A–455–808, A–583–875, A–489–852]

Diocetyl Terephthalate From Malaysia, Poland, Taiwan, and the Republic of Türkiye: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

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

DATES: Applicable July 24, 2024.

FOR FURTHER INFORMATION CONTACT:

Nathan Araya (Malaysia), Colin Thrasher (Poland), Brian Smith (Taiwan), and Dennis McClure (the Republic of Türkiye (Türkiye)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482-3401, (202) 482-3004, (202) 482-1766, and (202) 482-5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2024, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of diethyl terephthalate from Malaysia, Poland, Taiwan, and Türkiye.¹ Currently, the preliminary determinations are due no later than September 3, 2024.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

Malaysia, Poland, Taiwan, and Türkiye

On July 16, 2024, the petitioner² submitted a timely request that Commerce postpone the preliminary determinations in the LTFV investigations.³ The petitioner stated that it requested postponement to provide Commerce with the time “to develop a full record in these investigations.”⁴

For the reason stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for

the preliminary determinations by 50 days (*i.e.*, 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than October 22, 2024. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-16235 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-842]

Large Residential Washers From Mexico: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on large residential washers from Mexico would be likely to lead to continuation or recurrence of dumping at the levels indicated in the “Final Results of Expedited Sunset Review” section of this notice.

DATES: Applicable July 24, 2024.

FOR FURTHER INFORMATION CONTACT: Mira Warriar, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-8031.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2013, Commerce published in the **Federal Register** the AD order on large residential washers from Mexico.¹ On April 1, 2024,

Commerce published the initiation of the second sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a notice of intent to participate in this sunset review from Whirlpool Corporation, the domestic interested party, within 15 days after the date of publication of the *Initiation Notice*.³ The domestic interested party claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

Commerce received a timely, adequate substantive response to the *Initiation Notice* from the domestic interested party within the 30-day period specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce did not receive substantive responses from any other interested parties, and no party requested a hearing.

On April 22, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from other interested parties.⁵ As a result, in accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited, *i.e.*, 120-day, sunset review of the *Order*.

Scope of the Order

The merchandise subject to the *Order* are large residential washers, all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm). For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁶

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 22373 (April 1, 2024) (*Initiation Notice*).

³ See Whirlpool's Letter, “Notice of Intent to Participate,” dated April 16, 2024.

⁴ See Whirlpool's Letter, “Substantive Response of Whirlpool Corporation to the Notice of Initiation,” dated April 29, 2024.

⁵ See Commerce's Letter, “Sunset Reviews Initiated on April 22, 2024,” dated April 23, 2024.

⁶ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Large Residential Washers from Mexico,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹ See *Diethyl Terephthalate from Malaysia, Poland, Taiwan, and the Republic of Türkiye: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 29286 (April 22, 2024).

² The petitioner is Eastman Chemical Company.

³ See Petitioner's Letter, “Request to Postpone Preliminary Antidumping Duty Determinations,” dated July 16, 2024.

⁴ *Id.*

¹ See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013) (*Order*).

margins of dumping likely to prevail if the *Order* were revoked.⁷ A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Expedited Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margin likely to prevail would be at a rate up to 72.41 percent.

Administrative Protective Order

This notice serves as the only reminder to interested parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 subject to sanction.

Notification to Interested Parties

We are issuing and publishing the results in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act and 19 CFR 351.218.

Dated: July 17, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping

2. Magnitude of the Margins of Dumping Likely to Prevail
 - VII. Final Results of Expedited Sunset Review
 - VIII. Recommendation
- [FR Doc. 2024–16183 Filed 7–23–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration [A–423–813]

Citric Acid and Certain Citrate Salts From Belgium: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Citribel nv. (Citribel) did not sell subject merchandise in the United States at prices below normal value during the July 1, 2022, through June 30, 2023, period of review (POR).

DATES: Applicable July 24, 2024.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4521.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2024, Commerce published the preliminary results of the 2022–2023 administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from Belgium¹ in the **Federal Register** and invited interested parties to comment.² We received no comments from interested parties on the *Preliminary Results*, and we have made no changes to the *Preliminary Results*. Accordingly, no decision memorandum accompanies this **Federal Register** notice. The *Preliminary Results* are hereby adopted in these final results. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this *Order* include all grades and granulation sizes

of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period July 1, 2022, through June 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Citribel nv	0.00

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered this review. Because the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.³ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.⁴

For entries of subject merchandise during the POR produced by Citribel, for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the

¹ See *Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders*, 83 FR 35214 (July 25, 2018) (*Order*).

² See *Citric Acid and Certain Citrate Salts from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 22674 (April 2, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102–03 (February 14, 2012); see also 19 CFR 351.106(c)(2).

⁴ See section 751(a)(2)(C) of the Act.

⁷ *Id.*

all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of citric acid from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Citribel will be equal to the weighted-average dumping margin established in the final results of this administrative review (*i.e.*, 0.00 percent); (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the company-specific rate established for the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.30 percent, the all-others rate established in the less-than-fair-value investigation.⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-16268 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-853]

Large Top Mount Combination Refrigerator-Freezers From Thailand: Initiation of Less-Than-Fair-Value Investigation; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of July 16, 2024, in which Commerce initiated the less-than-fair-value (LTFV) investigation on large top mount combination refrigerator-freezers (refrigerators) from Thailand. This notice incorrectly stated that the U.S. International Trade Commission (ITC) will make its preliminary determination within 45 days after the date on which the petition was filed.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatryan, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6412.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2024, Commerce published in the **Federal Register** the initiation notice of the LTFV investigation on refrigerators from Thailand.¹ In that notice, Commerce incorrectly stated that the ITC will make its preliminary determination within 45 days after the date the petition was filed.

Correction

In the **Federal Register** of July 16, 2024, in FR Doc 2024-15601,² on page 57864, in the first column, correct the text under the section titled "Preliminary Determination by the ITC" as follows:

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notification from Commerce of initiation of the investigation, whether there is a reasonable indication that imports of refrigerators from Thailand are materially injuring, or threatening material injury to, a U.S. industry.³ A negative ITC determination will result in the investigation being terminated.⁴ Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Notice to Interested Parties

This notice is issued and published in accordance with sections 732(c)(2) and 777(i)(1) of the Act, and 19 CFR 351.203(c).

Dated: July 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-16273 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-DS-P

¹ See *Large Top Mount Combination Refrigerator-Freezers from Thailand: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 57860 (July 16, 2024).

² *Id.*

³ See section 733(a) of the Tariff Act of 1930, as amended (the Act).

⁴ *Id.*

⁵ See *Order*.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-917]

Certain Paper Shopping Bags From Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, the People's Republic of China, and the Socialist Republic of Vietnam: Antidumping Duty Orders; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** on July 18, 2024 regarding the antidumping duty (AD) orders on certain paper shopping bags (paper bags) from Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, the People's Republic of China (China), and the Socialist Republic of Vietnam (Vietnam). This notice omitted language that subject merchandise produced and exported by Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private Limited is

excluded from the AD order with respect to India. This notice corrects that omission.

FOR FURTHER INFORMATION CONTACT: Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3401.

SUPPLEMENTARY INFORMATION:**Background**

On July 18, 2024, Commerce published in the **Federal Register** the AD orders on paper bags from Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, China, and Vietnam.¹ Commerce omitted language that subject merchandise produced and exported by Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private Limited is excluded from the *Order* in the “Estimated Weighted-Average Margins” section and “Continuation of Suspension of Liquidation” section.

Correction

In the **Federal Register** of July 18, 2024, in FR Doc 2024-15746 on page

58334, in the second column, correct the “Continuation of Suspension of Liquidation and Cash Deposits” section to include the following paragraph at the end of that section which was omitted: “Because the estimated weighted-average dumping margin is zero for subject merchandise produced and exported by Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private Limited, entries of shipments of subject merchandise from this producer/exporter combination are excluded from the antidumping duty order on subject merchandise from India. This exclusion will not be applicable to merchandise exported to the United States by this respondent in any other producer/exporter combination or by third parties that sourced subject merchandise from the excluded producer/exporter combination.”

Additionally, in the **Federal Register** of July 18, 2024, in FR Doc 2024-15746 on page 58334, correct the table of final results for India to include a footnote as follows:

India:²

Producer or exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for export subsidy offset) (percent)
Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private Limited	0.00	Not Applicable
Kuloday Plastomers Pvt. Ltd	4.59	1.20
Adeera Packaging Pvt. Ltd	4.59	1.20
Amate Products Pvt. Ltd	4.59	1.20
Apex Paper and Plastic and Film	* 53.05	49.66
Archies Limited	4.59	1.20
Asha Overseas	* 53.05	49.66
Carrywell Packaging Pvt. Ltd	4.59	1.20
Colorbox	4.59	1.20
Dynaflex Private Limited	4.59	1.20
Godhani Exports	* 53.05	49.66
Pack Easy Paper Products	* 53.05	49.66
Pack Planet Pvt. Ltd	4.59	1.20
Poonam	4.59	1.20
Shriniwas Enterprises	4.59	1.20
Tejaswi Plastic Pvt. Ltd	4.59	1.20
The Velvin Group (DBA Velvin Packaging Solutions Pvt. Ltd. and Velvin Paper Products)	4.59	2.21
Vama Packaging	4.59	1.20
All Others	4.59	1.20

* Rate based on facts available with adverse inferences.

¹ See *Certain Paper Shopping Bags from Cambodia, Colombia, India, Malaysia, Portugal, Taiwan, the People's Republic of China, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 89 FR 58334 (July 18, 2024) (*Order*).

² After the final determination, Commerce directed CBP not to suspend liquidation of entries of subject merchandise produced and exported by Aeroplast Packaging Solution Private Limited; Aero Plast Limited; Aero Business Solutions Private

Limited. Subject merchandise from this producer/exporter combination is excluded from the antidumping duty order on India. See “Continuation of Suspension of Liquidation” section, *supra*.

Notification to Interested Parties

This notice is issued and published in accordance with section 736(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: July 18, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–16236 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE055]

Marine Fisheries Advisory Committee Meeting

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under the **SUPPLEMENTARY INFORMATION** section below.

DATES: The meeting will be held August 27, 2024, from 2 to 4 p.m. Eastern Time.

ADDRESSES: Meeting is by webinar and teleconference. Conference call and webinar access information are available at: <https://www.fisheries.noaa.gov/event/august-2024-marine-fisheries-advisory-committee-meeting>.

Public comment may be provided to MAFAC by one of the following methods:

Submit written comments in advance of the MAFAC public meeting to katie.zanowicz@noaa.gov, with “August 2024 MAFAC” in the subject line of the email message. Oral public comment may be provided during the virtual meeting at the time allotted on the posted agenda.

FOR FURTHER INFORMATION CONTACT: Katie Zanowicz, MAFAC Assistant, 301–427–8038, katie.zanowicz@noaa.gov.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the

Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter, summaries of prior meetings, and MAFAC recommendations and reports are located online at <https://www.fisheries.noaa.gov/topic/partners/marine-fisheries-advisory-committee>.

Matters To Be Considered

The meeting time and agenda are subject to change. The meeting is convened for MAFAC to deliberate and vote on proposed comment and recommendations on the revised NMFS Ecosystem-Based Fisheries Management Road Map. MAFAC may also discuss various administrative and organizational matters.

Time and Date

The virtual meeting will be held August 27, 2024, from 2 to 4 p.m. Eastern Time. Conference call and webinar access information are available at <https://www.fisheries.noaa.gov/event/august-2024-marine-fisheries-advisory-committee-meeting>.

Special Accommodations

This virtual meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katie Zanowicz, (301) 427–8038, by August 13, 2024.

Dated: July 19, 2024.

Heidi Lovett,

Designated Federal Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2024–16250 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE129]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public hybrid meeting (in-person/virtual).

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 185th public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 185th CFMC public hybrid meeting will be held on August 13, 2024, from 9 a.m. to 4:45 p.m. A closed session will be held from 5 p.m. to 5:30 p.m., to discuss personnel matters, and on August 14, 2024, from 8:30 a.m. to 4:15 p.m., AST.

ADDRESSES:

Meeting address: The meeting will be held at The Buccaneer Hotel, Estate Shoys, St. Croix, U.S. Virgin Islands.

You may join the 185th CFMC public hybrid meeting via Zoom, from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting: <https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUtKck8xYk1XOXNDY1ErZz09>

Meeting ID: 830 6068 5915

Passcode: 995658

One tap mobile: +17879451488,, 83060685915#,,,,,0#,,995658# Puerto Rico; +17879667727,, 83060685915#,,,,,0#,,995658# Puerto Rico

Dial by your location: +1 787 945 1488 Puerto Rico; +1 787 966 7727 Puerto Rico; +1 939 945 0244 Puerto Rico

Meeting ID: 830 6068 5915

Passcode: 995658

In case there are problems, and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet, or smartphone at <https://global.gotomeeting.com/join/971749317>. You can also dial in using your phone. United States: +1 (408) 650–3123 Access Code: 971–749–317.

FOR FURTHER INFORMATION CONTACT:

Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

August 13, 2024

9 a.m.–9:30 a.m.

- Call to Order
- Roll Call
- Adoption of Agenda
- Consideration of 184th Council Meeting Verbatim Transcriptions
- Executive Director’s Report

9:30 a.m.–10 a.m.

- NOAA Fisheries Actions—Sam Rauch, Deputy Assistant Administrator for Regulatory Programs, NOAA Fisheries
- Confidentiality Rule Update
- Council on Environmental Quality NEPA Regulations

—America the Beautiful 30 x 30
 —ESA/MSA Integration Policy Draft
 10 a.m.–10:45 a.m.

—Update NMFS/Council Actions and IBFMP Amendments—María López-Mercer, NOAA Fisheries/Southeast Regional Office (SERO)
 10:45 a.m.–11 a.m.

—Break
 11 a.m.–12 p.m.

—Federal Permits Discussion and Example—Puerto Rico Deepwater Snappers—Jessica Stephen, NOAA Fisheries/Southeast Regional Office (SERO)
 12 p.m.–1:30 p.m.

—Lunch Break
 1:30 p.m.–1:50 p.m.

—Community Climate Change Vulnerability Project for US Caribbean—Tarsila Seara, NOAA Fisheries, Northeast Regional Office
 1:50 p.m.–2:50 p.m.

—USVI Queen Triggerfish Framework Action to Establish Management Reference Points Based on SEDAR 80—Sarah Stephenson, NOAA Fisheries/Southeast Regional Office (SERO)
 2:50 p.m.–3:20 p.m.

—Rainbow Runner Amendment 4—Draft Document Discussion—María López-Mercer, NOAA Fisheries/Southeast Regional Office (SERO)
 3:20 p.m.–3:30 p.m.

—Break
 3:30 p.m.–4 p.m.

—2024 Annual Catch Limits Monitoring—NOAA Fisheries/Southeast Regional Office (SERO)
 4 p.m.–4:30 p.m.

—Protected Resources Division Update—Jennifer Lee, NOAA Fisheries/Southeast Regional Office (SERO)
 4:30 p.m.–4:45 p.m.

—Safe Fishing Zones—Carlos Farchette, CFMC Chair
 4:45 p.m.

—Adjourn for the Day
 5 p.m.–5:30 p.m.

—Closed Session

August 14, 2024

8:30 a.m.–9 a.m.

—Southeast Fisheries Science Center Update—Kevin McCarthy, NOAA Fisheries
 —Survey of Stakeholder Priorities for Caribbean Fisheries Management
 9 a.m.–9:15 a.m.

—Outcomes from WECAFC Flying Fish Dolphinfinch Working Group Meeting and WECAFC Spawning Aggregations Working Group Meeting—Laura Cimo, NOAA Fisheries, The Office of International Affairs, Trade, and Commerce
 9:15 a.m.–9:45 a.m.

—Queen Triggerfish Life history—Jesús Rivera Hernández, University of South Carolina at Aiken
 9:45 a.m.–10:15 a.m.

—Lane Snapper Study Results—Jesús Rivera Hernández, University of South Carolina at Aiken
 10:15 a.m.–10:30 a.m.

—Break
 10:30 a.m.–11:15 a.m.

—Outreach and Education Report
 —Liaison Officers Descending Devices July Meeting Report—Liandry A. de La Cruz
 —Social Networks Report—Cristina Olán
 —Chefs' Workshop on Underutilized Species—Jannette Ramos
 11:15 a.m.–11:30 a.m.

—Lionfish Derby Report—Mike Funk
 11:30 a.m.–12 p.m.

—Electronic Monitoring and Reporting (EMR) Grant Program—Willy Goldsmith, Field Liaison for the National Fish and Wildlife Foundation
 12 p.m.–1:30 p.m.

—Lunch Break
 1:30 p.m.–2 p.m.

—Aging of Spiny Lobster Study—Ana Medina, University of Puerto Rico at Mayagüez
 2 p.m.–2:30 p.m.

—EBFM TAP Update—Sennai Habtes, EBFM TAP Chair and Liajay Rivera, CFMC Staff
 2:30 p.m.–3:30 p.m.

—Enforcement Reports (15-minutes each)
 —Puerto Rico—DNER
 —USVI—DPNR
 —U.S. Coast Guard

—NMFS/NOAA

3:30 p.m.–3:40 p.m.

—Break

3:40 p.m.–3:50 p.m.

—Advisory Bodies Membership

3:50 p.m.–4 p.m.

—Other Business

4 p.m.–4:15 p.m.

—Public Comment Period (5-minute presentations)

—Next Meeting

—Adjourn

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from or completed before the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on August 13, 2024, at 9 a.m., AST, and will end on August 14, 2024, at 4:15 p.m., AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: July 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–16215 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE130]

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council (Council) will hold a two-hour webinar meeting of its Ecosystem Technical Committee (ETC).

DATES: The webinar meeting will be held Friday, August 9, 2024, from 1 p.m. to 3 p.m., EDT.

ADDRESSES: The meeting will take place via webinar. Registration information will be available on the Council's website by visiting www.gulfcouncil.org and clicking on the "meeting tab".

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Dr. Verena Wang, Fishery Biologist, Gulf of Mexico Fishery Management Council; verena.wang@gulfcouncil.org; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Friday, August 9, 2024; 1 p.m.–3 p.m. EDT

The meeting will begin with Introductions and Adoption of Agenda, Approval of Minutes and Meeting Summary from the September 2023 meeting and a review of Scope of Work. The committee will review and discuss the Ecosystem Based Fisheries Management Road Map Update along with receiving a presentation and review of a draft comment letter to National Oceanic and Atmospheric Administration (NOAA).

The Committee will receive public comment at the end of the day and discuss any items under Other Business.—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting www.gulfcouncil.org and clicking on the Technical meeting on the calendar.

The agenda is subject to change, and the latest version along with other meeting materials will be posted on www.gulfcouncil.org as they become available.

Although other non-emergency issues not on the agenda may come before the

Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Committee will be restricted to those issues specifically identified in the agenda 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 Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348-1630, at least 5 days prior to the meeting date.

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

Dated: July 18, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-16216 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE136]

Marine Mammals; File No. 27867

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Mridula Srinivasan, Ph.D.), has applied in due form for a permit to conduct research on cetaceans, and import, export, and receive cetacean parts for scientific research.

DATES: Written comments must be received on or before August 23, 2024.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 27867 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 27867 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Jennifer Skidmore, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act 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 Endangered Species Act of 1973, as amended (ESA; 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).

The applicant requests a 5-year permit to conduct research in the western North Atlantic Ocean, Gulf of Mexico and Caribbean Sea. The objectives are to study cetacean stock structure, geographic range, population size, habitat, movement, vocalizations, reproduction, health status, and behavior. Up to 33 species of cetaceans may be targeted including the following ESA-listed species: blue (*Balaenoptera musculus*), fin (*B. physalus*), North Atlantic right (*Eubalaena glacialis*), Rice's (*B. ricei*), sei (*B. borealis*), and sperm (*Physeter macrocephalus*) whales. Research may occur year-round during vessel or aircraft surveys, including unmanned aircraft systems, for counts, photography, video recording (above and underwater), photogrammetry, thermal imaging, observations, passive acoustics, biological sampling (sloughed skin, exhaled air, feces, and skin and blubber biopsy), and tagging (suction-cup, dart, and deep-implant). In addition, the applicant is requesting authority to receive, import, and export cetacean parts. See the application for complete numbers of animals requested by species, age-class, and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 18, 2024.

Julia M. Harrison,
*Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 2024–16237 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE119]

Fisheries of the South Atlantic; 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 93 Review Workshop for Atlantic States Marine Fisheries Commission (ASMFC) Red Drum.

SUMMARY: The review of the SEDAR 93 assessment of Atlantic red drum will be conducted via an in-person review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 93 ASMFC Red Drum Review Workshop is scheduled for August 13–16, 2024. The meetings on August 13–15 will be held from 8 a.m. until 6 p.m., Eastern, each day. The meeting on August 16 will be held from 8 a.m. until 1 p.m., Eastern. The meeting will be live streamed. Individuals may register by going to the SEDAR website: www.sedarweb.org. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Garden Inn Charleston Airport, 5265 International Blvd., North Charleston, SC 29418.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie A Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North

Charleston, SC 29405; phone (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 three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a 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, Highly Migratory Species 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 non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 93 Review Workshop are as follows:

Participants will evaluate the data and assessment reports, as specified in the Terms of Reference, to determine if they are scientifically sound.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically 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 accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business 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: July 19, 2024.

Key Israel Marquez,

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

[FR Doc. 2024–16262 Filed 7–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE111]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold two virtual public hearings pertaining to Amendment 55 to the Fishery Management Plan (FMP) for the Snapper Grouper Fishery in the South Atlantic Region. This amendment establishes a Scamp and Yellowmouth Complex, establishes a rebuilding plan, catch levels, sector allocations, management measures, and accountability measures for the new complex. The amendment also updates the composition and catch levels of the Other South Atlantic Shallow Water Grouper Complex.

DATES: The public hearings will take place August 13, 2024 and August 14, 2024, beginning at 6 p.m., EDT. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The hearings will be held via webinar. Webinar registration information is available from the Council's website at: <https://safmc.net/events/august-2024-public-hearings-snapper-grouper-amendment-55/>.

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: Public hearing documents, an online public comment form, and other materials will be posted to the Council's website at <https://safmc.net/events/august-2024-public-hearings-snapper-grouper-amendment-55/> as they become available. Written comments should be addressed to John Carmichael, Executive Director, SAFMC, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405. Written comments must be received by August 16, 2024, by 5 p.m. During the hearings, Council staff will provide an overview of actions being considered in the amendment. Staff will answer clarifying questions on the presented information and the proposed actions. Following the presentation and questions, the public will have the opportunity to provide comments on the amendment.

Amendment 55 to the Snapper Grouper FMP

The most recent stock assessment (SEDAR 68) assessed scamp and yellowmouth grouper combined due to misidentification between the two species and indicated that the stock is overfished but not subject to overfishing. In response to this assessment the Council will need to establish the Scamp Yellowmouth Grouper Complex (which entails adjusting the composition and catch levels of the Other Shallow Water Grouper Complex), establish stock determination criteria for the new complex, a rebuilding plan, annual catch limits, management measures, allocations and sector annual catch limits, and accountability measures.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 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: July 19, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-16261 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE120]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Marine Planning Committee (MPC) will hold an online public meeting.

DATES: The online meeting will be held Monday, August 12, 2024, from 10 a.m. to 4 p.m., Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including a proposed agenda and directions on how to attend the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820-2409.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the MPC to consider current offshore wind (OSW) energy and aquaculture issues and to provide information and recommendations to the Pacific Council for consideration at its September 2024 meeting. Topics will include updates on Bureau of Ocean Energy Management activities, updates from coastal states and the National Marine Fisheries Service, a Tribal update, fishing community engagement in OSW transmission planning, and other OSW or aquaculture topics, as appropriate.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section

305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: July 19, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024-16263 Filed 7-23-24; 8:45 am]

BILLING CODE 3510-22-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No: CFPB-2024-0029]

Privacy Act of 1974; System of Records

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Consumer Financial Protection Bureau (CFPB or Bureau) proposes to establish a new CFPB system of records titled, "CFPB.030—Nonbank Registry" (Nonbank Registry). Generally, "nonbanks" are institutions involved in the offering or provision of consumer financial products or services that are not insured depository institutions or insured credit unions (hereinafter referred to as "nonbanks"). The Nonbank Registry system of records covers information collected and maintained as part of the CFPB nonbank registration program. The Nonbank Registry enables certain nonbanks to register with the CFPB through the Bureau's Nonbank Registry portal and to provide additional required information and/or other required documents. The records maintained in the Nonbank Registry enables the CFPB to gather information from registered nonbanks; to monitor and identify consumer risks; to gather information and documents to conduct examinations of registered nonbanks subject to the CFPB's supervisory authority; and to ensure that registered nonbanks subject to the CFPB's supervisory authority are legitimate entities and able to perform their obligations to consumers,

including their obligations under Federal consumer financial law. This newly established system of records will be included in the CFPB's inventory of records systems.

DATES: Comments must be received no later than August 23, 2024. The new system of records will be effective August 23, 2024 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and docket number (see above Docket No. CFPB–2024–0029), by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2024-0029>.

- **Email:** privacy@cfpb.gov. Include Docket No. CFPB–2024–0029 in the subject line of the email.

- **Mail/Hand Delivery/Courier:** Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552, (202) 435–7058. Because paper mail in the Washington, DC area and at CFPB is subject to delay, commenters are encouraged to submit comments electronically.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552; (202) 435–7058. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the CFPB is establishing a new system of records titled, “CFPB.030, Nonbank Registry.” On June 3, 2024, the CFPB published the *Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders Final Rule* (Orders Rule) pursuant to sections 1022 and 1024 of the Consumer Financial Protection Act

(CFPA) of 2010. The Orders Rule imposes specific requirements on “covered nonbanks,” as that term is defined in section 1092.201(d) of the Orders Rule. Covered nonbanks are generally required to register “covered orders,” as that term is defined in section 1092.201(e) of the Orders Rule, that remain in or take effect on or after the Orders Rule’s effective date.

The CFPB’s exercise of its nonbank registration rulemaking authority expands the category of individuals and records collected and maintained on nonbanks to include those required to register with the CFPB to enable the Bureau to monitor and reduce the risks to consumers posed by these institutions more effectively. The registry also allows the Bureau to monitor trends in enforcement and more effectively utilize Bureau resources. To this end, the CFPB has created the Nonbank Registry portal to facilitate the registration process and information collection maintained in the Nonbank Registry system of records for nonbanks that are required to register with the CFPB in accordance with current or subsequent CFPB regulations. Finally, the CFPB may publish certain information collected and maintained in the Nonbank Registry system of records as is in the public interest and in accordance with CFPB regulations.

SYSTEM NAME AND NUMBER:

CFPB.030—Nonbank Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

SYSTEM MANAGER(S):

Program Director, Systems and Registrations Team, Office of Supervision, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, title X, sections 1022 and 1024, codified at 12 U.S.C. 5512 and 5514.

PURPOSE(S) OF THE SYSTEM:

The purposes of the Nonbank Registry are: (1) To effectively monitor and understand financial markets related to nonbanks or nonbank institutions; (2) To monitor for risks to consumers in the offering or provision of consumer financial products or services; (3) To facilitate the CFPB’s risk-based nonbank supervision program; (4) To ensure that registered nonbanks subject to the

CFPB’s supervisory authority are legitimate entities and are able to perform their obligations to consumers, including their obligations under Federal consumer financial law; and (5) To maintain a central public registry of information on nonbanks to facilitate public awareness and oversight.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The CFPB collects and maintains information on the following individuals:

- Authorized representatives acting on behalf of nonbanks who are authorized to submit information to the Nonbank Registry portal;
- Attesting executives;
- Individuals (e.g., consenting party, defendant) listed or included in a covered order and related public records, such as court or agency documents, or other documents provided to the registry;
- Individuals, including authorized representatives who submit a question via the Nonbank Registry portal about related regulations or that require technical assistance with the Nonbank Registry; and
- CFPB staff assigned to maintain the Nonbank Registry, including system developers, system administrators, and similar system stakeholders who support the Nonbank Registry and program operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records maintained in this Nonbank Registry include:

- Full names and business contact information (e.g., business title, email address, and phone number) for authorized representatives and attesting executives provided during the registration process;
- Information related to individuals associated with nonbanks found in submitted documents, such as covered orders and related public records, such as court or agency documents, or other documents provided to the Nonbank Registry;
- Annual written statements signed by an attesting executive (or executives) and notification/confirmation of non-registration;
- Names and contact information (e.g., phone number, email address) of individuals, along with question submitted about related regulations or that require technical assistance with the Nonbank Registry; and
- Access records to CFPB computers and networks (e.g., external facing portals) containing usernames and passwords and first and last names of CFPB staff and external users authorized

to access the Nonbank Registry, and other audit-related information, such as date and time stamps of submissions via the Nonbank Registry portal, and information regarding reconciliation or correction of errors.

RECORD SOURCE CATEGORIES:

The information in the Nonbank Registry system of records is collected directly from covered nonbanks and the authorized representatives and executives acting on behalf of the covered nonbanks; CFPB staff; and from individuals that submit questions via the Nonbank Registry portal about related regulations or that require technical assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, and consistent with the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070, all or a portion of the records or information contained in this system may be disclosed outside the CFPB as a routine use to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(2) Another Federal agency or entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access, amendment, or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of

information submitted by an individual who has requested access to or amendment or correction of records.

(4) The Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains.

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or the U.S. Government and who have a need to access the information in the performance of their mission, including duties or activities.

(7) The Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the Bureau in their official capacity;

(c) Any employee of the Bureau in their individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the Bureau or any of its components.

(8) Appropriate Federal, State, local, foreign, Tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

(9) To the National Archives and Records Administration (NARA) or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(10) A grand jury pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

(11) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings.

(12) To members of the public as is in the public interest in accordance with 12 CFR part 1092. Such disclosure would be limited to the names and titles of attesting executives and individuals listed or included in a covered order and related public records, such as court or agency documents, or other documents provided to the registry.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records are maintained in electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records maintained in this system of records are retrievable using a personal identifier, including an individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records contained within the Nonbank Registry system of records are considered unscheduled and will be maintained as permanent until there is an approved records schedule for the Nonbank Registry.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

External access to the Nonbank Registry via the portal for nonbank user accounts is limited to the nonbank that created the account with the CFPB. Nonbanks will login with a username and password using multi-factor authentication. Internal access to electronic records is restricted to authorized CFPB staff based on role-based access controls using multi-factor authentication.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/foia-requests/submit-request/>.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record contained in this system of records may inquire in writing in accordance with instructions in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Instructions are also provided on the Bureau website: <https://www.consumerfinance.gov/privacy/amending-and-correcting-records-under-privacy-act/>.

NOTIFICATION PROCEDURES:

See “Record Access Procedures” above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records.

Kathryn Fong,

Chief Privacy Officer, Consumer Financial Protection Bureau.

[FR Doc. 2024–16245 Filed 7–23–24; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID: DoD–2024–OS–0074]

Information Request on Financing Support for Covered Technology Categories—Specific to Lenders

AGENCY: Office of Strategic Capital (OSC), Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice; request for information (RFI).

SUMMARY: The OSC is seeking information from lenders and other private credit investors regarding capital needs for industries related to the Covered Technology Categories to inform the design and implementation of the DoD Loan Program Office.

DATES: Comments must be received by October 22, 2024. Written comments in response to this RFI should be submitted in accordance with the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections in this notice.

ADDRESSES: Interested parties may submit comments on this transaction electronically on www.regulations.gov. To submit a comment, enter “Information Request on Financing Support for Covered Technology Categories—Specific to Lenders” under

the heading “Enter Keyword or ID” and select Search. You can also search by the Docket ID, DoD–2024–OS–0074. Follow the instructions provided at the “Submit a Comment” screen.

Comments can also be sent by mail to Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Please include your name, company name (if any) and “Information Request on Financing Support for Covered Technology Categories” on any attached document.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact David Vidal, Office of Strategic Capital Director of Credit Programs, at Federal.Register.Notice@osc.mil. Tel. No. 703–545–1903. Please direct media inquiries to the OSC Press Team at engagements@osc.mil.

SUPPLEMENTARY INFORMATION:**Background**

In December 2022, the Secretary of Defense established OSC to attract and scale private capital to technologies critical to the national security of the United States. Furthermore, in 2024, Congress authorized OSC as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2024. The NDAA states that OSC shall:

(a) develop, integrate, and implement capital investment strategies proven in the commercial sector to shape and scale investment in critical technologies and assets;

(b) identify and prioritize promising critical technologies and assets that require capital assistance and have the potential to benefit the DoD; and

(c) make eligible investments in such technologies and assets, such as supply chain technologies not always supported through direct investment.

Covered Technology Categories

The NDAA designates the following 31 categories as a “Covered Technology Category.”

- Advanced bulk materials (including dielectrics, alloys, polymers, and composites)
- Advanced manufacturing (including upgrades for increasing the efficiency or quality of existing production processes or for enabling commercialization of new technologies)

- Autonomous mobile robots
- Battery storage (including lithium ion, advanced lead acid, and alternate batteries, as well as fuel cells)
- Biochemicals
- Bioenergetics
- Biomass (including conversion-ready feedstock)
- Cybersecurity
- Data fabric (including integration across disparate domains)
- Decision science (including ensemble learning methods for portfolio optimization)
- Edge computing
- External communication
- Hydrogen generation and storage
- Mesh networks (including off-grid communications)
- Microelectronics assembly, testing, or packaging
- Microelectronics design and development
- Microelectronics fabrication
- Microelectronics manufacturing equipment
- Microelectronics materials
- Nanomaterials and metamaterials
- Open RAN
- Optical communications (including free space and optical fiber)
- Sensor hardware
- Solar (including power system and management components)
- Space launch
- Spacecraft
- Space-enabled services and equipment (including in-space operations and associated ground equipment)
- Synthetic biology
- Quantum computing
- Quantum security
- Quantum sensing

The NDAA authorizes OSC to provide capital assistance, defined as a “loan, loan guarantee, or technical assistance” for eligible investments. Eligible investments are those made in a technology that is (a) in a Covered Technology Category and (b) not solely utilized in defense applications. OSC is seeking public comment on the capital needs of industries and assets related to the Covered Technology Categories to inform the design of DoD Loan Program.

Specific Requests for Information

The following statements and questions cover the major topic areas for which OSC seeks comment. They are not intended to limit the topics that may be addressed. Responses may include any topic believed to inform the U.S. Government’s efforts in developing recommendations for supporting the design of the DoD Loan Program, regardless of whether the topic is included in this document.

Respondents are encouraged to respond to any or all of the following questions and topic areas. Responses may include estimates, which should be designated as such. Your responses may include supporting data and examples. We welcome submission of publications or studies that support your responses as attachments.

Questions

The questions section of this **Federal Register** notice is split into four parts: (a) General, (b) Financing, (c) Experience with U.S. Government Financing, and (d) Economic Outlook.

General

1. What are your (i) geographical and (ii) business sectoral coverage areas for lending or private credit investment efforts?

2. Do you finance companies that largely produce, integrate, or otherwise use equipment or services with a purpose that aligns with any of the Covered Technology Categories? Please list each Covered Technology Category and define the relationship.

3. What types of financing products do you make available to companies in Question #2?

4. Are there any debt financing gaps in industries or assets related to the Covered Technology Categories (e.g., capital expenditure, working capital, acquisition financing, lease financing, etc.)?

Financing

5. What terms are you offering the market? Please break down (i) the product type, (ii) the transaction size, (iii) the interest rate and credit spread, and (iv) the tenor range by Covered Technology Category.

6. What fees do you typically charge for various debt product types associated with companies in Question #2 (e.g., underwriting fees, draw fees, prepayment fees, etc.)?

7. What are the key credit risk categories that lead to a denial of financing to companies within the Critical Technology Categories relevant to your firm (e.g., technology commercialization risk, credit/financial risk, customer concentration risk, market/merchant risk, sector's cyclicity, etc.)?

8. How can the DoD Loan Program partner with financing firms to crowd capital into Covered Technology Categories and their supply chains?

9. Do you believe the Covered Technologies Categories identified in Question #2 would benefit from credit support from the DoD Loan Program? If so, what are the most beneficial forms

of credit support (e.g., Direct Loans, Loan Guarantees, etc.) and why?

10. How should the DoD Loan Program be designed to be complementary to, rather than a substitute for private sector debt financing?

11. Do you believe Federal loans and loan guarantees would help enhance the terms you provide to the market? If so, how and why?

12. What is the ideal loan guarantee coverage percentage that would entice you to lend to companies in a Covered Technology Category? Please include the (i) sector, (ii) the company size, and (iii) the debt amount. Additionally, please describe how this loan guarantee coverage percentage enables your firm to finance the companies discussed in Question 2.

Experience With U.S. Government Financing

13. Have you previously worked with financing tools from the U.S. Government? If so, please specify which (i) government programs your firm engaged in and (ii) what financing tools you utilized (e.g., loans or loan guarantees). If not, please specify why (e.g., not relevant, fees too high, etc.).

14. What was the size of the financing tools mentioned above? For example, if the tool used was a loan, please indicate its size (e.g., \$0–5MM, \$5–25MM, \$25–75MM, >\$75MM).

15. What types of fees were associated with these financing tools (e.g., underwriting fees, draw fees, prepayment fees, etc.)?

16. What challenges (i) have you seen, and/or (ii) do you foresee, with Federal credit direct loans and loan guarantees as it relates to Covered Technology Categories?

Economic Outlook

17. What is your outlook on the five-year macroeconomic projection for the Covered Technology Categories you selected previously? Which, if any, macroeconomic headwinds and tailwinds are most impacting (i) your ability to finance the Covered Technology Categories and (ii) the Covered Technology Categories themselves?

Requirements for Written Comments

OSC encourages respondents, when addressing the points above, unless raising other challenges related to financing Covered Technology Categories not explicitly asked, to identify which point they are responding to by using the same numbers and heading as set forth above. For example, someone submitting

comments responsive to (8), “How can the DoD Loan Program partner with financing firms to crowd capital into Covered Technology Categories and their supply chains?”, would use that same text as a heading followed by the respondent's specific comments responding to it. This formatting will assist OSC in more easily reviewing and summarizing the comments received in response to these specific points of inquiry.

Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission. Users submitting a form that contains business confidential information will need to submit a non-confidential version of the same form that does not contain the confidential business information. The non-confidential version of the submission will be placed in the public file on <https://www.regulations.gov>. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The non-confidential version must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments.

Dated: July 18, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–16180 Filed 7–23–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0073]

Information Request on Financing Support for Covered Technology Categories—Specific to Companies and Trade Associations

AGENCY: Office of Strategic Capital (OSC), Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice; request for information (RFI).

SUMMARY: The OSC is seeking information from companies and trade associations regarding strategic capital needs for industries related to the Covered Technology Categories to inform the design and implementation of the DoD Loan Program.

DATES: Comments must be received by October 22, 2024. Written comments in response to this RFI should be submitted in accordance with the instructions in the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this notice.

ADDRESSES: Interested parties may submit comments on this transaction electronically on www.regulations.gov. To submit a comment, enter “Information Request on Financing Support for Covered Technology Categories—Specific to Companies and Trade Associations” under the heading “Enter Keyword or ID” and select Search. You can also search by the Docket ID, DoD–2024–OS–0073. Follow the instructions provided at the ‘Submit a Comment screen’.

Comments can also be sent by mail to Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Please include your name, company name (if any) and “Information Request on Financing Support for Covered Technology Categories” on any attached document.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact David Vidal, Office of Strategic Capital Director of Credit Programs, at Federal.Register.Notice@osc.mil, Tel. No. 703–545–1903. Please direct media inquiries to the OSC Press Team at engagements@osc.mil.

SUPPLEMENTARY INFORMATION:

Background

In December 2022, the Secretary of Defense established OSC to attract and scale private capital to technologies critical to the national security of the United States. Furthermore, in 2024, Congress authorized OSC as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2024. The NDAA states that OSC shall:

(a) develop, integrate, and implement capital investment strategies proven in the commercial sector to shape and scale investment in critical technologies and assets,

(b) identify and prioritize promising critical technologies and assets that require capital assistance and have the potential to benefit the DoD, and

(c) make eligible investments in such technologies and assets, such as supply chain technologies not always supported through direct investment.

Covered Technology Categories

The NDAA designates the following 31 categories as a “Covered Technology Category.”

- Advanced bulk materials (including dielectrics, alloys, polymers, and composites)
- Advanced manufacturing (including upgrades for increasing the efficiency or quality of existing production processes or for enabling commercialization of new technologies)
- Autonomous mobile robots
- Battery storage (including lithium ion, advanced lead acid, and alternate batteries, as well as fuel cells)
- Biochemicals
- Bioenergetics
- Biomass (including conversion-ready feedstock)
- Cybersecurity
- Data fabric (including integration across disparate domains)
- Decision science (including ensemble learning methods for portfolio optimization)
- Edge computing
- External communication
- Hydrogen generation and storage
- Mesh networks (including off-grid communications)
- Microelectronics assembly, testing, or packaging
- Microelectronics design and development
- Microelectronics fabrication
- Microelectronics manufacturing equipment
- Microelectronics materials
- Nanomaterials and metamaterials
- Open RAN
- Optical communications (including free space and optical fiber)
- Sensor hardware
- Solar (including power system and management components)
- Space launch
- Spacecraft
- Space-enabled services and equipment (including in-space operations and associated ground equipment)
- Synthetic biology
- Quantum computing
- Quantum security
- Quantum sensing

The NDAA authorizes OSC to provide capital assistance, defined as a “loan,

loan guarantee, or technical assistance” for eligible investments. Eligible investments are those made in a technology that is (a) in a Covered Technology Category and (b) not solely utilized in defense applications. OSC is seeking public comment on the capital needs of industries and assets related to the Covered Technology Categories to inform the design of DoD loan program.

Specific Requests for Information

The following statements and questions cover the major topic areas for which OSC seeks comment. They are not intended to limit the topics that may be addressed. Responses may include any topic believed to inform the U.S. Government’s efforts in developing recommendations for supporting the design of the DoD Loan Program, regardless of whether the topic is included in this document.

Respondents are encouraged to respond to any or all of the following questions and topic areas. Responses may include estimates, which should be designated as such. Your responses may include supporting data and examples. We welcome submission of publications or studies that support your responses as attachments.

Questions

The questions section of this **Federal Register** notice is split into four parts: (a) General, (b) Financing, (c) Economic Outlook, and (d) Competition.

General

1. From the Covered Technology Categories referenced in the Background of this **SUPPLEMENTARY INFORMATION** section, please select at least one Category that best represents your company.

2. What is the 6-digit North American Industry Classification System (NAICS) code for your business? If your business has more than one NAICS code, please list those associated with the Covered Technology Categories noted in your response to Question 1.

3. Does your company largely produce, integrate, or otherwise use equipment and/or services for a purpose that aligns with any of the Covered Technology Categories enumerated in the Background section? Please list each Covered Technology Category and define the relationship.

4. What are the primary technology asset(s)/equipment utilized in your sector for production or provision of services? What is the typical useful life of these technology equipment/assets?

5. Is there a secondary market for the technology equipment/asset(s) noted in Question 4? If so, how is the secondary

market value typically established (*e.g.*, public benchmark, appraisals, etc.)?

6. If applicable, how are these technology equipment/asset(s) transported from the source of origin to your facilities (airship, sea ship, rail, trucks)? If shipped via sea, are you/or your supplier able to transport them on a U.S.-flagged vessel?

7. How long has your company been in business? How many years has your firm operated in the specified Covered Technology Category?

8. What was your company's annual revenue over the past five years? (Please list each year and the respective annual value).

9. What were your company's earnings before interest and taxes (EBIT), and EBIT margins from the past five years? (Please list each year and the respective annual value).

10. What is your company's actual or implied Credit Rating Agency rating (*e.g.* BB+, Ba1, etc.)?

11. What is the current size of your company by employee count?

12. In which city, state, and countries are your company's headquarters, and manufacturing plants located?

13. In which geographies are your suppliers most concentrated? Please specify the state(s) or country(ies) if foreign.

14. In which geographies are your customers most concentrated? Please specify the state(s) or country(ies) if foreign.

15. Who are the major lenders in your market segment (*e.g.*, banks, specialty firms, private credit)? Please specify the institutions.

16. What percentage of your annual revenue has been spent on Research and Development (R&D) over the past five years? (Please list each year and the respective annual value).

17. What percentage of your annual revenue has been spent on capital expenditures (CapEx) over the past five years? (Please list each year and the respective annual value).

18. How often is capital expenditure (CapEx) funding usually needed (*e.g.*, once every three years)?

Financing

19. Have you previously used any form of U.S. Government funding? If so, please specify which funding tool(s) your company used and how (*e.g.*, loans, loan guarantees, etc.). If not, please specify why.

20. Have you ever accessed or attempted to obtain Federal credit (*e.g.*, direct loans or loan guarantees) in the past, or are you considering it in the future? If so, please specify the Federal credit programs or institutions.

21. Have Federal credit programs been able to successfully address the funding needs in your market segment? Please explain.

22. Which types of debt financing are currently available to your company for the purposes of working capital, capital/equipment lease or purchases, and acquisition?

23. What are the sources of debt financing in your market segment (*e.g.*, Banks, Credit Unions, Non-Bank Lenders, Funds, etc.)?

24. On average, how long does it take a company in your market segment to secure the needed debt funding for working capital, capital/equipment purchases or leases, acquisitions, etc.? How critical is the speed of funding availability in your line of business?

25. What are the typical terms for such debt instruments (*e.g.*, debt/equity ratio, repayment tenor, fund availability period, grace period, amortization structure, security/collateral package, covenants, interest rates, credit spreads, etc.)?

26. What are the limitations with existing forms of debt capital available to your company or sector (*e.g.*, type, cost, availability, covenants, eligibility, etc.)?

27. What are the typical debt instruments used to fund the procurement of the technology assets/equipment in your sector?

28. What forms of working capital funding are available to companies in your market?

29. Have you deferred production expansion due to lack of access to capital or the cost of capital?

30. What is the seniority level of the typical debt instrument in your market? Are there any covenant restrictions preventing additional borrowing that is *pari-passu* or senior to existing debt on your balance sheet (if any)?

31. What are some of the limitations or challenges in accessing funding in your sector?

32. Are there any niche areas in your sub-sector that struggle with accessing the needed debt capital? Please describe the reasons for this.

33. Would you benefit from OSC offering any of the following types of loan or loan guarantees: working capital loans or lines of credit, asset-backed loans, equipment financing, or acquisition financing?

34. Subject to the criteria and eligibility requirements to be determined by OSC, what factors should OSC consider important when reviewing applications for the DoD Loan Program?

Economic Outlook

35. What is your outlook on the five-year macroeconomic projection for your industry? What macroeconomic headwinds/tailwinds are most impacting you?

Competition

36. Who are the main competitors in your space? Where are they located geographically? Please list the city and state, if known. If the competitor is located overseas, please list the city and country.

37. Do you have foreign competition in your industry? Foreign competition is defined as a competing firm with headquarters outside of the United States. If yes, please list the firm(s) as well as the country they are headquartered in.

38. Are you aware of or facing competition backed by foreign government financing? If so, please identify the competition and the type of foreign government financing provided.

Requirements for Written Comments

OSC encourages respondents, when addressing the points above, unless raising other challenges related to financing Covered Technology Categories not explicitly asked, to identify which point they are responding to by using the same numbers and heading as set forth above. For example, someone submitting comments responsive to (9), "What is your company's actual or implied Credit Rating Agency rating (*e.g.* BB+, Ba1, etc.)?", would use that same text as a heading followed by the respondent's specific comments responding to it. This formatting will assist OSC in more easily reviewing and summarizing the comments received in response to these specific points of inquiry.

Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission. Users submitting a form that contains business confidential information will need to submit a non-confidential version of the same form that does not contain the confidential business information. The non-confidential version of the submission will be placed in the public file on <https://www.regulations.gov>. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC." Any

page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. The non-confidential version must be clearly marked "PUBLIC." The file name of the non-confidential version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments.

Dated: July 18, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-16179 Filed 7-23-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0093]

Agency Information Collection Activities; Comment Request; Education Stabilization Fund—Governor's Emergency Education Relief Fund (GEER I and GEER II) Recipient Data Collection Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2024-SCC-0093. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be

addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202-8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Britt Jung, (202) 453-6046.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Stabilization Fund—Governor's Emergency Education Relief Fund (GEER I and GEER II) Recipient Data Collection Form.

OMB Control Number: 1810-0748.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 3,326.

Total Estimated Number of Annual Burden Hours: 40,612.

Abstract: The Department awards GEER grants to Governors (States) and analogous ESF—Governor grants to Outlying Areas for the purpose of providing local educational agencies (LEAs), institutions of higher education (IHEs), and other education related entities with emergency assistance as a

result of the coronavirus pandemic. The Department has awarded these grants to States (Governors offices) based on a formula stipulated in the legislation. The grants are also awarded to Outlying Areas based on the same formula: (1) 60% on the basis of the States or Outlying Areas relative population of individuals aged 5 through 24. (2) 40% on the basis of the States relative number of children counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (ESEA). Data collected through this information collection will inform Department monitoring and oversight, and public reporting.

This information collection requests approval for an extension to a previously approved collection that includes annual reporting requirements to comply with the requirements of the GEER/ESF—Governor program and to obtain information on how the funds were used.

The information will be reviewed by U.S. Department of Education (Department) employees to ensure that GEER/ESF—Governor funds are used in accordance with applicable requirements under the CARES Act and CRRSA Act and will be shared with the public to promote transparency regarding the allocation and uses of funds. Furthermore, the information collected will be analyzed to provide aggregate statistics on SEA and LEA use of Education Stabilization Fund (ESF) funds to address the impacts of the COVID-19 virus on students and schools. The collection was used for a similar purpose in the first three years of its administration, with reporting made public in 2021, 2022, and 2024.

Dated: July 18, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024-16187 Filed 7-23-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0094]

Agency Information Collection Activities; Comment Request; Education Stabilization Fund—Emergency Assistance for Non-Public Schools (EANS) Program Recipient Annual Reporting Data Collection Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 23, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0094. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Britt Jung, (202) 453–6046.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be

processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Stabilization Fund—Emergency Assistance for Non-Public Schools (EANS) Program Recipient Annual Reporting Data Collection Form.

OMB Control Number: 1810–0765.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 208.

Abstract: Under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Public Law 116–260 (December 27, 2020), Congress first authorized the Emergency Assistance to Non-Public Schools (EANS) program to provide emergency services or assistance to non-public schools in the wake of the Coronavirus Disease 2019 (COVID–19). The American Rescue Plan Act of 2021 (ARP Act), Public Law 117–2 (March 11, 2021), authorized a second round of funding (ARP EANS) to provide services or assistance to non-public schools.

This request seeks approval for a revision to the currently approved data collection for the established annual reporting requirements which align with the requirements of the EANS program and obtain information on how the program funds were used. This revision is being requested to make updates to the collection for the upcoming fiscal year and to remove two questions that are no longer relevant. The reported information will be reviewed by U.S. Department of Education (Department) employees to ensure that EANS funds are used in accordance with applicable requirements under the CRRSA Act and ARP Act and will be shared with the public to promote transparency regarding the allocation and use of funds.

Dated: July 18, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–16184 Filed 7–23–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–264–E]

Application for Renewal of Authorization To Export Electric Energy; ENMAX Energy Marketing Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: ENMAX Energy Marketing, Inc. (ENMAX or Applicant) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 23, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to Electricity.Exports@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474–8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On November 27, 2019, DOE issued Order No. EA–264–D to ENMAX to transmit electric energy from the United States to Canada as a power marketer for a period of five years. On May 30, 2024,

ENMAX filed an application (Application or App.) for renewal of its export authority for a five-year term. App. at 1.

According to the Application, ENMAX is an Alberta, Canada corporation having its principal place of business at Calgary, Alberta, Canada and a wholly owned subsidiary of ENMAX Energy Corporation, which is a wholly owned subsidiary of ENMAX Corporation, which is wholly owned by The City of Calgary. *Id.* at 1–2. ENMAX represents that it is a power marketer and engages in the purchase and sale of energy and capacity in wholesale electric markets. *Id.* at 3. ENMAX also represents that it has received authority from the Federal Energy Regulatory Commission (FERC) to sell power in the U.S. at market-based rates. *Id.* at 1.

The Applicant states that although it does not own transmission border facilities, it purchases transmission service from locations in the United States to the border with Canada. *Id.* at 5. Furthermore, ENMAX represents that its parent company ENMAX Corporation, through ENMAX Power Corporation, owns electrical transmission and distribution assets in the Calgary, Alberta, Canada region and indirectly owns Versant Power, a public utility that owns electrical transmission and distribution lines in Maine. *Id.* at 2.

ENMAX represents that its export of electricity will not impair the sufficiency of the United States electric supply because the power exported will only be on transmission lines with available capacity. App. at 5. Additionally, the Applicant states that it will comply with all applicable reliability and technical standards set forth in the relevant licenses and that its proposed exports would not adversely affect transmission facilities or impede the coordinated use of transmission facilities. *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at Electricity.Exports@hq.doe.gov. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at Electricity.Exports@hq.doe.gov in

accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning ENMAX's Application should be clearly marked with GDO Docket No. EA–264–E. Additional copies are to be provided directly to Wesley Manfro, ENMAX Corporation, 141—50 Avenue SE Calgary, AB T2G 4S7, wmanfro@enmax.com.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing Electricity.Exports@hq.doe.gov.

Signing Authority: This document of the Department of Energy was signed on July 18, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 19, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–16270 Filed 7–23–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–249–E]

Application for Renewal of Authorization To Export Electric Energy; Constellation Generation Company LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Constellation Generation Company LLC (the Applicant) has

applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 23, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to .

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474–8226, Electricity.Exports@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2023 and Redelegation Order No. S3–DEL–GD1–2023.

On February 10, 2022, DOE issued order No. EA–249–D to Constellation Generation Company LLC to transmit electric energy from the United States to Canada. On June 6, 2024, Constellation Generation Company LLC filed a renewal Application (Application or App.) for an additional five-year term. App. at 1.

According to the Application, Constellation Generation Company LLC is a “Pennsylvania limited liability company with its principal executive offices in Baltimore, Maryland.” *Id.* at 2. Constellation Generation Company LLC states it is a competitive power generator “with approximately 32,000 megawatts of owned capacity located in a number of organized markets.” *Id.* The Applicant further states that it “does not own or operate any transmission or distribution facilities and does not have a franchised service area.” *Id.* Constellation Generation Company LLC is “authorized by the Federal Energy Regulatory Commission (“FERC”) to sell energy, capacity, an ancillary service at market-based rates in the United States.” *Id.*

The Applicant states that it has and will continue to export on either firm or interruptible basis and “will not impair the sufficiency of the electric power supply within the United States . . . [or] will not impede or tend to impede the regional coordination of electric utility planning or operations.” *Id.* at 3. Constellation Generation Company LLC states it “has and will continue to make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to affect any power exports.” *Id.* The Applicant further states it “has and will continue to comply with the terms and conditions contained in the authorizations issued for these cross-border facilities as well as any other export limitations that DOE may deem appropriate, consistent with DOE’s orders authorizing exports of electric energy by power marketers.” *Id.* at 4.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@hq.doe.gov*. Protests should be filed in accordance with Rule 211 of FERC’s Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning Constellation Generation Company LLC’s Application should be clearly marked with GDO Docket No. EA–249–E. Additional copies are to be provided directly to Todd Brecher, Constellation Generation Company, LLC, 1310 Point Street, 8th Floor, Baltimore, MD 21231, 410–470–2593, *todd.brecher@constellation.com*; and Buffy Pyle-Liberto, Constellation Energy Generation, LLC, 1310 Point Street, 8th Floor, Baltimore, MD 21231, 443–910–0414, *b.pyle-liberto@constellation.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE’s National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on July 18, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 19, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–16269 Filed 7–23–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–515]

Application for Authorization To Export Electric Energy; AMA QSE, LLC

AGENCY: Grid Deployment Office,
Department of Energy.

ACTION: Notice of application.

SUMMARY: AMA QSE, LLC (the Applicant or “AMA”) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before August 23, 2024.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Janessa Zucchetto, (240) 474–8226, *Electricity.Exports@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: The United States Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b)

and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export (16 U.S.C. 824a(e)). On April 10, 2023, the authority to issue such orders was delegated to the DOE’s Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2023 and Redelelegation Order No. S3–DEL–GD1–2023.

On June 4, 2024, AMA QSE, LLC filed an application (Application or App.) with DOE to transmit electric energy from the United States to Mexico for a five-year term. App. at 1–2.

According to the Application, AMA QSE, LLC is “authorized to do business in the State of Texas and such other states as required by the current nature of its business.” App. at 2. AMA states it “does not currently own or control electric generation or transmission facilities and does not have a power supply of its own in the United States[.]” *Id.* at 4. The Applicant represents that it is “authorized by the Federal Energy Regulatory Commission (“FERC”) to make sales of electric power at wholesale in interstate commerce at market-based rates.” *Id.* at 2. Further, AMA QSE, LLC states it “will purchase the energy to be exported from wholesale generators, electrical utilities, and federal power marketing agencies.” *Id.* The Applicant adds that it will purchase the electricity “through negotiated agreements that have been voluntarily executed by the selling parties after considering their own need for any such electricity.” *Id.* at 4–5. The Applicant also notes its transactions will comply with all applicable regulatory requirements, including any export limits imposed by DOE. *See Id.* at 5–6. The Applicant asserts its “exports will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operations.” *Id.* at 3.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App. at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at *Electricity.Exports@*

hq.doe.gov. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previously provided email address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning AMA QSE, LLC's Application should be clearly marked with GDO Docket No. EA-515. Additional copies are to be provided directly to Juan I. Romo, AMA QSE, LLC, 401 Franklin Street, Suite 2400-115, Houston, TX 77002, *jromo@ammper.com*; Frederick G. Jauss IV, Husch Blackwell LLP, 1801 Pennsylvania Avenue NW, Suite 1000, Washington, DC 20006-3606, *fred.jauss@huschblackwell.com*; and Michael Blackwell, Husch Blackwell LLP, 1801 Pennsylvania Avenue NW, Suite 1000, Washington, DC 20006-3606, *michael.blackwell@huschblackwell.com*.

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available, upon request, by accessing the program website at <https://www.energy.gov/gdo/pending-applications-0> or by emailing *Electricity.Exports@hq.doe.gov*.

Signing Authority: This document of the Department of Energy was signed on July 18, 2024, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 19, 2024.

Treena V. Garrett,

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

[FR Doc. 2024-16271 Filed 7-23-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2513-000]

FRP Columbia County Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of FRP Columbia County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 6, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: July 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-16203 Filed 7-23-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2514-000]

FRP Gadsden County Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of FRP Gadsden County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 6, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: July 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-16196 Filed 7-23-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24-2525-000]

RDAF Energy Solutions, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RDAF Energy Solutions, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 6, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: July 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-16199 Filed 7-23-24; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24-127-000.

Applicants: Great Basin Transmission, LLC.

Description: Great Basin Transmission, LLC submits Petition for Declaratory Order.

Filed Date: 7/11/24.

Accession Number: 20240711-5177.

Comment Date: 5 p.m. ET 8/12/24.

Docket Numbers: EL24-128-000.

Applicants: Enerwise Global Technologies, LLC v. PJM Interconnection, L.L.C.

Description: Complaint of Enerwise Global Technologies, LLC v. PJM Interconnection, L.L.C.

Filed Date: 7/16/24.

Accession Number: 20240716-5085.

Comment Date: 5 p.m. ET 8/5/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18-1708-002.

Applicants: Copenhagen Wind Farm, LLC.

Description: Notice of Change in Status of Copenhagen Wind Farm, LLC.

Filed Date: 7/16/24.

Accession Number: 20240716-5130.

Comment Date: 5 p.m. ET 8/6/24.

Docket Numbers: ER22-282-000; ER23-2216-000.

Applicants: El Paso Electric Company, El Paso Electric Company.

Description: Conditional Formal Challenge of Tucson Electric Power Company, et al.

Filed Date: 7/12/24.

Accession Number: 20240712-5215.

Comment Date: 5 p.m. ET 8/2/24.

Docket Numbers: ER24-2531-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5836; AE2-227 re: failure to cure breach to be effective 9/16/2024.

Filed Date: 7/16/24.

Accession Number: 20240716-5132.

Comment Date: 5 p.m. ET 8/6/24.

Docket Numbers: ER24-2532-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5837; AE2-228 re: failure to cure breach to be effective 9/16/2024.

Filed Date: 7/16/24.

Accession Number: 20240716-5135.

Comment Date: 5 p.m. ET 8/6/24.

Docket Numbers: ER24-2533-000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii): AEP submits one Facilities Agreement re: ILDSA, SA No. 4234 to be effective 9/17/2024.

Filed Date: 7/17/24.

Accession Number: 20240717-5059.

Comment Date: 5 p.m. ET 8/7/24.

Docket Numbers: ER24–2534–000.
Applicants: Gravel Pit Solar III, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 9/11/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5078.
Comment Date: 5 p.m. ET 8/7/24.
Docket Numbers: ER24–2535–000.
Applicants: Gravel Pit Solar IV, LLC.
Description: Baseline eTariff Filing: Gravel Pit Solar IV, LLC to be effective 9/11/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5079.
Comment Date: 5 p.m. ET 8/7/24.
Docket Numbers: ER24–2536–000.
Applicants: Avista Corporation.
Description: 205(d) Rate Filing: Avista RS No. T1236, Fairchild AFB Interconnection and Operating Agreement to be effective 7/10/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5081.
Comment Date: 5 p.m. ET 8/7/24.
Docket Numbers: ER24–2537–000.
Applicants: Buckeye Plains Solar Project, LLC, Pickaway County Solar Project, LLC.
Description: 205(d) Rate Filing: Buckeye Plains Solar Project, LLC submits tariff filing per 35.13(a)(2)(iii): Revised Common Facilities Agreement to be effective 9/15/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5096.
Comment Date: 5 p.m. ET 8/7/24.
Docket Numbers: ER24–2538–000.
Applicants: Buckeye Plains II Solar Project, LLC.
Description: Tariff Amendment: Notice of Cancellation—Buckeye Plains II to be effective 9/15/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5097.

Comment Date: 5 p.m. ET 8/7/24.
Docket Numbers: ER24–2539–000.
Applicants: Pickaway County II Solar Project, LLC.
Description: Tariff Amendment: Notice of Cancellation—Pickaway County II to be effective 9/15/2024.
Filed Date: 7/17/24.
Accession Number: 20240717–5099.
Comment Date: 5 p.m. ET 8/7/24.
 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: July 17, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
 [FR Doc. 2024–16204 Filed 7–23–24; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

TIME AND DATE: July 25, 2024, 10 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Acting Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at <https://elibrary.ferc.gov/eLibrary/search> using the eLibrary link.

1116TH—MEETING

[Open Meeting; July 25, 2024; 10:00 a.m.]

Item No.	Docket No.	Company
Administrative		
A–1	AD24–1–000	Agency Administrative Matters.
A–2	AD24–2–000	Customer Matters, Reliability, Security and Market Operations.
Electric		
E–1	ER24–95–000	New York Independent System Operator, Inc.
E–2	ER24–138–000	ISO New England Inc.
E–3	ER24–155–000	California Independent System Operator Corporation.
E–4	ER24–156–000	PJM Interconnection, L.L.C.
E–5	ER24–165–000	Midcontinent Independent System Operator, Inc.
E–6	ER24–289–000	Southwest Power Pool, Inc.
E–7	ER24–1606–000	Sol Systems, LLC.
E–8	ER24–1775–000	Southwest Power Pool, Inc.
E–9	EL24–86–000	New York Power Authority.
E–10	EL24–107–000	Pacific Gas and Electric Company.
E–11	OMITTED.	
E–12	OMITTED.	

1116TH—MEETING—Continued
[Open Meeting; July 25, 2024; 10:00 a.m.]

Item No.	Docket No.	Company
E-13	ER13-760-002	Canastota Windpower, LLC.
	ER19-2644-002	Whitney Hill Wind Power, LLC.
	ER19-430-002	Enel Green Power Hilltopper Wind, LLC.
	ER22-2483-001	Alta Farms Wind Project II, LLC.
E-14	ER10-2527-011	Allegheny Ridge Wind Farm, LLC.
	ER23-842-002	Big Plain Solar, LLC.
	ER10-2532-019	Crescent Ridge LLC.
	ER23-1497-001	GSG Wind, LLC.
	ER20-1610-004	Lone Tree Wind, LLC.
	ER23-1595-001	LRE Energy Services, LLC.
	ER10-2535-013	Mendota Hills, LLC.
	ER23-843-002	Oak Trail Solar, LLC.
E-15	ER16-355-004	Colonial Eagle Solar, LLC.
	ER16-141-006	Conetoe II Solar, LLC.
	ER15-255-005	Duke Energy Beckjord Storage, LLC.
	ER10-2032-010	Duke Energy Kentucky, Inc.
	ER10-2033-009	Duke Energy Ohio, Inc.
	ER15-190-021	Duke Energy Renewable Services, LLC.
	ER12-2313-007	Laurel Hill Wind Energy, LLC.
	ER10-1330-009	North Allegheny Wind, LLC.
	ER18-2466-002	Federal Way Powerhouse LLC.
	ER18-2465-002	Potter Road Powerhouse LLC.
	ER19-2343-003	2018 ESA Project Company, LLC.
	ER17-2336-007	Shoreham Solar Commons LLC.
	ER18-1343-015	Carolina Solar Power, LLC.
E-16	ER14-225-008; ER14-225-009; EL23-95-000.	New Brunswick Energy Marketing Corporation.
E-17	EL22-80-000	<i>American Municipal Power, Inc., Office of the People's Counsel for the District of Columbia, and the PJM Industrial Customer Coalition v. PJM Interconnection, L.L.C.</i>
	EL22-85-000	PJM Interconnection, L.L.C.
E-18	ER22-962-005	PJM Interconnection, L.L.C.
Gas		
G-1	IS20-108-001; IS21-133-000	TransCanada Keystone Pipeline, LP.
	OR21-1-000 (consolidated)	<i>Husky US Marketing LLC and Phillips 66 Company v. TransCanada Keystone Pipeline, LP.</i>
Hydro		
H-1	P-15248-000	RAMM Power Group, LLC.
	P-14869-000	
H-2	P-15327-000	New England Hydropower Company, LLC.
H-3	P-15302-001	LinkPast Solutions, Inc.
H-4	P-2701-066	Erie Boulevard Hydropower, L.P.
H-5	P-1881-110	BIF III Holtwood, LLC.
H-6	CD24-2-001	River Roar Energy LLC.
H-7	P-5261-024	Green Mountain Power Corporation.
H-8	P-9709-073	ECOsponsible, LLC.
H-9	DI22-5-001	Antelope Valley Water Storage LLC.
Certificates		
C-1	CP23-523-000	ANR Pipeline Company.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502-8680 or email customer@ferc.gov if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: July 18, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
[FR Doc. 2024-16296 Filed 7-22-24; 11:15 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER24–2512–000]

FRP Gilchrist County Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of FRP Gilchrist County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 6, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available

information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–16195 Filed 7–23–24; 8:45 am]

BILLING CODE 6717–01–P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–86–000.

Applicants: Ameren Illinois Company.

Description: 284.123(g) Rate Filing: Five-Year Review and Amended Statement of Operating Conditions to be effective 9/1/2024.

Filed Date: 7/16/24.

Accession Number: 20240716–5121.

Comment Date: 5 p.m. ET 8/6/24.

284.123(g) Protest: 5 p.m. ET 9/16/24.

Docket Numbers: RP24–906–000.

Applicants: Covia Holdings Corporation.

Description: Petition for Temporary Retroactive Waiver of Capacity Release Regulations, of Covia Solutions LLC.

Filed Date: 7/16/24.

Accession Number: 20240716–5084.

Comment Date: 5 p.m. ET 7/29/24.

Docket Numbers: RP24–907–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing: Rate Schedule S–2 OFO Refund Report July 2024 to be effective N/A.

Filed Date: 7/17/24.

Accession Number: 20240717–5020.

Comment Date: 5 p.m. ET 7/29/24.

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.

The filings are accessible in the Commission's eLibrary system ([https://](https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)

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.

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Dated: July 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–16201 Filed 7–23–24; 8:45 am]

BILLING CODE 6717–01–P**FEDERAL MARITIME COMMISSION****[DOCKET NO. 24–24]****S.P.F. Logistics, Inc., Complainant v. Hapag Lloyd AG, Respondent; Notice of Filing of Complaint and Assignment**

Served: July 19, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the "Commission") by S.P.F. Logistics, Inc. (the "Complainant") against Hapag Lloyd AG (the "Respondent"). Complainant states that the Commission has subject matter jurisdiction over the complaint pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.* and personal jurisdiction over the Respondent as an ocean common carrier as defined in 46 U.S.C. 40102.

Complainant is a California corporation that operates as a licensed motor carrier.

Complainant identifies Respondent as a corporation organized under the laws of Germany with its headquarters located in Hamburg, Germany, that does business in the United States through Hapag Lloyd (America) LLC, a Delaware limited liability company with its principal place of business in Piscataway, New Jersey.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), as

interpreted by 46 CFR 545.5. Complainant alleges this violation arose from the assessment of detention charges during periods when empty containers could not be returned due to reasons such as dual transaction requirements and appointment unavailability.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/24-24/>. This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by July 21, 2025, and the final decision of the Commission shall be issued by February 4, 2026.

David Eng,
Secretary.

[FR Doc. 2024-16260 Filed 7-23-24; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not

include any information such as confidential information that would not be appropriate for public disclosure.

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 August 8, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *John Adam Robertson; Aaron Andrew Robertson; the Edwin G. Robertson Children's Irrevocable Trust, John Adam Robertson, Trustee; and the Craig E. Robertson Children's Irrevocable Trust, Aaron Andrew Robertson, Trustee, all of Speedwell, Tennessee; Emily Alayne King, Powell, Tennessee; Erica Leigh Corum, Harrogate, Tennessee; Matthew Craig Robertson, Tazewell, Tennessee; and Dakota John Robertson Bristol, Tennessee; as a group acting in concert, to retain voting shares of Robertson Holding Company, L.P., Harrogate, Tennessee. Robertson Holding Company, L.P., controls Commercial Bancgroup, Inc., which controls Commercial Bank, both of Harrogate, Tennessee.*

In addition, *Aaron Andrew Robertson; Cynthia Diane Robertson; James Oscar Robertson; John Adam Robertson, all of Speedwell, Tennessee; Sherri Jo Robertson and Noah Bradley Robertson, both of Harrogate, Tennessee; Dakota John Robertson, Bristol, Tennessee; Judith Yvonne Robertson, Cumberland Gap, Tennessee; Matthew Craig Robertson and Matthew Craig Robertson II, both of Tazewell, Tennessee; Olivia Grace Robertson, Hanahan, South Carolina; Emily Alayne King; Halle McLayne King; John McKinley King; and Riley Parker King, all of Powell, Tennessee; as a group acting in concert with Robertson Holding Company, L.P., to retain voting shares of Commercial Bancgroup, Inc.*

B. Federal Reserve Bank of Richmond (Brent B. Hassell, Assistant Vice President) P.O. Box 27622, Richmond, Virginia 23261. Comments can also be sent electronically to Comments.applications@rich.frb.org:

1. *Barry J. Renbaum, Carol E. Renbaum, both individually and of Reisterstown, Maryland, Bryan M. Renbaum, individually, Frederick, Maryland; to form the Renbaum Family Control Group, a group acting in concert, to acquire voting shares of*

Farmers and Merchants Bancshares, Inc., Hampstead, Maryland, and thereby indirectly acquire voting shares of Farmers and Merchants Bank, Upperco, Maryland.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024-16265 Filed 7-23-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-24-24HP; Docket No. CDC-2024-0056]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Compliance Attestation Statement for the Framework for Nucleic Acid Synthesis Screening. The project aims to assist providers and manufacturers of synthetic nucleic acids and benchtop nucleic acid synthesis equipment (providers) in making an attestation that they have instituted a process to screen nucleic acid sequences of concern and verify customer legitimacy, in accordance with the requirements outlined in the OSTP Framework for Nucleic Acid Synthesis Screening.

DATES: CDC must receive written comments on or before September 23, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2024-0056 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600

Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To

comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Compliance Attestation Statement for the Framework for Nucleic Acid Synthesis Screening—New—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This data collection form was developed pursuant to the Framework

for Nucleic Acid Synthesis Screening, which was released by the Office of Science and Technology Policy (OSTP) in April of 2024. This framework was directed by the *Executive Order on the Safe, Secure, and Trustworthy Development of Artificial Intelligence*, and recommends that providers and manufacturers of synthetic nucleic acids screen their sequences and customers before fulfilling orders to prevent potential misuse.

The Attestation Form will collect basic organizational information and an attestation of compliance from providers and manufacturers of synthetic nucleic acids and benchtop nucleic acid synthesis equipment. Data collected includes organization name, location, website, and type of organization. The form also includes primary and secondary contact information such as name, location, phone number and email address to ensure there is a point of contact with the company in case of questions regarding compliance and record keeping. This data is needed to ensure the self-attestation form can be filed and logged correctly, and to ensure the government can reach out to the correct contact if clarification is necessary.

CDC requests OMB approval for an estimated 20 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Providers and manufacturers of synthetic nucleic acids and benchtop nucleic acid synthesis equipment.	Annual Provider and Manufacturer Self-Attestation Statement.	60	1	20/60	20
Total .....	.....	.....	.....	.....	20

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2024–16233 Filed 7–23–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10434 #66]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the “generic” clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are “usually voluntary, low-burden, and uncontroversial collections,” do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an

overarching plan that defines the scope of the individual collections that would fall under its umbrella. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 7, 2024.

ADDRESSES: When commenting, please reference the applicable form number (CMS-10434 #66) and the OMB control number (0938-1188). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS-10434 #66/OMB control number: 0938-1188, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRAListing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Because of system limitations, we are submitting this generic collection of information request on an interim basis under CMS-10434 (OMB 0938-1188). At the appropriate time we will move this request under its proper place (CMS-10398, OMB 0938-1148) and subsequently remove it from CMS-

10434 to prevent duplication. The public can monitor the status of such activities at reginfo.gov.

Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid and Children's Health Insurance Program Eligibility Processing Data Report; *Type of Information Collection Request:* Revision of a previously approved collection of information request; *Use:* The COVID-19 outbreak and implementation of Federal policies to address the public health emergency (PHE) disrupted routine Medicaid, Children's Health Insurance Program (CHIP), and Basic Health Program (BHP) eligibility and enrollment operations. Medicaid and CHIP enrollment grew to historic levels due in large part to the Medicaid continuous enrollment condition that States implemented as a condition of receiving a temporary Federal medical assistance percentage (FMAP) increase under section 6008 of the Families First Coronavirus Response Act (Pub. L. 116-127).

States have an obligation to conduct redeterminations of eligibility for all individuals enrolled in Medicaid and CHIP in compliance with all existing Federal requirements at 42 CFR 435.916 and 457.343. In March 2023, CMS identified that 35 States were non-compliant with at least one Medicaid/CHIP renewal requirement. To be eligible for temporary increased funding under the Consolidated Appropriations Act (CAA, 2023), these States were required to implement mitigation strategies or take other steps before they were able to begin unwinding. During unwinding, several States were also required to adopt mitigations when CMS identified other issues (e.g., 29 States with the household auto-renewal issue). As of June 2024, most States have at least one outstanding area of non-compliance with Federal renewal requirements.

It is critical that States ensure their compliance with all Federal renewal requirements to help individuals eligible for Medicaid or CHIP successfully renew their coverage. To confirm compliance with these regulations, CMS is providing a template for States to indicate their current compliance status with renewal regulations, describe policies and processes, and identify planned mitigations for any identified

deficiencies. This template will be completed once by States, with updates provided as States with compliance deficiencies inform CMS of progress and come into compliance with requirements.

Form Number: CMS-10434 #66 (OMB control number: 0938-1188); *Frequency:* Monthly and once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,400; *Total Annual Hours:* 21,056. (For policy questions regarding this collection contact: Bonnie Norton at (301) 492-4176.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-16205 Filed 7-23-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-0990-281]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 23, 2024.

ADDRESSES: Submit your comments to Sherrette.Funn@hhs.gov or by calling (202) 264-0041 and PRA@HHS.GOV.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-0281-60D and project title for reference, to Sherrette A. Funn, email: Sherrette.Funn@hhs.gov, PRA@HHS.GOV or call (202) 264-0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Prevention Communication Formative Research.

Type of Collection: Revision.

OMB No.: 0990–0281.

Abstract: The Office of Disease Prevention and Health Promotion (ODPHP) is focused on developing and disseminating health information to the public. ODPHP faces an increasingly urgent interest in finding effective ways to communicate health information to America's diverse population. ODPHP strives to be responsive to the needs of America's diverse audiences while

simultaneously serving all Americans across a range of channels, from print to new communication technologies. To carry out prevention information efforts, ODPHP is committed to conducting formative and usability research to provide guidance on the development and implementation of their communication and education efforts. The information collected will be used to improve communication, products, and services that support key office initiatives including: Dietary Guidelines for Americans, Food is Medicine, Healthy People, Health Literacy, Healthy Aging, Physical Activity Guidelines for Americans, the Move Your Way Campaign and the President's

Council on Sports, Fitness & Nutrition. ODPHP communicates through its website (www.health.gov) and through other channels including social media, print materials, interactive training modules, and reports. Data collection will be qualitative and quantitative and may include in-depth interviews, focus groups, web-based surveys, omnibus surveys, card sorting, and several forms of usability testing of materials and interactive tools to assess the public's understanding of disease prevention and health promotion content, responses to prototype materials, and barriers to effective use.

The program is requesting a 3-year extension of the clearance.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
In-depth interviews—Screener	500	1	10/60	83
In-depth interviews—Instrument	167	1	1.00	167
Focus groups—Screener	975	1	10/60	162.5
Focus groups—Instrument	325	1	1.50	487.5
Intercept interviews	1,750	1	5/60	146
Cognitive testing of instruments—Screener	50	1	10/60	8
Cognitive testing of instruments—Cognitive test	17	1	2.00	34
Web-based surveys—Screener	10,000	1	5/60	833
Web-based surveys—Survey	3,333	1	15/60	833
Omnibus surveys	700	1	10/60	117
Gatekeeper reviews	109	1	30/60	54
Card sorting—Screener	200	1	10/60	33
Card sorting—Card sort	67	1	1.00	67
Usability and prototype testing of materials (print and web)—Screener	600	1	10/60	100
Usability and prototype testing of materials (print and web)—usability tests	208	1	1.00	208
Total .....	.....	.....	.....	3,333

OMB No.

Sherrette A. Funn,

*Paperwork Reduction Act Reports Clearance
Officer, Office of the Secretary.*

[FR Doc. 2024–16210 Filed 7–23–24; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Declaration of Emergency Pursuant to the Federal Food, Drug and Cosmetic Act

AGENCY: Office of the Secretary,
Department of Health and Human
Services.

ACTION: Notice of amendment.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to the Federal Food, Drug, and Cosmetic (FD&C) Act. On July

18, 2024, the Secretary amended the April 19, 2013, determination made pursuant to the FD&C Act, regarding the avian influenza A (H7N9) virus, and determined pursuant to his authority under the Act that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves biological agents, namely pandemic influenza A viruses and influenza A viruses with pandemic potential.

DATES: The section 564(b)(1)(C) determination that was originally issued on April 19, 2013, is amended as of July 18, 2024.

FOR FURTHER INFORMATION CONTACT:
Dawn O'Connell, Administrator and
Assistant Secretary for Preparedness
and Response, Administration for
Strategic Preparedness and Response,
Department of Health and Human
Services, 200 Independence Avenue

SW, Washington, DC 20201, Telephone
(202) 205–2882 (this is not a toll-free
number).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 564 and 564A of the Federal Food, Drug, and Cosmetic Act (FD&C Act), the U.S. Department of Health and Human Services (HHS) has the ability to take certain steps to help facilitate the availability of medical countermeasures after one of four determinations under section 564(b) is made: (1) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a chemical, biological, radiological, or nuclear (“CBRN”) agent or agents; (2) the identification of a material threat by the Secretary of the Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act sufficient to affect national

security or the health and security of United States citizens living abroad; (3) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces, including personnel operating under the authority of title 10 or title 50, of attack with (i) a CBRN agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to United States military forces; or (4) a determination by the Secretary [of HHS] that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a CBRN agent or agents, or a disease or condition that may be attributable to such agent or agents.

After any of these four determinations is made, if other applicable statutory criteria are met, HHS may take actions under section 564A of the FD&C Act to help facilitate the availability of certain medical countermeasures. For example, under section 564A(e), the Director of the Centers for Disease Control and Prevention (CDC) may create and issue Emergency Use Instructions to inform health care providers or individuals about the approved, licensed, or cleared conditions of use of “eligible” medical countermeasures (*i.e.*, “eligible products” as defined in section 564A(a)(1) of the FD&C Act). As another example, under section 564A(b), the U.S. Food and Drug Administration (FDA) may extend the expiration date of eligible medical countermeasures. Based on any of these four determinations, the Secretary of HHS may also declare that circumstances exist that justify an Emergency Use Authorization (EUA), at which point the FDA may issue an EUA authorizing (1) the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product; or (2) an unapproved use of an approved drug, approved or cleared device, or licensed biological product, if the criteria for issuance of an authorization under section 564 of the FD&C Act are met.

The Administration for Strategic Preparedness and Response (ASPR) requested that the Secretary amend the April 19, 2013, determination made pursuant to section 564 of the FD&C Act, regarding the avian influenza A (H7N9) virus, to apply generally to pandemic influenza A viruses and influenza A viruses with pandemic potential. As described below,

broadening the April 19, 2013, determination to apply to pandemic influenza A viruses and influenza A viruses with pandemic potential—rather than just H7N9 specifically—would appropriately cover the range of known and emerging influenza A viruses that present a significant potential for a public health emergency.

II. Determination by the Secretary of Health and Human Services

On April 19, 2013, pursuant to section 564(b)(1)(C) of the FD&C Act, former Secretary Sebelius determined that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves the avian influenza A (H7N9) virus. I have determined that the 2013 determination should be amended to cover a broader range of influenza A viruses, namely pandemic influenza A viruses and influenza A viruses with pandemic potential. For purposes of the amended determination, “pandemic influenza A viruses and viruses with pandemic potential” means animal viruses and/or human influenza A viruses circulating in wild birds, domestic animals and/or humans that cause or have significant potential to cause sporadic or ongoing human infections, or historically have caused pandemics in humans, or have mutated to cause pandemics in humans, and for which the majority of the population is immunologically naive. Pandemic influenza A viruses and influenza A viruses with pandemic potential present a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad because influenza A viruses that may initially be only occasionally transmitted to or between humans have the potential to become highly transmissible in humans and can cause significant morbidity and mortality. For example, the A/H1N1 influenza pandemic in 2009 was caused by a reassortant H1N1 that emerged from a combination of genes that had been present in various strains of swine, avian, and human influenza.

H7N9 is another example of an influenza A virus that presents a significant potential for a public health emergency and would be considered an influenza A virus with pandemic potential. H7N9 has demonstrated the ability to transmit from poultry to humans, causing two separate human case clusters involving over 400 people and resulting in over 100 fatalities from 2013 to 2014. While sustained human-

to-human transmission was not seen, familial clusters could not be ruled out. Moreover, some patients treated for illness had treatment-emergent resistance, another concern for pandemic potential.

H5N1 is a third example. From 1997 through April 2024, over 50 percent of human cases of influenza A(H5N1) have been fatal. Although H5N1 is not easily transmissible in humans, it has demonstrated the ability to transmit from poultry to humans, and now likely from cattle to humans. On March 25, 2024, U.S. Department of Agriculture reported that milk samples collected from affected cows on two dairy farms in Kansas and one in Texas, as well as an oropharyngeal swab from another dairy in Texas, tested positive for highly pathogenic avian influenza (HPAI), later confirmed to be Type A H5N1. This is the first time that these bird flu viruses were found in cattle. Since the beginning of April 2024, CDC has reported eight HPAI A(H5N1) human cases associated with the dairy cattle outbreak: one in Texas, two in Michigan, and five confirmed in Colorado. All individuals had occupational exposure to infected animals (either cattle or poultry), and none of the cases has involved severe disease. The current risk to human health posed by HPAI A (H5N1) virus is low. But the cases stemming from dairy cattle represent the first instances of likely mammal-to-human transmission of HPAI A(H5N1). Additionally, we cannot be sure that the cases known to be associated with the dairy cattle outbreak represent the full spectrum of disease from this currently circulating HPAI A (H5N1) strain, nor can we be assured that the virus will not mutate to cause more severe disease and/or to become more transmissible (*e.g.*, acquire a mutation conferring facile mammal-to-mammal transmission).

Broadening the April 19, 2013, determination to apply to pandemic influenza A viruses and influenza A viruses with pandemic potential—rather than just H7N9 specifically—would appropriately cover the range of known and emerging influenza A viruses that present a significant potential for a public health emergency.

Therefore, I have now amended the April 19, 2013, determination to recognize that there is a significant potential for a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad and that involves biological agents, namely pandemic influenza A viruses and influenza A viruses with pandemic potential.

III. Declaration of the Secretary of Health and Human Services

On April 19, 2013, pursuant to section 564(b)(1) of the FD&C Act and subject to the terms of any authorization issued under that section, former Secretary Sebelius declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of avian influenza A (H7N9) virus. That declaration remains in effect until that declaration is terminated in accordance with section 564 of the FD&C Act.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–16247 Filed 7–23–24; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0037]

Agency Information Collection Activities; Extension; Entry of Articles for Exhibition

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than September 23, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0037 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border

Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry of Articles for Exhibition.
OMB Number: 1651–0037.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Goods entered for the purpose of exhibit at fairs, or for use in constructing, installing, or maintaining foreign exhibits at a fair may be free of duty under 19 U.S.C. 1752. In order to substantiate that goods qualify for duty-free treatment, the consignee of the

merchandise must provide information to CBP about the imported goods, which is specified in 19 CFR 147.11(c).

Without the required information CBP will not be able to determine if the goods qualify for duty free treatment. A trade fair entry allows for duty-free entry of imported articles intended for exhibitions or for articles that will be used in the construction, installation or maintenance of foreign exhibits at trade fairs. These importations do not require the payment of any taxes or fees except for the Harbor Maintenance Fee (HMF). Trade Fair entries are not exempt from Harbor Maintenance Fee (HMF) pursuant to 19 CFR 24.24(c). “The collection of information is made upon arrival at the port of the fair on a special form of entry, 19 CFR 147.11(c).”

Type of Information Collection:

Articles for Exhibition.

Estimated Number of Respondents:

50.

Estimated Number of Annual Responses per Respondent: 50.

Estimated Number of Total Annual Responses: 2,500.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 833.

Dated: July 19, 2024.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–16242 Filed 7–23–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0058]

Agency Information Collection Activities; Extension; Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than

September 23, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0058 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Current Actions: CBP proposes to extend the expiration date of this information collection without a change to the burden hours or information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: In accordance with 19 CFR 122.27(c), a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) a pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration. CBP officers use the information on these documents as part of the inspection process for private aircraft arriving from a foreign country. This presentation of information is authorized by 19 U.S.C. 1433, as amended by Public Law 99–570.

Type of Information Collection: Documents abroad a private aircraft.

Estimated Number of Respondents: 120,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 120,000.

Estimated Time per Response: .0166.

Estimated Total Annual Burden Hours: 1,992.

Dated: July 19, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–16241 Filed 7–23–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2024–0029]

Establishment of Independent Panel To Review Actions Relating to the Attempted Assassination of Former President Donald J. Trump

AGENCY: Office of the Secretary, Department of Homeland Security (DHS).

ACTION: Committee management; notice of committee establishment.

SUMMARY: In order to facilitate an effective review of the security provided by the U.S. Secret Service to Former President Donald J. Trump on July 13, 2024, the Department of Homeland Security (Department or DHS) is creating an Independent Review Panel

(Panel). Pursuant to the Homeland Security Act of 2002, the Department is taking immediate measures to establish this independent panel of experts to inquire into the planning for and actions taken by the U.S. Secret Service and state and local authorities, before, during, and after the July 13, 2024, attempted assassination of Former President Donald J. Trump at a campaign rally in Butler, Pennsylvania. The Panel will also review the governing policies and procedures and provide findings and recommendations to the Secretary of Homeland Security.

FOR FURTHER INFORMATION CONTACT:

Michael J. Miron, Committee Management Officer, Office of Partnership and Engagement, U.S. Department of Homeland Security at *reviewpanel@hq.dhs.gov* or (202) 343–1673.

SUPPLEMENTARY INFORMATION:

I. Background

At the direction of the President, the Secretary of Homeland Security is establishing an independent review of the tragic events of July 13, 2024, when a now-deceased assailant attempted to assassinate former President Donald J. Trump at a campaign rally in Butler, Pennsylvania, injuring the former President, killing one person attending the rally, and injuring two others, as reported. The Panel will review the planning for and actions taken by U.S. Secret Service and state and local authorities before, during, and after the July 13, 2024 campaign rally, and the governing policies and procedures. The Panel will provide findings and recommendations to the Secretary of Homeland Security. This time-sensitive and important review will entail discussion of classified information.

The Department has recognized in the past that some highly critical issues cannot be discussed in public without jeopardizing the security and confidentiality of sensitive homeland security information. For example, in 2014, the Department established the United States Secret Service Protective Mission Panel (USSSPMP) to review security processes, procedures, and actions taken after a civilian scaled a fence and entered the White House compound on September 19, 2014. See 79 FR 63141 (Oct. 22, 2014). Discussions between the members of the 2014 Panel involved intelligence and law enforcement sensitive information and remain non-public to avoid disclosing protective mission sensitive information to criminals and our nation's enemies, including sensitive law enforcement techniques and

methods, and the management of these protective and law enforcement missions of the U.S. Secret Service. Similarly, many of the issues to be reviewed by the Independent Review Panel will require access to, and discussion of, non-public classified information and other non-public law enforcement sensitive information. These matters include protective measures taken by U.S. Secret service, state and local authorities, before, on, or after July 13, 2024.

II. Identifying Solutions

The Department recognizes the importance of the Federal Advisory Committee Act (FACA), 5 U.S.C. Ch. 10. The FACA, when it applies, generally requires advisory committees to meet in open session and make publicly available associated written materials. It also requires a 15-day notice before any meeting may be closed to public attendance. These requirements, however, would prevent the Department from convening on short notice a panel to discuss the sensitive and classified information surrounding the events of July 13, 2024, in an appropriate setting. The FACA contains several exceptions to its general disclosure rules, but the use of those exceptions is not sufficient to address the proper handling of classified material and the protection of law enforcement sensitive information in this unique context. The information that will be discussed and reviewed by this Panel will be deliberative in nature and will involve classified information that, if discussed in public, would result in the unauthorized disclosure of information that could reasonably be expected to result in threats or damage to national security. Furthermore, the information discussed will involve techniques and procedures for law enforcement investigations. The release of this information would enable criminals and enemies to use that information to circumvent the law and could reasonably be expected to endanger the life or physical safety of individuals.

Section 871 of the Homeland Security Act (HSA) provides the Secretary of Homeland Security with the authority to establish advisory committees and exempt them from the FACA. 6 U.S.C. 451(a). This authority allows the Department a forum to freely and completely review the security procedures, to discuss potential vulnerabilities, and to provide the Department with information and recommendations that otherwise could not be discussed.

III. Exercise of Section 871 Authority To Establish the Independent Review Panel

The Department respects the principles of open government and has judiciously exercised the authority Congress provided in Section 871 of the HSA. Given that the use of this authority will allow the Department a forum to fully and completely review the issues and make recommendations surrounding the U.S. Secret Service as described above, the Department is invoking that authority.

Collaboration among the panel members must involve many activities to include planning, coordination, protective security implementation, operational activities related to protective service security measures, vulnerabilities, protective measures, best practices, and lessons learned. An effective panel must be able to have ongoing, immediate, and multidirectional communication and coordination under highly exigent circumstances.

In furtherance of the DHS mission to provide protective services, the public interest requires the establishment of the Panel under the authority of 6 U.S.C. 451. The Panel will review the planning for and actions taken by the U.S. Secret Service and state and local authorities before, during, and after the July 13, 2024 campaign rally, and the governing policies and procedures. The Panel will interact with federal officials and representatives from the security and law enforcement communities. The Panel has no authority to establish Federal policy or otherwise undertake inherently governmental functions.

Exemption from the FACA (Pub. L. 92-463): In recognition of the highly sensitive, and often confidential or classified nature of the subject matter involved in the activities of the Panel, under the authority of section 871 of the Homeland Security Act of 2002 (6 U.S.C. 451), the panel is hereby deemed exempt from the requirements of Public Law 92-463 (5 U.S.C. Ch. 10). The decision to exercise the exemption authority in section 871 will support the free flow of classified and law enforcement sensitive information concerning U.S. Secret Service protective measures and its operations as a law enforcement organization.

The Department, to the fullest extent possible without compromising the protective security or law enforcement missions, will make the factual findings and recommendations of the Panel available to the public.

IV. Membership and Structure

The specific membership of the Panel will consist of individuals with expertise in (a) law enforcement, (b) protective security, (c) homeland security, and (d) other experts as the investigation dictates. The Panel members will be designated by the Secretary. The Panel is tasked with making factual findings and recommendations. The Panel may identify and provide to the Secretary interim recommendations requiring immediate implementation prior to completing the full inquiry. This Notice is not a solicitation for membership.

Membership Status: Non-Federal members of the Panel serve as special government employees.

Meetings: The Panel may meet as a whole or in any combination of subgroups that is most conducive to the effective conduct of its activities including, without limitation, in groups encompassing discrete topics to address specific issues and concerns (e.g., a meeting of the members to discuss security specific issues, or a meeting of leaders of complex organizations). As independent bodies, meetings consisting solely of members of these subgroups shall not constitute meetings of the Panel. In addition, the Panel may establish informal working groups for the purpose of factfinding, issue development, or other preliminary non-deliberative activities. Such activities in support of the Panel shall also be within the scope of the exemption noted above.

Duration of Panel: Six months, subject to extension pursuant to section 871(b) of the Homeland Security Act of 2002 (6 U.S.C. 451(b)).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2024-16290 Filed 7-22-24; 8:45 am]

BILLING CODE 9112-FF-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0014]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Declaration of Financial Support

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 30 days until August 23, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615-0014 in the body of the letter, the agency name and Docket ID USCIS-2006-0072. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0072.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 16, 2024, at 89 FR 26900, allowing for a 60-day public comment period. USCIS did receive two (2) comments in connection with the 60-day notice. There were no changes made to the new information collection since the publishing of the 60-day notice. USCIS responses to the comments are available in the comment matrix posted in the docket for this information collection.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and

entering USCIS-2006-0072 in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Declaration of Financial Support.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-134; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. DHS and consular officers of the Department of State (DOS) use Form I-134 to determine whether, at the time of the beneficiary's application, petition, or request for certain immigration benefits, that beneficiary

has sufficient financial support to pay for expenses for the duration of their temporary stay in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-134 is 2,500 and the estimated hour burden per response is 1.65 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,125 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$10,625.

Dated: July 18, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024-16232 Filed 7-23-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-R4-ES-2024-N037;
FXES11140400000-245-FF04E00000]**

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by August 23, 2024.

ADDRESSES: *Reviewing Documents:* Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the

applicant's name and application number (e.g., Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- **Email (preferred method):**

permitsR4ES@fws.gov. Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

- **U.S. mail:** U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT:

Karen Marlowe, Permit Coordinator, via telephone at 404-679-7097 or via email at karen_marlowe@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a federal permit is issued that authorizes such take. The definition of "take" in the ESA includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted

for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES117405-5	Tennessee Valley Authority; Knoxville, TN.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), tricolored bat (<i>Perimyotis subflavus</i>), and Virginia big-eared bat (<i>Corynorhinus townsendii virginianus</i>).	Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys.	Swabbing	Renewal and amendment.
ES14105A-3	Melissa Littrell; Lexington, KY.	Tricolored bat (<i>Perimyotis subflavus</i>)	Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia.	Presence/probable absence surveys.	Capture with mist nets or harp traps, handle, identify, band, radio tag, and release.	Renewal and amendment.
ES237549-3	Cory Holliday; Gainesboro, TN.	Tricolored bat (<i>Perimyotis subflavus</i>)	Tennessee	Presence/probable absence surveys.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, collect hair samples, swab, band, radio tag, and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES171545-4	Ronald Redman; Benton, AR.	Tricolored bat (<i>Perimyotis subflavus</i>)	Colorado, Connecticut, District of Columbia, Maine, Massachusetts, Nebraska, New Hampshire, New Mexico, Rhode Island, South Dakota, and Wyoming.	Presence/probable absence surveys and white-nose syndrome research.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio tag, swab, and release.	Renewal and amendment.
ES81492B-2	Biotope Forestry and Environmental, LLC; Sylva, NC.	Tricolored bat (<i>Perimyotis subflavus</i>)	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys, habitat use and assessment research, population monitoring, and studies to evaluate potential impacts of white-nose syndrome or other potential threats.	Capture with mist nets and harp traps, handle, identify, band, radio tag, and release.	Amendment.
ES002507-7	Florida Forest Service, Withlacoochee Forestry Center; Brooksville, FL.	Red-cockaded woodpecker (<i>Picoides borealis</i>).	Florida	Population monitoring.	Capture, band, monitor nest cavities, construct and monitor artificial nest cavities and restrictors, translocate, and release.	Renewal.
ES171518-2	Ouachita National Forest; Hot Springs, AR.	Red-cockaded woodpecker (<i>Picoides borealis</i>) and American burying beetle (<i>Nicrophorus americanus</i>).	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	Population management and monitoring and presence/probable absence surveys.	Red-cockaded woodpecker: capture, handle, band, monitor nest cavities, construct and monitor artificial nest cavities and restrictors, translocate, and release; American burying beetle: live trap and release.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES12392A-4	The Institute for Marine Mammal Studies; Gulfport, MS.	Green sea turtle (<i>Chelonia mydas</i>), Kemp's ridley sea turtle (<i>Lepidochelys kempi</i>), and loggerhead sea turtle (<i>Caretta caretta</i>).	Mississippi	Scientific research.	Attach satellite transmitters to turtles prior to release from rehabilitation facility.	Amendment.
PER9860588-0	Pennsylvania Fish and Boat Commission; Bellefonte, PA.	Clubshell (<i>Pleurobema clava</i>), Northern riffleshell (<i>Epioblasma rangiana</i>), rayed bean (<i>Villosa fabalis</i>), salamander mussel (<i>Simpsonaias ambigua</i>), sheepnose mussel (<i>Plethobasus cyphus</i>), and snuffbox mussel (<i>Epioblasma triquetra</i>).	Pennsylvania	Captive propagation for reintroduction and research.	Collect gravid females, remove glochidia, return females to the wild, retain glochidia in captivity to grow out for reintroduction and research.	New.
PER10116282-0	Christopher Thigpen; Jonesboro, AR.	Northern long-eared bat (<i>Myotis septentrionalis</i>).	Arkansas, Kentucky, Louisiana, Missouri, Oklahoma, and Tennessee.	Presence/probable absence surveys.	Capture with mist nets, handle, identify, band, radio tag, and release.	New.
PER10115889-0	Sharna Tolfree; Columbia, SC.	Red-cockaded woodpecker (<i>Picoides borealis</i>).	Florida, Georgia, North Carolina, South Carolina, and Virginia.	Population management and monitoring and presence/probable absence surveys.	Capture, handle, band, monitor nest cavities, construct and monitor artificial nest cavities, translocate, and release.	New.
PER10145221-0	Bonnie Porter; New Orleans, LA.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), and tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Capture with mist nets, handle, identify, band, radio tag, and release.	New.
PER10145867-0	Mississippi State University; Biloxi, MS.	Northern long-eared bat (<i>Myotis septentrionalis</i>) and tricolored bat (<i>Perimyotis subflavus</i>).	Mississippi	Presence/probable absence surveys and habitat-use monitoring.	Capture with mist nets, handle, and release.	New.
ES56588D-3	Martin Melville; Marietta, GA.	Flattened musk turtle (<i>Sternotherus depressus</i>), Black Warrior waterdog (<i>Necturus alabamensis</i>), frecklebelly madtom (<i>Noturus munitus</i>), sickle darter (<i>Percina williamsi</i>), longsolid (<i>Fusconaia subrotunda</i>), and round hickorynut (<i>Obovaria subrotunda</i>).	Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys.	Capture, handle, identify, and release.	Amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0030365-1	Gregory Myers; Wheeling, WV.	Clubshell (<i>Pleurobema clava</i>), fanshell (<i>Cyprogenia stegaria</i>), fat pocketbook (<i>Potamilus capax</i>), James spinymussel (<i>Parvaspina collina</i>), longsolid (<i>Fusconaia subrotunda</i>), northern riffleshell (<i>Epioblasma rangiana</i>), pink mucket (pearlymussel) (<i>Lampsilis abrupta</i>), purple cat's paw (<i>Epioblasma obliquata</i>), rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>), rayed bean (<i>Villosa fabalis</i>), round hickorynut (<i>Obovaria subrotunda</i>), sheepsnose (<i>Plethobasus cyphus</i>), snuffbox (<i>Epioblasma triquetra</i>), spectaclecase (<i>Cumberlandia monodonta</i>), white catspaw (<i>Epioblasma perobliqua</i>), and white wartyback (<i>Plethobasus cicatricosus</i>).	Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.	Presence/probable absence surveys.	Capture, handle, identify, tag, and release.	Amendment.
PER10878815-0	HGS Engineering, Inc; Anniston, AL.	Red-cockaded woodpecker (<i>Picoides borealis</i>).	Alabama, North Carolina, and South Carolina.	Presence/probable absence surveys and population monitoring.	Examine active cavities with a mirror and droplight or a video probe.	New.
PER10877733-0	Nicholas Sharp; Somerville, AL.	Gray bat (<i>Myotis grisescens</i>), Indiana bat (<i>Myotis sodalis</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), and tricolored bat (<i>Perimyotis subflavus</i>).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, band, radio tag, and release.	New.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES041314-7	U.S. Army, Fort Johnson; Fort Johnson, LA.	Red-cockaded woodpecker (<i>Picoides borealis</i>) and Louisiana pinesnake (<i>Pituophis ruthveni</i>).	Arkansas, Louisiana, Oklahoma, and Texas.	Population management and monitoring and screening for disease.	Red-cockaded woodpecker: capture, band, translocate, monitor nest cavities, construct and monitor artificial nest cavities and restrictors; Louisiana pinesnake: capture, handle, measure, weigh, PIT tag, swab, remove radio transmitters, and collect blood, fecal, and shed skin samples.	Renewal and amendment.
PER11091263-0	Garrett Hopper; Baton Rouge, LA.	Fishes: Blue shiner (<i>Cyprinella caerulea</i>), Cahaba shiner (<i>Notropis cahabae</i>), goldline darter (<i>Percina aurolineata</i>), pallid sturgeon (<i>Scaphirhynchus albus</i>), and Alabama sturgeon (<i>Scaphirhynchus suttkusi</i>); Mussels: Fanshell (<i>Cyprogenia stegaria</i>), dromedary pearlymussel (<i>Dromus dromas</i>), purple bankclimber (<i>Elliptoideus sloatianus</i>), Cumberlandian combshell (<i>Epioblasma brevidens</i>), oyster mussel (<i>Epioblasma capsaeformis</i>), southern combshell (<i>Epioblasma penita</i>), snuffbox (<i>Epioblasma triquetra</i>), shiny pigtoe (<i>Fusconaia cor</i>), finereyed pigtoe (<i>Fusconaia cuneolus</i>), longsolid (<i>Fusconaia subrotunda</i>), finelined pocketbook (<i>Hamiota altilis</i>), orangenacre mucket (<i>Hamiota perovalis</i>), shinyrayed pocketbook (<i>Hamiota subangulata</i>), pink mucket (<i>Lampsilis abrupta</i>), Alabama lampmussel (<i>Lampsilis virescens</i>), Louisiana pearlshell (<i>Margaritifera hembeli</i>), Alabama pearlshell (<i>Margaritifera marrianae</i>), Alabama moccasinshell (<i>Medionidus acutissimus</i>), Coosa moccasinshell (<i>Medionidus parvulus</i>), ring pink (<i>Obovaria retusa</i>), round hickorynut (<i>Obovaria subrotunda</i>), southern clubshell (<i>Pleurobema decisum</i>), southern pigtoe (<i>Pleurobema georgianum</i>), ovate clubshell (<i>Pleurobema perovatum</i>), fuzzy pigtoe (<i>Pleurobema strodeanum</i>), slabside pearlymussel (<i>Pleurobema dolabellodes</i>), fat pocketbook (<i>Potamilus capax</i>), inflated heelsplitter (<i>Potamilus inflatus</i>), triangular kidneyshell (<i>Ptychobranchus greenii</i>), southern kidneyshell (<i>Ptychobranchus jonesi</i>), rabbitsfoot (<i>Quadrula cylindrica cylindrica</i>), and pale lilliput (<i>Toxolasma cylindrelus</i>).	Alabama, Louisiana, Mississippi, and Tennessee.	Presence/probable absence surveys.	Capture, handle, and release.	New.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES810274–15	Peter Droppelman; Louisville, KY.	Mammals: Tricolored bat (<i>Perimyotis subflavus</i>); Mussels: Longsolid (<i>Fusconaia subrotunda</i>), green floater (<i>Lasmigona subviridis</i>), Cumberland moccasinshell (<i>Medionidus conradicus</i>), round hickorynut (<i>Obovaria subrotunda</i>), Tennessee clubshell (<i>Pleurobema oviforme</i>), Tennessee pigtoe (<i>Pleuronaia barnesiana</i>), and salamander mussel (<i>Simpsonaias ambigua</i>).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Tricolored bat: capture with mist nets or harp traps, handle, identify, band, radio tag, and release; Mussels: capture, identify, mark, release, collect relic shells.	Amendment.
PER11108599–0	Julie Weckworth, University of Montana; Missoula, MT.	Tricolored bat (<i>Perimyotis subflavus</i>)	Alabama, Connecticut, Georgia, Massachusetts, Michigan, New Hampshire, Pennsylvania, Tennessee, Texas, and Wisconsin.	Scientific research.	Capture with harp trap, mist net, or handheld hoop net, handle, identify, wing punch, swab, PIT tag, and release.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed above in this notice, we will publish a subsequent notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <https://www.regulations.gov> for the application number listed above in this document. Type in your search exactly as the application number appears above, with spaces and hyphens as necessary. For example, to find information about the potential issuance of Permit No. PER 1234567–0, you would go to <https://www.regulations.gov> and put “PER 1234567–0” in the Search field.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

Cheri Frazell,

*Acting Deputy Assistant Regional Director,
Ecological Services, Southeast Region.*

[FR Doc. 2024–16243 Filed 7–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Deron Kovac, DMD; Decision and Order

On March 24, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Deron Kovac, D.M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant’s Certification of Registration

No. FK7629340 at the registered address of 10493 Frankstown Road, Penn Hills, PA 15235. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the Commonwealth of Pennsylvania, the state in which [he is] registered with DEA." *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ "A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, effective October 18, 2022, the Pennsylvania State Board of Dentistry suspended Registrant's dental license. RFAAX 1, at 1. According to Pennsylvania online records, of which the Agency takes official notice, Registrant's dental license remains suspended.²

¹ Based on the Government's submissions in its RFAA dated October 12, 2023, the Agency finds that service of the OSC on the Registrant was adequate. Specifically, the submitted Declaration from a DEA Diversion Investigator indicates that Registrant was successfully mailed a copy of the OSC at both his last known address and his father's address on March 30, 2023, and April 25, 2023, respectively. RFAAX 2, at 1; *see also id.* at 3–10.

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a

Pennsylvania Licensing System Verification Service, <https://www.pals.pa.gov/#!/page/search> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice dentistry in Pennsylvania, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

According to Pennsylvania statute, "dispense" means "to deliver a controlled substance, other drug or device to an ultimate user or research subject by or pursuant to the lawful

party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare such item for that delivery." 35 Pa. Stat. and Cons. Stat. Ann. section 780–102(b) (West 2024). Further, a "practitioner" means "a physician . . . dentist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania." *Id.*

Here, the undisputed evidence in the record is that Registrant lacks authority to practice dentistry in Pennsylvania. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Pennsylvania. Thus, because Registrant lacks authority to practice dentistry in Pennsylvania and, therefore, is not authorized to handle controlled substances in Pennsylvania, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FK7629340 issued to Deron Kovac, D.M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Deron Kovac, D.M.D., to renew or modify this registration, as well as any other pending application of Deron Kovac, D.M.D., for additional registration in Pennsylvania. This Order is effective August 23, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this

document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–16211 Filed 7–23–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Donna Winingham, MD; Decision and Order

On July 19, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Donna Winingham, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AW1730729 in Templeton, CA 93465. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [she is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of her right to file with DEA a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ “A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

¹ Based on the Government's submissions in its RFAA dated September 26, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Government's included Notice of Service of Order to Show Cause indicates that Registrant was served with the OSC by certified mail on August 9, 2023. RFAAX 1, at 1; *see also id.* at 6.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, effective July 30, 2021, the Medical Board of California revoked Registrant's California medical license. RFAAX 2, at 2. According to California's online records, of which the Agency takes official notice, Registrant's California medical license remains revoked.² California DCA License Search, <https://search.dca.ca.gov/> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in California, the state in which she is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

² Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that “[t]he Attorney

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code section 11010 (West 2024). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.” *Id.* section 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice medicine in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AW1730729 issued to Donna Winingham, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Donna Winingham, M.D., to renew or modify this registration, as well as any other pending application of Donna Winingham, M.D., for additional registration in California. This Order is effective August 23, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 15, 2024, by Administrator Anne

General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

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

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–16212 Filed 7–23–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Carrie L. Madej, DO; Decision and Order

On May 15, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Carrie L. Madej, D.O. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FM6088997 at the registered address of 527 Luther Bailey Road, Senoia, Georgia 30276. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the state of Georgia," the state in which Registrant is registered with DEA. *Id.* at 1–2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of her right to file with DEA a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ "A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

¹ Based on the Government's submissions in its RFAA dated October 12, 2023, the Agency finds that service of the OSC on the Registrant was adequate. Specifically, the submitted Declaration from a DEA Diversion Investigator indicates that Registrant was personally served with the OSC on May 25, 2023. RFAAX 2, at 1.

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on January 4, 2023, Registrant surrendered her Georgia medical license, with the surrender made effective on January 6, 2023. RFAAX 1, at 1. According to Georgia online records, of which the Agency takes official notice, Registrant's Georgia medical license remains "Voluntarily Surrendered."² Georgia Composite Medical Board License Search, <https://gcmb.mylicense.com/verification> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Georgia, the state in which she is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

According to Georgia statute, "dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Ga. Code Ann. section 16–13–21(9) (2023). Further, a "practitioner" means a "physician . . . or other person licensed, registered, or otherwise authorized under the laws of [Georgia] to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in [Georgia]." *Id.* section 16–13–21(23)(A).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Georgia. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Georgia. Thus, because Registrant lacks authority to practice medicine in Georgia and, therefore, is not authorized to handle controlled substances in Georgia, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(g)(1) (this section, formerly sec. 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FM6088997 issued to Carrie Madej, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Carrie Madej, D.O., to renew or modify this registration, as well as any other pending application of Carrie Madej, D.O., for additional registration in Georgia. This Order is effective August 23, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-16213 Filed 7-23-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23-42]

John Qian, MD; Decision and Order

On May 3, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to John Qian, M.D., (Respondent) of San Diego, CA. OSC, at 1, 7. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration (Registration), Application Control No. W22061401C, alleging that the issuance of the registration would be inconsistent with the public interest. *Id.* at 1 (citing 21 U.S.C. 823(g)(1)).

A hearing was held before DEA Chief Administrative Law Judge John J. Mulrooney (the Chief ALJ), who, on October 19, 2023, issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD), which

recommended denial of Respondent's application. RD, at 27. Respondent did not file Exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

I. Findings of Fact

Respondent was previously registered with the DEA to prescribe controlled substances in California. *John X. Qian, M.D.* ("Qian I"), 87 FR 8039, 8058 (2022). The Agency issued an OSC and Immediate Suspension of Registration to Respondent on November 18, 2019 (2019 OSC/ISO), recommending that his previous Registrations be revoked on the grounds that they were inconsistent with the public interest. RD, at 3 (citing 21 U.S.C. 824(a)(4)). Respondent's Registrations were immediately suspended because the Agency determined that there was an imminent danger to the public health or safety from continuing his Registrations during the pendency of the proceeding. RD, at 3 (citing 21 U.S.C. 824(d); 21 CFR 1301.36(e)). On February 11, 2022, following a hearing on the merits (2020 Hearing), the Agency revoked Respondent's previous Registrations. RD, at 3; *Qian I*, 87 FR at 8058.¹

Approximately three months later, on May 26, 2022, Respondent filed an application for a new registration. RD, at 3. The Agency issued an OSC on May 3, 2023, proposing that the application be denied based on the same conduct alleged in the 2019 OSC/ISO. *Id.* at 2. Following Respondent's request for a hearing, the Government filed a Partial Motion for Summary Disposition (the PMSD), arguing that the Agency's final order in *Qian I* satisfied the Government's prima facie case that it would be inconsistent with the public interest to grant Respondent's application. *Id.* at 2-3; ALJX 8, at 5-17. The Chief ALJ granted the Government's unopposed PMSD and found that the sole remaining issue to determine at the August 2023 Hearing (2023 Hearing) was whether Respondent could be entrusted with a registration. RD, at 2-3. The Chief ALJ also found that the Agency's factual findings, legal

conclusions, and credibility determinations in *Qian I* should be afforded preclusive effect in this proceeding.² The Agency agrees.

Because the Agency's factual findings in *Qian I* serve as the basis for the Government's prima facie case, they are briefly summarized here.³ In *Qian I*, the Agency found that Respondent had issued one-hundred and fifteen prescriptions to three patients from 2017 through 2019 in violation of federal and state law and beneath the standard of care for prescribing controlled substances in California. RD, at 4; *Qian I*, 87 FR 8057. The Agency found that Respondent had issued these prescriptions without performing or documenting adequate physical examinations, developing or documenting adequate treatment plans, developing or documenting a justification for prescribing controlled substances, or resolving or documenting resolution of diversion red flags. RD, at 4-5; *Qian I*, 87 FR 8039 n.1, 8040, 8045 n.27, 8050, 8055-57. The Agency also found that Respondent had repeatedly copied language verbatim throughout his medical records, which violated the California standard of care and significantly undermined the medical records' credibility. RD, at 5; *Qian I*, 87 FR 8055. Respondent's recordkeeping errors were egregious; for example, in one medical record, Respondent copied forward his description of a physical examination verbatim over twenty-one visits for fifteen months without adding any new information. *Id.* at 8048. Respondent then added an additional

² RD, at 3-4, 4 n.9 (citing *Jose G. Zavaleta, M.D.*, 78 FR 27431, 27434 (2013) ("[T]he Agency's factual findings and legal conclusions are entitled to preclusive effect in a subsequent proceeding."); *Robert L. Dougherty, M.D.*, 76 FR 16823, 16830 (2011) ("[W]here, as here, an applicant has previously been the subject of an Agency Final Order, the doctrine of *res judicata* bars the relitigation of the factual findings and conclusions of law of the prior proceeding absent the applicant's establishing that he falls within one of the doctrine's recognized exceptions."); see also *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 797 (1986) ("[I]t is sound policy to apply principles of issue preclusion to the factfinding of administrative bodies acting in a judicial capacity."); *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966) ("When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.")).

³ The Government's only witness at the 2023 Hearing was Diversion Group Supervisor (GS) Ann Malta-Chi, who testified briefly to authenticate and lay foundation for Respondent's Certificate of Non-Registration. RD, at 6; Tr. 21-23; GX. 1. The Agency agrees with the Chief ALJ that the GS presented as an impartial regulator, testifying to matters that were not in serious contention, and that her testimony was sufficiently detailed, plausible, and internally consistent to be fully credited. RD, at 6.

¹ Following publication of *Qian I* in the **Federal Register**, Respondent filed a Petition for Review with the Court of Appeals. *Qian v. DEA*, No. 22-70039 (9th Cir. filed Mar. 2, 2022). After the Court of Appeals extended the initial briefing schedule on four separate occasions, the petition was administratively closed on December 15, 2022. On April 13, 2023, Respondent filed a Motion to Voluntarily Dismiss the Appeal, which the Court of Appeals granted on April 28, 2023.

eight physical tests to the description and copied forward the new description verbatim for an additional seventeen months. *Id.* Meanwhile, Respondent was prescribing this patient “astronomically high” dosages of opiates along with a long-acting benzodiazepine—a combination that poses a serious risk of death—without documenting whether safer methods had been tried or even what conditions he was treating with these controlled substances. *Id.* at 8046–48, 8057. The Agency found that Respondent’s documentation was “so egregiously bad that it [was] difficult to determine what steps [he] was taking to ensure this patient’s safety, or even why a particular controlled substance was being prescribed.” *Id.* at 8058. Respondent failed to accept responsibility for his recordkeeping violations, testifying that there may have been “some mistakes,” but “overall [his] charts [were] good” and “above average.” *Id.*

Respondent also failed to resolve red flags presented by his patients, including failing to adequately address an inconsistent urine drug screen that showed that the patient was taking two controlled substances that had not been prescribed and that posed serious risks when taken with the opioids prescribed by Respondent. *Id.* at 8051–52. Respondent’s prescribing patterns were similar with all three patients and they were so dangerous that the Agency determined that Respondent’s prescribing practices created a risk of death. RD, at 5–6; *Qian I*, 87 FR 8047–53, 8057.

As discussed in more detail below (*see infra* § II), the Agency found in *Qian I* that the Government had met its prima facie burden of demonstrating that Respondent’s registration was inconsistent with the public interest under the Controlled Substances Act (CSA), and the burden shifted to Respondent to prove that he could be entrusted with a registration. *Qian I*, 87 FR 8057–58. The Agency found that Respondent did not prove that he could be entrusted with a registration because he did not accept responsibility for his egregious conduct, and determined that the appropriate remedy was revocation. *Id.*

II. Discussion

A. The Five Public Interest Factors

Under the CSA, “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this

title inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant’s] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant’s] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. The Government satisfied its burden based on the Agency’s findings in *Qian I*, which are binding in this case. In *Qian I*, the Agency considered all of the public interest factors in 21 U.S.C. 823(g)(1),⁴ and revoked Respondent’s registration primarily based on evidence under Factors B and D (formerly Factors 2 and 4). 87 FR 8055–58; RD, at 21–22. Evidence is considered under Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See*

⁴ In *Qian I*, Respondent argued that Factor A weighed in his favor because the Medical Board of California (MBC) had ordered probation rather than revocation after receiving a complaint against his license. 87 FR 8054. The Agency found that the MBC’s order should receive “minimal to no weight” under Factor A because the conduct at issue in *Qian I* involved different patients, a different timeframe, and altogether different misconduct than the subject of the MBC’s order, and there was no evidence of what the MBC would have concluded if it had considered the same misconduct as the Agency considered in *Qian I*. *Id.* Regarding Factor C, the Agency found that the absence of a conviction related to controlled substances was not dispositive based on longstanding Agency precedent. *Id.* (citing *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010)). Finally, the Agency found that the absence of evidence of “other conduct which may threaten the public health and safety” under Factor E did not militate for or against a finding that Respondent’s registration was inconsistent with the public interest. RD, at 21–22 n.57.

Sualeh Ashraf, M.D., 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). The Agency found that Factors B and D weighed against Respondent’s continued registration because Respondent had issued numerous controlled substance prescriptions in violation of state and federal law and beneath the standard of care in California. *Qian I*, 87 FR 8055–57. Based on the Agency’s findings in *Qian I*, the Agency finds that Respondent’s continued registration is inconsistent with the public interest under 21 U.S.C. 823(g)(1). RD, at 21–22.⁵

III. Sanction

Where, as here, the Government has established sufficient grounds to deny Respondent’s Application, the burden shifts to Respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18904 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken remedial measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62316, 62339 (2012). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency’s interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021).

At the 2020 Hearing in *Qian I*, Respondent explicitly denied

⁵ Respondent offered into evidence four letters drafted by doctors to support his request for early termination of the MBC’s probation. RD, at 17–18; RX L, M, N, O. The Agency considered these letters, but found them to have limited probative value because they do not address whether granting Respondent’s application is in the public interest. RD, at 18 (citing, *e.g., George Pursley, M.D.*, 85 FR 80162, 80180 (2020) (noting that the applicant submitted “written statements of support . . . [that] provided limited evidence relevant to Applicant’s controlled substance prescribing” and therefore were “of limited value”); *Mark P. Koch, D.O.*, 79 FR 18714, 18736–37 (2014) (finding that supportive testimony about a practitioner’s professional reputation “carries little value under the public interest analysis because it does not bear a connection to Respondent’s ability to handle controlled substances”); *Michael S. Moore, M.D.*, 76 FR 45867, 45873 (2011) (“In evaluating the weight to be attached to the representations in the letters provided by the Respondent’s hospital administrators and peers, it can hardly escape notice that, in addition to the fact that the authors were not subjected to the rigors of cross examination, each source has a significant influencing consideration that bears caution.”)).

responsibility for his misconduct, maintaining that his recordkeeping was “above average” and offering other incredulous and false testimony under oath. *Qian I*, 87 FR 8052. The Agency found that some of his testimony was “self-serving to the point it denied belief.” *Id.* at 8042. For example, Respondent defended an inconsistent urine drug screen by suggesting that there might have been “liquid contamination” that caused the substance to show up in the screen without the patient having consumed the substance. *Id.* When asked what “liquid contamination” meant, Respondent suggested that the patient may have been in close proximity to someone else who was taking the drug, and that person may have dropped some of the substance into the patient’s food, causing her to accidentally ingest it. *Id.* at 8051. This illogical testimony was discredited by the Government’s expert. *Id.* at 8042. Another area where the Agency found that Respondent’s testimony was untruthful was his suggestion that rather than mechanically copying forward the same description month-after-month in his medical records, he performed the same exact examination each month and made the same selections in the software, which generated an identical description. *Id.* The Agency called a representative from the software company to testify, who discredited Respondent’s testimony and conclusively established that the medical records had been copied forward repeatedly. *Id.* at 8041. Respondent’s lack of candor during the 2020 Hearing bolstered the Agency’s conclusion that he could not be entrusted with a registration.

Although Respondent was more contrite at the 2023 Hearing, his acceptance of responsibility lacked the requisite remorse and sincerity to be considered unequivocal.⁶ During the course of his testimony, Respondent indicated that he accepted responsibility for several defects in his treatment of patients in *Qian I*, as well as defects in his treatment of patients identified in a January 31, 2020

probationary order by the Medical Board of California (MBC Order). For example, Respondent indicated that he accepted responsibility for failing to adequately monitor and assess the patients under his care taking opioids, Tr. 116, 125–27, 135–38, 150–53; failing to recognize signs of drug abuse in cases where some of his patients should have been referred to addictionologists, *id.* at 123–24; failing to adequately document his medication decisions, *id.* at 123–24, 131–132, 139–40, 142–46, 156–57; failing to consider the input of his patients’ family members, *id.* at 136; failing to conduct adequate physical examinations, *id.* at 147–49, 156, 161; and failing to acquire sufficient patient histories, *id.* at 149. RD, at 13. Respondent also acknowledged that he failed to recognize the risks of concurrently prescribing opioids, benzodiazepines, and carisoprodol. RD, at 13; Tr. 116–22, 126, 134–35. Additionally, Respondent testified that he broadly accepted responsibility for the findings in *Qian I*. RD, at 14; Tr. 158.

However, many of Respondent’s statements accepting responsibility were undermined by other portions of his testimony, particularly his explanations for why he committed the errors and omissions in *Qian I*. For example, he blamed his failure to comply with the standard of care on unspecified “guideline changes,” and referred to the pain management guidelines as “rapidly changing.” RD, at 14; Tr. 128; RX R, at 8. He testified that the guidelines had changed three times since he had been practicing, and that the changes were “always indicated for primary care physician,” but as a specialist he became “a little bit [] complacent.” Tr. 128. Respondent, however, did not explain what rules had changed, how those rules had changed, or why the rules were different for him as a specialist.⁷ This testimony is concerning because the deficiencies outlined in *Qian I*—such as failure to have a medical justification for the controlled substances prescribed, failure to warn about the dangers of concurrent prescriptions for opioids and benzodiazepines, failure to resolve red flags of abuse and diversion, and failure to maintain accurate medical records—

are core failures that violated bedrock principles of the CSA.

Respondent also occasionally blamed others for his violations. For example, when asked why he failed to refer one of his patients to an addictionologist, he testified that he had made the referral, but it “never got carried out.” RD, at 13 n.37; Tr. 123. And while Respondent admitted to errors in his recordkeeping, he also explained that he was new to electronic medical records (EMRs), the copy forward feature was important for patient flow, and the physician’s assistants who worked with him were complaining that the paperwork was arduous. RD, at 14; Tr. 130–33, 161, 163. Respondent also declined an opportunity to accept responsibility for falsifying his medical records. RD, at 14–15; Tr. 143–45. Although he conceded that he probably needed to conduct more detailed examinations, he testified that his examinations had been consistent with his training and that he thought they had been complete. *Id.*

Respondent was also evasive when asked to address the areas in *Qian I* where the Agency found that he had presented false testimony. Respondent initially explained that he was not lying to the prior ALJ and offered various explains for his testimony, including that he had been defensive, hypothetical, nervous, and speculative, and that he had misspoken. RD, at 14; Tr. 158–61, 163, 166–67. After returning from a recess requested by his counsel, Respondent reluctantly conceded that some of his statements were not accurate or truthful. RD, at 14; Tr. 158–61, 166–67). Respondent’s testimony falls short of the unequivocal acceptance that is required from someone who previously lied under oath.

Respondent entered a proposed Corrective Action Plan (CAP) into the record, which contains additional statements that detract from his acceptance of responsibility and minimize the Agency’s findings in *Qian I*.⁸ The CAP asserts that “the underlying reasons for the revocation of [Respondent’s registration] did not involve patient harm.” RD, at 16; RX R, at 6. Although it is not necessary for the Agency to find patient harm to revoke

⁶ The Agency incorporates herein the entire summary of Respondent’s testimony and the Chief ALJ’s credibility findings with respect to Respondent. RD, at 12–21. The Agency agrees with the Chief ALJ that Respondent was the witness at the 2023 Hearing with the most to gain by his testimony and that there are additional features of his testimony that supply reason for caution, including that he declined to unequivocally accept responsibility for his perjurious statements in *Qian I*. RD, at 20–21. The Agency also agrees with the Chief ALJ that while there are certain portions of this testimony that appear truthful, such as biographical details, his claims of remorse and acceptance of responsibility were not sufficiently credible for him to prevail on this issue. *Id.*

⁷ Respondent contends that the guidelines for pain management specialists are less defined than for general physicians, but California law requires all doctors to maintain adequate and accurate records, perform appropriate physical examinations, and establish a medical indication before prescribing controlled substances. RD, at 15, 17; RX R, at 9; Cal. Bus. & Prof. Code sections 2266, 2242(a).

⁸ Although the CAP was submitted to the Agency after the deadline set by the OSC, the Agency agrees with the Chief ALJ’s decision to accept it into the record and treat it as a sworn statement, because Respondent testified that he would adhere to its terms and the Government had an opportunity to cross examine him. RD, at 15–16; ALJX 1, at 6; see 21 U.S.C. 824(c)(2)(C). The Agency also agrees with the Chief ALJ that the CAP is of limited utility in supporting Respondent’s application. RD, at 17.

a registration,⁹ and the Agency did not find specific evidence of patient harm in *Qian I*, the Agency found that Respondent's prescribing created a risk of death and that his "documentation [was] too deficient to conclusively determine that no harm occurred." 87 FR 8057. Respondent's statement that *Qian I* did not involve patient harm indicates that he does not appreciate the dangers posed by his prescribing.¹⁰

Further, in *Qian I*, the Agency noted that Respondent's "repeated and systematic violations of [his] obligations to document required elements of the standard of care when prescribing high dosages of opioids manifests a disturbing pattern of indifference." 87 FR 8057. This indifference carried over into Respondent's testimony at the 2023 hearing. He testified that he had become complacent with some of his patients, particularly those who were medical practitioners or personal acquaintances. Tr. 127. For example, he testified, "often you have nurse practitioner, could be a little bit loose, a more combo." *Id.* He also testified that he let his guard down with long-term patients and they became more like friends. *Id.* at 200. This testimony exhibits a lack of appreciation for medical ethics and the dangers of prescribing controlled substances, and Respondent's testimony did little to convince the Agency that he has been sufficiently rehabilitated to be trusted with a registration. Thus, the ALJ found, and the Agency agrees, that Respondent did not unequivocally accept responsibility for his misconduct. RD, at 24.

Although it is not necessary to consider Respondent's remedial measures if he has failed to unequivocally accept responsibility,¹¹ Respondent presented very little evidence that can be fairly characterized as remedial measures, and most of these measures were either mandated by the MBC or lacked sufficient specificity to

signal meaningful change. *Id.* at 24–25. First, Respondent submitted evidence of approximately 342 hours of continuing medical education (CME) courses from 2020 through 2022,¹² approximately seventy-five of which arguably relate to remedial measures.¹³ *Id.* at 19. However, most of these classes were either required by the MBC Order, or had also been previously completed by Respondent in 2013 and 2018 prior to issuing many of the prescriptions in this case. *Id.*; RX E–F; ALJX 15, app. at 118. The Agency has no reason to believe that Respondent would change his practices after taking these same courses again, and the fact that these courses were required by the MBC's Order detracts some from their weight as remedial measures.

Second, Respondent asserts that he has implemented a new EMR software that does not allow for patient examination records to be copied forward, but he did not supply any corroborating documentation confirming that the EMR lacks that feature. RD, at 17; Tr. 130. Even if it does, the implementation of a new EMR requires minimal effort and does not address the Agency's underlying concerns that Respondent does not fully appreciate his obligations under the CSA.

Third, as discussed in more detail *supra*, Respondent offered extensive testimony pledging to follow California's most recent Guidelines for Prescribing Controlled Substances for Pain. RD, at 20. To the extent that this testimony may be considered remedial in nature, the Agency agrees with the Chief ALJ that this testimony was not compelling, and it is unclear why the Agency should trust Respondent to comply with guidelines in the future that he declined to comply with previously. *Id.*

Finally, Respondent has been under mandatory monitoring by an MBC-appointed physician, Dr. Bitonte, since January 2021, and Respondent testified that he is willing to retain Dr. Bitonte as a monitor even if his probation with the MBC ends.¹⁴ However, neither Dr.

Bitonte nor Respondent demonstrated in their testimony that Dr. Bitonte's monitoring has aided in remediating Respondent. Dr. Bitonte did not oversee Respondent's prescribing of controlled substances because Respondent did not possess a DEA registration while Dr. Bitonte monitored him (RD, at 12; Tr. 46, 56, 62, 73; ALJ Ex. 28, at 6). Dr. Bitonte also did not observe any of Respondent's encounters with his patients, which precluded him from addressing one of the Agency's primary concerns in *Qian I*, that Respondent's medical records did not accurately reflect what occurred during the patient encounters. RD, at 8–9. Additionally, Dr. Bitonte testified that he has not prescribed controlled substances since 2014 and is no longer comfortable doing so because opiate prescribing has become a specialty. RD, at 7; Tr. 83–84. This testimony suggests that Dr. Bitonte would not be the ideal candidate for monitoring Respondent's reinstated prescribing of controlled substances. Finally, Dr. Bitonte's opinions at the hearing and in his regular practice monitoring reports (PMRs) were conclusory and repetitive,¹⁵ which suggests that Dr. Bitonte's monitoring lacked the level of involvement necessary to help Respondent reform his recordkeeping practices, which are a vital component of the CSA's efforts to prevent diversion of controlled substances.¹⁶ Thus, the Agency agrees with the Chief ALJ that the potential remedial measures identified by Respondent are not sufficient to establish that Respondent can be trusted with a registration, especially in light of

termination of his probation with the MBC, which would eliminate the monitoring requirement. RD, at 16; RX R, at 3; ALJX 15, app. at 173.

¹⁵ Dr. Bitonte's PMRs primarily consist of statements that Respondent's records were "complete and in order" and "excellent," and that Respondent's practice is "markedly different from the [practice] described in the [MBC Order]" because he is "now almost exclusively providing pain management by interventional procedures, consulta[tions] for outside physicians, and electrodiagnostics for outside providers." RD, at 8–10; Tr. 73, 77–78; RX H at 7, 14, 18, 23, 27, 40, 47.

¹⁶ The Agency incorporates herein the entire summary of Dr. Bitonte's testimony and the Chief ALJ's credibility findings with respect to Dr. Bitonte. RD, at 7–12. The Agency agrees with the Chief ALJ that there were inconsistencies and weaknesses that detracted from Dr. Bitonte's credibility, including that Dr. Bitonte initially testified that he had reviewed *Qian I*, and then later conceded that he had not. *Id.* at 11–12; Tr. 46, 89–94, 99–101. The Agency also agrees that there were portions of Dr. Bitonte's testimony that can be afforded full credibility, such as details of his monitoring assessment and his monitoring methodology. RD, at 12. Ultimately, however, the Agency does not find that Dr. Bitonte's testimony is entitled to significant weight in analyzing whether Respondent can be entrusted with a registration because he did not observe his patient encounters.

⁹ *Melanie Baker, N.P.*, 86 FR 23998, 24009 (2021); *Larry C. Daniels, M.D.*, 86 FR 61630, 61660–61 (2021); *Jeanne E. Germeil, M.D.*, 85 FR 73786, 73799 n.32 (2020); *Qian I*, 87 FR 8056 (noting that Respondent had not cited any legal authority for the proposition that the Agency must find patient harm in order to suspend or revoke a registration, and revoking Respondent's registration notwithstanding the absence of a specific demonstration of harm).

¹⁰ The Agency has previously found that a respondent's minimization of his misconduct weighs against a finding of unequivocal acceptance of responsibility. *See, e.g., Morris & Dickson Co.*, 88 FR 34523, 34538 (2023) (citing *Ronald Lynch, M.D.*, 75 FR 78745, 78754 (2010) (finding that Respondent did not accept responsibility after noting that he "repeatedly attempted to minimize his [egregious] misconduct"); *Michael White, M.D.*, 79 FR 62957, 62967 (2014) (similar)).

¹¹ *Ajay S. Ahuja, M.D.*, 84 FR 5479, 5498 n.33 (2019); *Jones Total Health Care Pharmacy, L.L.C., & SND Health Care*, 81 FR 79188, 79202–03 (2016).

¹² Respondent's records include duplicate certificates and repeated courses, which the Agency does not credit. RD, at 19. Several of Respondent's certificates are also unsigned, and they do not claim any credits for the courses, which calls into question the level of Respondent's participation in these classes. RD, at 19; RX E–F. The courses direct the student to "claim the credit commensurate with the extent of their participation in the activity." *Id.*

¹³ These courses related to physician prescribing and medical recordkeeping. RD, at 19.

¹⁴ Although Dr. Bitonte and Respondent testified that they are willing to continue Dr. Bitonte's monitoring if the Agency orders them to do so, the record indicates that Respondent is requesting early

his failure to unequivocally accept responsibility for his actions. RD, at 19–21.

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.*, 80 FR 74800, 74810 (2015). In this case, the Agency agrees with the Chief ALJ that Respondent's failure to fully acknowledge his wrongdoing suggests that these revocation proceedings have not sufficiently deterred him from future violations. RD, at 25–26.

Although Respondent demonstrated some level of interest in complying with the applicable rules and regulations going forward, which suggests that the likelihood of recidivism may be reduced, on balance the considerations of specific deterrence do not support Respondent's application in this case. *Id.* Further, the Agency agrees with the Chief ALJ that the interests of general deterrence also support revocation. *Id.* at 26. A decision to grant Respondent's application now, despite Respondent's failure to fully accept responsibility for his misconduct, would send a message to the registrant community that lying to the Agency and prescribing controlled substances without conducting and documenting even the most basic examinations and mitigation measures can be overlooked or excused. *Id.*

Moreover, the Agency agrees with the Chief ALJ that Respondent's actions were egregious. *Id.* at 25. Respondent prescribed dangerous combinations of benzodiazepines and high-dose opioids while failing to conduct appropriate examinations, monitor for compliance, or maintain accurate medical records, leading the Agency to conclude that he had put his patients at risk of death. *Id.* Respondent also misled the tribunal in his first hearing and failed to adequately acknowledge the untruthful testimony in his second hearing. In this case, the Agency believes that denial of Respondent's application would encourage the general registrant community to exhibit candor when dealing with the Agency, conduct and document appropriate medical examinations, and monitor their patients carefully to ensure that the controlled substances that they prescribe do not harm their patients or fall into illegitimate channels where they can be abused or diverted.

In sum, Respondent has not offered any credible evidence on the record to rebut the Government's case for denial of his application and Respondent has not demonstrated that he can be entrusted with the responsibility of registration. *Id.* at 26–27. Accordingly,

the Agency will order that Respondent's application be denied.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the pending application for a Certificate of Registration, Control Number W22061401C, submitted by John Qian, M.D., as well as any other pending application of John Qian, M.D., for additional registration in California. This Order is effective August 23, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on July 16, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–16185 Filed 7–23–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Alleged Safety or Health Hazards

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/

PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The OSHA–7 Form is used by OSHA personnel to report unhealthful and/or unsafe conditions in the workplace. The information is given to OSHA by employees who wish to report unhealthful and/or unsafe conditions at their place of employment. Employee reports are authorized by Section 8(f)(1) of the OSH Act. This information is used by OSHA to evaluate the alleged hazards and to schedule an inspection. The form is available in English and Spanish. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 30, 2024 (89 FR 34273).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Notice of Alleged Safety or Health Hazards.

OMB Control Number: 1218–0064.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 94,529.

Total Estimated Number of Responses: 120,183.

Total Estimated Annual Time Burden: 35,783 hours.

Total Estimated Annual Other Costs Burden: \$1,705.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–16198 Filed 7–23–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Payments

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 August 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form LS–208, Notice of Payments, is used by insurance carriers and self-insured employers to report the payment of benefits under the Longshore and Harbors Workers Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 18, 2024 (89 FR 19363).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Notice of Payments.

OMB Control Number: 1240–0041.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 550.

Total Estimated Number of Responses: 32,016.

Total Estimated Annual Time Burden: 5,336 hours.

Total Estimated Annual Other Costs Burden: \$1,444.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–16193 Filed 7–23–24; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Controversion of Right To Compensation

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 August 23, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 18, 2024 (89 FR 19360).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally

cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OWCP.

Title of Collection: Notice of Controversion of Right to Compensation.

OMB Control Number: 1240-0042.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 550.

Total Estimated Number of Responses: 23,928.

Total Estimated Annual Time Burden: 5,982 hours.

Total Estimated Annual Other Costs Burden: \$1,858.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-16194 Filed 7-23-24; 8:45 am]

BILLING CODE 4510-CF-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100552; File No. SR-OCC-2024-001]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change by The Options Clearing Corporation Concerning Its Process for Adjusting Certain Parameters in Its Proprietary System for Calculating Margin Requirements During Periods When the Products It Clears and the Markets It Serves Experience High Volatility

July 18, 2024.

On January 10, 2024, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the

proposed rule change SR-OCC-2024-001 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to codify OCC’s process for adjusting certain parameters in its proprietary system for calculating margin requirements during periods when the products OCC clears and the markets it serves experience high volatility.³ The proposed rule change was published for public comment in the **Federal Register** on January 25, 2024.⁴ The Commission has received comments regarding the proposed rule change.⁵

On February 23, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On April 22, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the proposed rule change.⁹

Section 19(b)(2) of the Exchange Act¹⁰ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹¹ The 180th day after publication of the Notice in the **Federal Register** is July 23, 2024.

The Commission is extending the period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that the Commission has sufficient time to consider the issues raised by the

proposed rule change and to take action on the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,¹² the Commission designates September 21, 2024, as the date by which the Commission should either approve or disapprove the proposed rule change SR-OCC-2024-001.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16218 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-036, OMB Control No. 3235-0028]

Proposed Collection; Comment Request; Extension: Rule 17f-2(d)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17f-2(d) (17 CFR 240.17f-2(d)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17f-2(d) requires that records created pursuant to the fingerprinting requirements of Section 17(f)(2) of the Act be maintained and preserved by every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency (“covered entities” or “respondents”); permits, under certain circumstances, the records required to be maintained and preserved by a member of a national securities exchange, broker, or dealer to be maintained and preserved by a self-regulatory organization that is also the designated examining authority for that member, broker or dealer; and permits the required records to be preserved on microfilm. The general purpose for Rule 17f-2 is to: (i) identify security risk personnel; (ii) provide criminal record

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 89 FR 5062.

⁴ Securities Exchange Act Release No. 99393 (Jan. 19, 2024), 89 FR 5062 (Jan. 25, 2024) (File No. SR-OCC-2024-001) (“Notice of Filing”).

⁵ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2024-001/srocc2024001.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 99594 (Feb. 23, 2024), 89 FR 14909 (Feb. 29, 2024) (File No. SR-OCC-2024-001).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 100009 (Apr. 22, 2024), 89 FR 32469 (Apr. 26, 2024) (File No. SR-OCC-2024-001).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(57).

information so that employers can make fully informed employment decisions; and (iii) deter persons with criminal records from seeking employment or association with covered entities. The rule enables the Commission or other examining authority to ascertain whether all required persons are being fingerprinted and whether proper procedures regarding fingerprinting are being followed. Retention of these records for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity ensures that law enforcement officials will have easy access to fingerprint cards on a timely basis. This in turn acts as an effective deterrent to employee misconduct.

Approximately 3,800 respondents are subject to the recordkeeping requirements of the rule. Each respondent maintains approximately 68 new records per year, each of which takes approximately 2 minutes per record to maintain, for an annual burden of approximately 2.2666667 hours (68 records times 2 minutes). The total annual time burden for all respondents is approximately 8,613 hours (3,800 respondents times 2.2666667 hours). As noted above, all records maintained subject to the rule must be retained for a period of not less than three years after termination of a covered person's employment or relationship with a covered entity. In addition, we estimate the total annual cost burden to respondents is approximately \$38,000 in third party storage costs.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 23, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange

Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 18, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16231 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100551; File No. SR-CboeBZX-2024-065]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fees the Exchange Charges Companies Seeking a Review of a Delisting Determination, Public Reprimand Letter, or Written Denial of an Initial Listing Application

July 18, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder, ² notice is hereby given that on July 3, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to modify the fees the Exchange charges Companies seeking a review of a Delisting Determination, public reprimand letter, or written denial of an initial listing application. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Pursuant to Exchange Rule 14.12(h), Companies ³ may seek review of a determination by the Exchange's Listing Qualifications Department ⁴ to deny initial or delisting a Company's securities or to issue a Public Reprimand Letter, ⁵ by requesting a hearing before an independent Hearings Panel (the “Hearings Panel”). ⁶ Exchange Rule 14.12(h)(1)(C) provides that a Company requesting a hearing must, within 15 calendar days of the Staff Delisting Determination, ⁷ must submit a hearing fee. Hearing fees are currently charged as follows: (i) when the Company has requested a written hearing, \$1,000; or (ii) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000. Companies may also appeal a Hearings Panel decision to the Exchange Listing Council. ⁸ Exchange Rule 14.12(i)(1) requires a Company seeking such an appeal to submit a fee of \$4,000. The Exchange has not amended these fees since the Exchange listing rules were originally adopted in 2011. ⁹ The Exchange now proposes to (i) increase the hearing fee for both written and oral hearings to \$20,000; and (ii) increase the fee to appeal a Hearings Panel decision

³ See Exchange Rule 14.1(a)(3).

⁴ See Exchange Rule 14.12(b)(7).

⁵ See Exchange Rule 14.12(b)(9).

⁶ See Exchange Rule 14.12(b)(5).

⁷ See Exchange Rule 14.12(b)(11).

⁸ See Exchange Rule 14.12(b)(6).

⁹ See Securities Exchange Act Release Nos. 64546 (May 25, 2011) 76 FR 31660 (June 1, 2011) (SR-BATS-2011-018) (Notice of Filing of Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange); 65225 (August 30, 2011) 76 FR 55148 (September 6, 2011) (Order Approving Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange).

to the Exchange Listing Council to \$15,000. The Exchange is increasing the fees because the anticipated costs incurred in preparing for and conducting hearings and appeals have increased since the fees were originally adopted.¹⁰

The Exchange recognizes that in the past, fees for a written hearing have been lower than fees for an oral one. The Exchange believes that the basis for this historical distinction is unclear, and upon review, found to be unwarranted. The cost to a company that elects a written hearing may be lower because the company's related expenses, such as travel and legal representation, may be avoided. However, the anticipated costs to the Exchange associated with a written hearing are similar to those associated with an oral hearing. The Exchange believes that the fees should reflect that Staff and Panels expend similar resources, time, and effort in ensuring a full and fair hearing for all hearing participants, and both processes afford the same benefit to the issuer. Therefore, while the proposed amendment preserves the availability of a written hearing to any company that requests one, the Exchange proposes to charge the same fee for a written hearing as for an oral one.¹¹

While the Exchange has had no Company request a hearing by the Hearings Panel for Tier I or Tier II securities listed on the Exchange, the Exchange expects that the costs of the review process would include significant time and resources to maintain the infrastructure for the processes and to prepare for and conduct individual hearings and appeals.¹² For example, with respect to review by the Hearings Panels, the Exchange expects to incur expenses related to the Exchange staff that facilitates the hearings and provides legal counsel and support to the

independent Hearings Panel members, the honorarium paid to the Hearings Panel members, the cost of maintaining a transcript of the hearing, and the cost of obtaining an advisor to the Hearing Panel. Listings Qualification Staff reviews each Company's submissions to the Hearings Panel and provides the Hearings Panel with its analysis of the Company's plans; Listings Qualification Staff also provides written submissions in support of the delisting, listing denial, or Public Reprimand determination. In addition, in some matters Listings Qualification Staff is expected to attend hearings to respond to presentations by the Company and answer questions from the Hearings Panel members. Listings Qualification Staff also must manage and coordinate the Hearings Panel dockets, maintain the systems that track hearing matters, draft initial decisions for review by the Hearings Panel members, and monitor post-hearing compliance efforts in matters where the Hearings Panel has granted the Company a period of time to cure a deficiency.¹³

The Exchange also expects additional costs associated with the Exchange Listing Council's review of every Hearings Panel decision, in determining whether to call that decision for review as described in Rule 14.12(j)(2). In that regard, the Exchange expects to incur expenses related to the Exchange staff that facilitates the call for review process and that provides legal counsel and support to the Exchange's Listing Council members, the cost of obtaining an advisor to the Listing Council, as well as the honorarium paid to the Exchange's Listing Council members. When a matter is called for review, the Exchange expects to incur costs related to the staff in the Listing Qualifications Department, which reviews the Company's submissions to the Exchange's Listing Council and provides the Exchange's Listing Council with Listing Qualification Staff's analysis of the Company's plans and any issues identified by the Exchange's Listing Council in its call for review. The Exchange staff also must manage and coordinate the Exchange's Listing Council docket, maintain the systems that track call for review matters, and

draft initial decisions for review by Exchange's Listing Council members. The Exchange believes that these additional costs for the call for review process are appropriately considered as part of the cost of the Hearings Panel review, since every Hearings Panel decision is subject to review by the Exchange's Listing Council and the decision as to whether to call a matter for review rests with the Exchange's Listing Council.¹⁴

Where a Company appeals a matter to the Exchange's Listing Council, the Exchange expects similar additional costs as well, which the Exchange believes should be borne by the Company through the appeal fee. Specifically, like where a decision is called for review, when a Company appeals a decision the Exchange would incur expenses related to the Exchange staff that facilitates the process and that provides legal counsel and support to the Exchange's Listing Council members, the honorarium paid to the Exchange's Listing Council members, Listings Qualification Staff review and analysis of the Company's submissions to the Exchange's Listing Council, management of the docket, maintaining the systems that track Exchange's Listing Council appellate matters and drafting the initial decisions for review by Exchange's Listing Council members.

Throughout the hearing and Exchange's Listing Council process, the Exchange expects to incur costs to maintain and upgrade its electronic systems for tracking Companies and maintaining a clear record, as required by Exchange and SEC rules.¹⁵ The Exchange will also maintain lists on its website,¹⁶ updated every business day, that reflect the status of all Companies in the deficiency process.¹⁷

All of these expenses have presumably increased in the 13 years since the fees were adopted in 2011. Accordingly, the Exchange proposes to increase the fee to request review by a Hearings Panel to \$20,000 and the fee for an appeal to the Exchange's Listing Council to \$15,000, which the Exchange believes will accurately reflect the Exchange's anticipated costs. The Exchange believes that this is an equitable allocation based on the expenses incurred in connection with

¹⁰ The Exchange initially filed the proposed fee changes on June 13, 2024 (SR-ChoeBZX-2024-056). On June 25, 2024, the Exchange withdrew that filing and submitted SR-ChoeBZX-2024-060. On July 3, 2024, the Exchange withdrew that filing and submitted this filing.

¹¹ The Exchange notes that Nasdaq similarly eliminated the distinction in fees between a written and an oral hearing. See Securities Exchange Act Release No. 68676 (January 16, 2013) 78 FR 4914 (January 23, 2013) (SR-Nasdaq-2013-004) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Fees for Review of Delisting Determinations and Appeal of Panel Decisions).

¹² The Exchange notes that issuers of two exchange-traded products ("ETPs") listed on the Exchange have requested a hearing by the Hearings Panel under Rule 14.12(h) in prior years, which are listed under Exchange Rule 14.11 rather than Rules 14.8 or 14.9. The Exchange anticipates the costs for a Hearings Panel would generally be the same for ETPs as they would for Tier I or Tier II securities listed on the Exchange.

¹³ The Exchange notes that Nasdaq similarly increased its fees to request review by a Hearings Panel to \$20,000 and the fee for an appeal to the Exchange's Listing Council to \$15,000. See Securities Exchange Act Release No. 96966 (February 22, 2023) 88 FR 12710 (February 28, 2023) (SR-Nasdaq-2023-004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees the Exchange Charges Companies Seeking Review of a Delisting Determination, Public Reprimand Letter, or Written Denial of an Initial Listing Application).

¹⁴ *Id.*

¹⁵ See Exchange Rule 14.12(m)(1). See also Rule 420(e) of the SEC Rules of Practice, 17 CFR 201.420(e) which requires the Exchange to certify and file a copy of the record upon which a delisting or denial was based where the Company requests Commission review of the Exchange's action.

¹⁶ See https://www.cboe.com/us/equities/listings/listed_products/below_standard/.

¹⁷ *Supra* note 13.

each portion of the overall appellate process. The revised fees will allow the Exchange to recoup a portion of the expected expenses it incurs in the review and appeal processes that will more closely approximate its actual costs associated with those processes.¹⁸ The proposed fee would be effective to any Company that was issued a Staff Delisting Determination with an issuance date on or after the date of this filing.¹⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)²³ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Specifically, the proposed fee increase is reasonable because it will better reflect the Exchange's expected costs related to hearings and appeals. The Exchange has not increased these fees since adopted in 2011, but the expected costs have increased since that time.²⁴ The fees will help offset the anticipated costs of conducting hearings and appeals, which serve to ensure that the Exchange's listing standards are properly enforced for the protection of investors. The proposed changes are equitable and not unfairly

discriminatory because they would apply equally to all Companies that choose to request a hearing for review of a Delisting Determination. In addition, aligning the fees for hearings with the underlying costs of the review process is equitable because doing so will help minimize the extent that Companies that are compliant with all listing standards may subsidize the costs of review for Companies that are non-compliant.

The Exchange also believes that the proposed fees are consistent with the investor protection objectives of Section 6(b)(5) of the Act²⁵ in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market systems, and in general to protect investors and the public interest. Specifically, the fees are designed to provide adequate resources for appropriate preparation to conduct reviews of the Exchange's Listing Qualifications' Staff determinations and appeals of Hearings Panel decisions, which help to assure that the Exchange's listing standards are properly enforced and investors are protected.

The Exchange also believes that the proposed changes are consistent with Section 6(b)(7) of the Act,²⁶ in that the proposed fees are consistent with the provision by the Exchange of a fair procedures for the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange. In particular, the Exchange believes that the proposed amended fees should not deter listed issuers from availing themselves of the right to appeal because the fees will still be set at a level that will be affordable for listed Companies. The Exchange does not believe that the proposed fee is unduly burdensome or would discourage any company from seeking a hearing or appeal. Furthermore, the proposed fees are in-line with similar fees on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, this proposed fee is based on the anticipated increase in costs to the Exchange to provide a delisting review process, which is in turn necessary to ensure investor protection as well as a

transparent process for issuers.²⁷ Moreover, the market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. This rule proposal does not burden competition with other listing venues, which are similarly free to align their fees on the costs incurred by the process they offer. For this reason, and the reasons discussed in connection with the statutory basis for the proposed rule change, the Exchange does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ChoeBZX-2024-065 on the subject line.

²⁷ *Supra* note 13.

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

¹⁸ *Supra* note 13.

¹⁹ As noted above, this filing was originally filed June 13, 2024.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ 15 U.S.C. 78f(b)(4).

²⁴ *Supra* note 13.

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(7).

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–CboeBZX–2024–065. 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–CboeBZX–2024–065 and should be submitted on or before August 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–16222 Filed 7–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–562, OMB Control No. 3235–0624]

Proposed Collection; Comment Request; Extension: Regulation R, Rule 701

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Regulation R, Rule 701 (17 CFR 247.701) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Regulation R, Rule 701 requires a broker or dealer (as part of a written agreement between the bank and the broker or dealer) to notify the bank if the broker or dealer makes certain determinations regarding the financial status of the customer, a bank employee's statutory disqualification status, and compliance with suitability or sophistication standards.

The Commission estimates there are 3,402 registered brokers or dealers that would, on average, notify 1,000 banks approximately two times annually about a determination regarding a customer's high net worth or institutional status or suitability or sophistication standing as well as a bank employee's statutory disqualification status. Based on these estimates, the Commission anticipates that Regulation R, Rule 701 would result in brokers or dealers making approximately 2,000 notifications to banks per year. The Commission further estimates (based on the level of difficulty and complexity of the applicable activities) that a broker or dealer would spend approximately 15 minutes per notice to a bank. Therefore, the estimated total annual third-party disclosure burden for the requirements in Regulation R, Rule 701 is 500¹ hours for brokers or dealers.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

¹ 1,000 banks × 2 notices = 2,000 notices; (2,000 notices × 15 minutes) = 30,000 minutes/60 minutes = 500 hours.

comments and suggestions submitted by September 23, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 18, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024–16234 Filed 7–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–263, OMB Control No. 3235–0275]

Proposed Collection; Comment Request; Extension: Rule 17Ad–13

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17Ad–13 (17 CFR 240.17Ad–13), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17Ad–13 requires certain registered transfer agents to file annually with the Commission and the transfer agent's appropriate regulatory authority a report prepared by an independent accountant on the basis of a study and evaluation of the transfer agent's system of internal accounting controls for the transfer of record ownership and the safeguarding of related securities and funds. If the independent accountant's report specifies any material inadequacy in a transfer agent's system, the rule requires the transfer agent to notify the Commission and its appropriate regulatory agency in writing, within sixty calendar days after the transfer agent receives the independent accountant's report, of any corrective action taken or proposed to be taken by

³⁰ 17 CFR 200.30–3(a)(12).

the transfer agent. In addition, Rule 17Ad-13 requires that transfer agents maintain the independent accountant's report and any other documents required by the rule for at least three years, the first year in an easily accessible place. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents and transfer agents that service only their own companies' securities are exempt from Rule 17Ad-13.

Approximately 100 professional independent transfer agents must file with the Commission one report prepared by an independent accountant pursuant to Rule 17Ad-13 each year. Commission staff estimates that, on average, the annual internal time burden for each transfer agent to submit the independent accountant's report to the Commission is minimal or zero. The time required for an independent accountant to conduct the study and evaluation of a transfer agent's system of internal accounting controls and complete the report varies depending on the size and nature of the transfer agent's operations. Commission staff estimates that, on average, each Rule 17Ad-13 report can be completed by the independent accountant in 120 hours. In light of Commission staff's review of previously filed Rule 17Ad-13 reports and Commission staff's conversations with transfer agents and accountants, Commission staff estimates that 120 hours are needed to perform the study and prepare the report on an annual basis. Commission staff estimates that the average hourly rate of an independent accountant is \$291, resulting in an annual external cost burden of \$34,920 for each of the approximately 100 professional independent transfer agents. The aggregate total annual external cost for the 100 respondents is approximately \$3,492,000.

Written comments are invited on: (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 any practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted by September 23, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 18, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16230 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-442, OMB Control No. 3235-0498]

Proposed Collection; Comment Request; Extension: Rule 17a-12

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17a-12 (17 CFR 240.17a-12) and Part II of Form X-17A-5 (17 CFR 249.617) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17a-12 is the reporting rule tailored specifically for over-the-counter ("OTC") derivatives dealers registered with the Commission, and Part II of Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers. Rule 17a-12 requires registered OTC derivatives dealers to file Part II of the FOCUS Report quarterly. Rule 17a-12 also requires that OTC derivatives dealers file audited reports annually.

The reports required under Rule 17a-12 provide the Commission with information used to monitor the operations of OTC derivatives dealers and to enforce their compliance with

the Commission's rules. These reports also enable the Commission to review the business activities of OTC derivatives dealers and to anticipate, where possible, how these dealers may be affected by significant economic events.

The Commission estimates that the total hour burden under Rule 17a-12 is approximately 540 hours per year, and the total cost burden is approximately \$138,900 per year.

Written comments are invited on: (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 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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 23, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: July 18, 2024.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16226 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100560; File No. SR-BOX-2024-18]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Strike Interval for Options on SPDR® Gold Shares

July 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 17, 2024, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 5050 (Series of Options Contracts Open for Trading) to amend the strike interval for options on SPDR® Gold Shares (“GLD”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <https://rules.boxexchange.com/rulefilings>.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 5050 (Series of Options Contracts Open for Trading) to amend the strike interval for options on SPDR® Gold Shares (“GLD”).

Specifically, the Exchange proposes to amend IM–5050–1(b) to allow for the interval between strike prices of series of options on Exchange-Traded Fund Shares (“ETFs” or “Units”)³ of SPDR® Gold Shares or “GLD” to be \$1 or greater, including where the strike price is greater than \$200.

Currently, IM–5050–1(b) provides that,

For series of options on Exchange Traded Fund Shares that satisfy the criteria set forth in Rule 5020(h), the interval of strike prices may be \$1 or greater where the strike price is \$200 or less or \$5 or greater where the strike price is over \$200. Notwithstanding any other provision regarding the interval of strike prices of series of options on Exchange-Traded Fund Shares in this rule, the interval of strike prices on SPDR® S&P 500® ETF (“SPY”), iShares S&P 500 Index ETF (“IVV”), PowerShares QQQ Trust (“QQQ”), iShares Russell 2000 Index Fund (“IWM”), and the SPDR® Dow Jones® Industrial Average ETF (“DIA”) options will be \$1 or greater.

At this time, the Exchange proposes to modify the interval setting regime to be \$1 or greater where the strike price is greater than \$200 for GLD options, similar to SPY, IVV, QQQ, IWM and DIA. The Exchange believes that the proposed rule change would make GLD options easier for investors and traders to use and more tailored to their investment needs.

GLD is an Exchange-Traded Fund Share designed to closely track the price and performance of the price of gold bullion. GLD is widely quoted as an indicator of gold stock prices and is a significant indicator of overall economic health. Investors use GLD to diversify their portfolios and benefit from market trends. Additionally, GLD is a leading product in its asset class that trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares. Accordingly, the Exchange believes that offering a wider base of GLD options affords traders and investors important hedging and trading opportunities, particularly in the midst of current price trends. The Exchange believes that not having the proposed \$1 strike price intervals above \$200 in GLD significantly constricts investors’ hedging and trading possibilities. The Exchange therefore believes that by having smaller strike intervals in GLD, investors would have more efficient hedging and trading opportunities due to the lower \$1 interval ascension. The proposed \$1 interval above the \$200 strike price, will result in having at-the-money series based upon the underlying ETF moving less than 1%. The Exchange believes that the proposed strike setting regime is in line with the slower movements of broad-based indices. Considering the fact that \$1 intervals already exist below the \$200 price point and that GLD have consistently inclined in price toward the \$200 level, the Exchange believes

that continuing to maintain the current \$200 level (above which intervals increase 500% to \$5), may have a negative effect on investing, trading and hedging opportunities, and volume. The Exchange believes that the investing, trading, and hedging opportunities available with GLD options far outweighs any potential negative impact of allowing GLD options to trade in more finely tailored intervals above the \$200 price point. The proposed strike setting regime would permit strikes to be set to more closely reflect the increasing value in the underlying and allows investors and traders to roll open positions from a lower strike to a higher strike in conjunction with the price movements of the underlying ETF. Under the current rule, where the next higher available series would be \$5 away above a \$200 strike price, the ability to roll such positions would be impaired. Accordingly, to move a position from a \$200 strike to a \$205 strike under the current rule, an investor would need for the underlying product to move 2.5%, and would not be able to execute a roll up until such a large movement occurred. The Exchange believes that with the proposed rule change, the investor would be in a significantly safer position of being able to roll his open options position from a \$200 to a \$201 strike price, which is only a 0.5% move for the underlying. As a result, the proposed rule change will allow the Exchange to better respond to customer demand for GLD strike price more precisely aligned with the smaller, longer-term incremental increases in the underlying ETF. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by providing investors the flexibility to more closely tailor their investment and hedging decisions using GLD options. Moreover, by allowing series of GLD options to be listed in \$1 intervals between strike prices over \$200, the proposal will moderately augment the potential total number of options series available on the Exchange. However, the Exchange believes it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange also believes that Participants will not have a capacity issue due to the proposed rule change. In addition, the Exchange represents that it does not believe that this expansion will cause fragmentation of liquidity, but rather, believes that finer strike intervals will serve to increase

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See BOX Rule 5020(h).

liquidity available as well as price efficiency by providing more trading opportunities for all market participants.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁴ in general, and Section 6(b)(5) of the Act,⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the proposed rule change will allow investors to more easily use GLD options. Moreover, the proposed rule change would allow investors to better trade and hedge positions in GLD options where the strike price is greater than \$200, and ensure that investors in both options are not at a disadvantage simply because of the strike price. The Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposal allows the Exchange to respond to customer demand to allow GLD options to trade in \$1 intervals above a \$200 strike price. The Exchange does not believe that the proposed rule would create additional capacity issues or affect market functionality. As noted above, ETF options trade in wider \$5 intervals above a \$200 strike price, whereby options at or below a \$200 strike price trade in \$1 intervals. This creates a situation where contracts on the same option class effectively may not be able to execute certain strategies such as, for example, rolling to a higher strike price, simply because of the \$200 strike price above which options intervals increase by 500%. This proposal remedies the situation by

establishing an exception to the current ETF interval regime for GLD options to allow such options to trade in \$1 or greater intervals at all strike prices.

The Exchange believes that the proposed rule change, like other strike price programs currently offered by the Exchange, will benefit investors by giving them increased flexibility to more closely tailor their investment and hedging decisions. By way of example, GLD is a leading product in its asset class and it trades within a “complex” where, in addition to the underlying security, there are multiple instruments available for hedging such as, COMEX Gold Futures; Gold Daily Futures; iShares GOLD Trust; SPDR GOLD Minishares Trust; Aberdeen Physical Gold Trust; and GraniteShares Gold Shares.

With regard to the impact of this proposal on system capacity, the Exchange believes it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its Participants will not have a capacity issue as a result of this proposal. Further, the Exchange believes the proposal does not unfairly discriminate among market participants, as all market participants will be treated in the same manner under this proposal.

Finally, the Exchange notes the proposed rule change is substantively the same as a rule change proposed by Nasdaq ISE, LLC (“ISE”) which the Commission recently approved.⁶

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment and trading objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that GLD options investors and traders will significantly benefit from the availability of finer strike price intervals above a \$200 price point. In addition, the interval setting regime the Exchange proposes to apply to GLD options is currently applied to SPY, IVV, QQQ, IWM and DIA options,

which are similarly popular and widely traded ETF products and track indexes at similarly high price levels. Thus, the proposed strike setting regime for GLD options will allow options on this actively traded ETF with index levels at corresponding price levels to trade pursuant to the same strike setting regime. This will permit investors to employ similar investment and hedging strategies for each of these options.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to make a finer strike price intervals above a \$200 price point available for GLD options. The Exchange notes that the proposed rule change is not a novel proposal, as the Commission recently approved a substantively identical proposal of another exchange.⁷ Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

⁷ *Id.*

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 100447 (June 28, 2024), 89 FR 55293 (July 3, 2024) (SR-ISE-2024-17).

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by ISE that recently was approved by the Commission.¹⁴ The Exchange has stated that waiver of the 30-day operative delay would allow the Exchange to implement the proposal at the same time as its competitor exchanges, thus creating competition among GLD options. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2024-18 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-BOX-2024-18. 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-BOX-2024-18 and should be submitted on or before August 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16219 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100555; File No. SR-FINRA-2024-004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend FINRA Rule 6730 (Transaction Reporting) To Reduce the 15-Minute TRACE Reporting Timeframe to One Minute

July 18, 2024.

On January 11, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA Rule 6730 to reduce the 15-minute reporting timeframe for transactions reported to FINRA's Trade Reporting and Compliance Engine ("TRACE") system to one minute, with exceptions for FINRA member firms with de minimis reporting activity and for manual trades. The proposed rule change was published for comment in the **Federal Register** on January 25, 2024.³

On February 29, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On April 22, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99825 (March 21, 2024), 89 FR 22294. Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-finra-2024-004/srfinra2024004.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99640 (Feb. 29, 2024), 89 FR 16042 (March 6, 2024). The Commission designated April 24, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 100006 (Apr. 22, 2024), 89 FR 32475 (Apr. 26, 2024).

⁸ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See *supra* note 6.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12), (59).

Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on January 25, 2024.⁹ The 180th day after publication of the notice for this proposed rule change is July 23, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates September 20, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-FINRA-2024-004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16224 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100558; File No. SR-BX-2024-024]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

July 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 2024, Nasdaq BX, Inc. ("BX" or "Exchange") 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 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 expand its co-location services.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/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

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.

The Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing NY11 data center,³ and the Exchange intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client

³ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11-2, NY11-3, and NY11-4.

⁴ One aspect of the data center that will be treated differently in NY11-4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11-4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11-4. The Exchange believes that equalizing telecommunications access

connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-

and inter-client connectivity in NY11-4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11-4 and for particular space in NY11-4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

⁵ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁹ See *supra* note 3 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11–4 will include certain features, including but not limited to: uniform, wider cabinets ⁶ (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock.

NY11–4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11–4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11–4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11–4 and that one of these options must be selected for cabinets in NY11–4. Although different cabinet power options will be offered in NY11 and NY11–4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution.⁷ Due to higher voltage options being offered in NY11–4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in

NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11–4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11–4 Exchange access on October 21, 2024 and providing customers access to the space on or after August 5, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to

standardized PDUs would only be offered for NY11–4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act¹⁴ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar

¹⁴ *Id.*

⁶ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11–4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁷ Customers in NY11–4 will receive comparable power draw/consumption as compared to NY11. Any differences between efficiencies in the customer equipment are negligible.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The

cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-BX-2024-024 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-BX-2024-024. 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-BX-2024-024 and should be submitted on or before August 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16223 Filed 7-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100557; File No. SR-MSRB-2024-01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend MSRB Rule G-14 To Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB

July 18, 2024.

On January 12, 2024, the Municipal Securities Rulemaking Board ("MSRB") 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 (1) amend MSRB Rule G-14 ("Rule G-14"), on reports of sales or purchases, to (i) shorten the amount of time within which brokers, dealers, and municipal securities dealers (collectively, "dealers," and each individually, a "dealer") must report most transactions to the MSRB; and (ii) require dealers to report certain transactions with a new trade indicator, and make certain clarifying amendments, and (2) make conforming amendments to MSRB Rule G-12, on uniform practice ("Rule G-12"), and the MSRB's Real-Time Transaction Reporting System ("RTRS") Information Facility ("IF-1") to reflect the shortened reporting timeframe (collectively, the "proposed rule change").³ The proposed rule change was published for comment in the **Federal Register** on January 26, 2024.⁴ On April 22, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶

Section 19(b)(2) of the Act⁷ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-99402 (Jan. 19, 2024), 89 FR 5384 (Jan. 26, 2024) ("Notice").

⁴ Notice, 89 FR at 5384.

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 100003 (Apr. 22, 2024), 89 FR 32485 (Apr. 26, 2024).

⁷ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 200.30-3(a)(12).

disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on January 26, 2024.⁸ The 180th day after publication of the notice for this proposed rule change is July 24, 2024. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁹ designates September 20, 2024, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-MSRB-2024-01).

For the Commission, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-16221 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100559; File No. SR-Phlx-2024-32]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

July 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 5, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) 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 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 expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/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

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing NY11 data center,³ and the Exchange intends to operate it generally in the same manner as existing aspects of NY11.⁴ Client

³ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11-2, NY11-3, and NY11-4.

⁴ One aspect of the data center that will be treated differently in NY11-4 as compared to NY11 at its outset is telecommunications access and inter-client connectivity. In NY11-4, connections between colocated client cabinets and the carrier cage will be of equal length. Inter-client connectivity will also be equalized in NY11-4. The Exchange believes that equalizing telecommunications access and inter-client connectivity in NY11-4 will provide a fair solution and avoid market disruption by avoiding both a race for real estate adjacent to NY11-4 and for particular space in NY11-4. The Exchange believes that these actions would facilitate a fair and orderly market and protect investors and the public interest, consistent with its obligations under the Act.

connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁵ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to:

⁵ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁸ See *supra* note 3 and accompanying text.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

uniform, wider cabinets⁶ (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock.

NY11-4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution.⁷ Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11,

the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on October 21, 2024 and providing customers access to the space on or after August 5, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today,

the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act¹⁴ because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11-4 because of different power configurations in NY11-4 as compared to NY11, NY11-4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11-4 (and across the data center broadly) on the same terms as any other customer.

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.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers

⁶ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁷ Customers in NY11-4 will receive comparable power draw/consumption as compared to NY11. Any differences between efficiencies in the customer equipment are negligible.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *Id.*

that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

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 Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-Phlx-2024-32 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-Phlx-2024-32. 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-Phlx-2024-32 and should be submitted on or before August 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-16220 Filed 7-23-24; 8:45 am]

BILLING CODE 8011-01-P

determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition "Wonders of Creation: Art, Science, and Innovation in the Islamic World" at the San Diego Museum of Art, San Diego, California; the McMullen Museum of Art, Boston College, Boston, Massachusetts; 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/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), 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. 2024-16249 Filed 7-23-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice:12466]

DEPARTMENT OF STATE

[Public Notice:12467]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Wonders of Creation: Art, Science, and Innovation in the Islamic World" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "The People of the Land: History and Archaeology of Ancient Israel" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition "The People of the Land:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 200.30-3(a)(12).

History and Archaeology of Ancient Israel” at the Museum of the Bible, Washington, District of Columbia, 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/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), 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. 2024–16254 Filed 7–23–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Harris County Toll Road Authority (WB24–30–6/17/24) for permission to use select data from the Board’s 2022 Unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board’s website under docket no. WB24–30.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board’s Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2024–16252 Filed 7–23–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0056]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Highway Project, Centre County, PA

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA, in coordination with the Pennsylvania Department of Transportation (PennDOT) is issuing the Notice of Intent (NOI) to solicit comments and advise the public, agencies, and stakeholders that an Environmental Impact Statement (EIS) will be prepared to study potential improvements to US 322 also known as the State College Area Connector Project from Potters Mills, PA to Boalsburg, PA. The project identification number is 112784. This NOI should be reviewed together with the NOI Additional Project Information document, which contains important details about the proposed project and complements the information in this NOI.

DATES: Comments on the NOI or the NOI Additional Project Information document are to be received by FHWA through the methods below by August 23, 2024.

ADDRESSES: This NOI and the NOI Additional Project Information are also available in the docket referenced above at www.regulations.gov and on the project website located at www.penndot.pa.gov/SCAC. The NOI Additional Project Information document will be mailed upon request. Interested parties are invited to submit comments by any of the following methods:

Website: For access to the documents, go to the Federal eRulemaking Portal located at www.regulations.gov or the project website located at www.penndot.pa.gov/SCAC. Follow the online instructions for submitting comments.

Mailing address or for hand delivery or courier: Docket Management Facility, U.S. Department of Transportation, 1200

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

All submissions should include the agency name, the docket number that appears in the heading of this notice, and the project identification number. All comments received will be posted without change to www.regulations.gov, including any personal information provided. A summary of the comments will be included in the Draft EIS.

FOR FURTHER INFORMATION CONTACT:

FHWA: Julia Moore, Senior Environmental Specialist, Federal Highway Administration, Pennsylvania Division Office, 30 North Third Street, Suite 700, Harrisburg, PA 17101; Julia.Moore@dot.gov; 717–221–4585. PennDOT: Eric Murnyack, PE, Project Manager, 70 PennDOT Drive, Clearfield, PA 16830; email emurnyack@pa.gov; 814–765–0435.

SUPPLEMENTARY INFORMATION: It is important to note that the FHWA and PennDOT are committed to public involvement in this project. The FHWA, as Federal lead agency, and PennDOT, as project sponsor, are preparing an EIS to study potential improvements to US 322 also known as the State College Area Connector Project from Potters Mills, PA to Boalsburg, PA. All public comments received in response to this notice will be considered and potential revisions made to the information presented herein as appropriate. The environmental review of alternatives for the transportation project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), 23 U.S.C. 139, CEQ regulations implementing NEPA (40 CFR 1500–1508), FHWA regulations implementing NEPA (23 CFR 771.101–771.139) and all applicable Federal, State, and local governmental laws and regulations.

Background. Within the State College Area Connector project area, there have been many transportation improvement studies and projects that have influenced travel within and immediately adjacent to the study area dating back to the 1970s. However, in the 1990s, key regional studies occurred which greatly influenced travel and development within the study area. The following provides a high-level summary of the local and regional transportation projects which have provided influence on the State College Area Connector project area.

Interstate 80:

○ I–80 was completed in Pennsylvania in 1970.

- I-80 through Pennsylvania influenced traffic patterns, particularly an increase in interstate truck traffic. This increase in traffic affected travel conditions within the project area.

- Roadway safety and quality of life in Centre County communities traversed by these roadways were influenced by the I-80 completion.

Interstate 99:

- US 220 study west of the State College area led to the development of a major improvement project for a new north-south interstate through Centre County that culminated with the construction of I-99 extending from Blair County to US 322 (the Mount Nittany Expressway).

- PA 26 corridor study resulted in the construction of I-99 from US 322 (the Mount Nittany Expressway) north towards I-80.

- I-80 Exit 161 (Bellefonte Interchange) is under development to replace the existing interchange with a new high-speed interchange and complete the I-99/I-80 connection. Construction of the interchange improvements will complete the goal for a major north-south interstate (I-99) through the center of the Commonwealth connecting two major east-west interstates, the Pennsylvania Turnpike (I-76) and I-80.

South Central Centre County Transportation Study (SCCCTS):

- SCCCTS was initiated in 1998 to evaluate and address transportation needs along the US 322, PA 144, and PA 45 corridors. The SCCCTS project needs identified specific transportation problems in each of the three corridors and on the local road system, as well as needs associated with regional travel patterns. The regional travel pattern need statement addressed the high percentage of through trips (in particular the high volume of truck traffic), high crash rates (including fatalities), poor Level of Service (LOS) (including LOS associated with heavy truck traffic) and increases in travel demand associated with local and regional planned development. However, SCCCTS was terminated in 2004 due to funding shortfalls and the NOI rescinded on July 29, 2019.

Safety Improvements:

- Following the termination of SCCCTS in 2004, short-term safety improvements along the US 322 were conducted between 2006 and 2015. These improvements included general intersection improvements (e.g., turn lanes), safety improvements (e.g., safety dot warning pavement markings, removal of passing zones), minor roadway realignments, and bridge reconstruction. These improvements

were initiated to address some of the safety concerns identified during the SCCCTS study.

Potters Mills Gap (PMG)

Transportation Project:

- PennDOT and FHWA initiated the PMG Transportation Project to improve a 3.75-mile-long section of US 322 in Potter Township within the area locally known as "Potters Mills Gap". This project area encompassed the southeastern portion of the SCCCTS study area. It was determined that this project had independent utility and addressed a defined purpose and need. The project included the construction of a new limited access four-lane roadway section that started at the Sand Mountain Road intersection and extended west, tying back into existing US 322 with a new interchange and roundabout, west of the PA 144/US 322 intersection.

SCCCTS Data Refresh:

- In 2018, PennDOT collected data to update the traffic and environmental information from the former SCCCTS (2004), to identify changes to travel patterns, the transportation network, and environmental conditions. This information supported the 2019 decision by State officials to restart efforts to address regional transportation needs in the US 322, PA 44, and PA 45 area. Nearly, \$15 million in State funding was allocated to advance the State College Area Connector Study.

State College Area Connector Planning and Environmental Linkages (PEL) Study:

- In 2020, PennDOT, in cooperation with FHWA and coordination with the Centre County Metropolitan Planning Organization (MPO), initiated the State College Area Connector PEL Study. The PEL process promoted early coordination with the public as well as Federal, State, and local agencies in a transparent and collaborative environment that identified and evaluated transportation needs in the area, and developed and evaluated alternatives while considering community concerns in transportation decision-making early in the planning process. The PEL study identified a range of alternatives and screened them against the purpose and need and potential for environmental impacts. Three Build Alternatives corridors were recommended for further study. These three recommended Build Alternatives and a refined study area are being advanced for NEPA study with a Notice of Intent to prepare an EIS.

The following information provided in the NOI is supplemented with more detail in the NOI Additional Project Information document.

(a) Purpose and Need for the Proposed Action

The purpose of this project is to improve roadway congestion by achieving acceptable LOS and to address safety issues by reducing the predicted crash frequency along the US 322 corridor between Potters Mills and Boalsburg. Additionally, the project will aim to provide a transportation network that meets driver expectations.

The preliminary needs identified for the project are that high peak hour traffic volumes cause congestion and result in unacceptable LOS (LOS D [rural only], E, or F) on US 322 roadways and intersections; the existing roadway configurations and traffic conditions contribute to safety concerns in the project area; and the roadway network and configuration in the project area lacks continuity and does not meet driver expectations.

The project purpose and needs were first presented as part of the Pre-NOI/PEL phase of project development and were presented to the State and Federal resource agencies at an agency coordination meeting in July 2020 and to public officials and the general public at a virtual meeting in October 2020. Resource agencies and the public were invited to comment on the Purpose and Need. The purpose and need statements were refined following the PEL study for the US 322 project area. The project-specific purpose and needs were presented to the resource agencies in January 2024. The purpose and needs and supporting documentation, including data and public input summary, will be available in the Draft EIS. No specific comments were received from any of the resource agencies.

(b) A Preliminary Description of the Proposed Action and Alternatives the Environmental Impact Statement Will Consider

As concluded in the PEL Study, the proposed action is anticipated to include construction of an approximately 8-mile four-lane limited access facility from the end of US 322/ Mount Nittany Expressway in Boalsburg to the newly constructed limited access portion of US 322 at Potters Mills in Centre County, Pennsylvania. Agencies and the public are invited to comment on the Range of Alternatives for the proposed action. Additional information on the Range of Alternatives is in the NOI Additional Project Information document. The Range of Alternatives proposed to be considered in the EIS include the following:

No Build Alternative

The No Build Alternative involves taking no action, except routine maintenance and other small projects currently listed in the Centre County Transportation Improvement Program (TIP). The existing two-lane alignment of US 322 between Potters Mills Gap and Boalsburg, Pennsylvania would remain. No new alignments or roadway improvements would be constructed.

Build Alternative—US 322–1S

The US 322–1S Build Alternative (US 322–1S) would have logical termini at the US 322 (Mt. Nittany Expressway) in Boalsburg and US 322 at Potters Mills Gap. US 322–1S would begin at the existing US 322 interchange with PA 45 near Boalsburg and follow existing US 322 to a point east of the Elks Club Road/Bear Meadows Road intersection. In this area, a two-lane service road would be provided on the north side of the limited access highway to provide connectivity to the local road network. US 322–1S would shift off existing US 322 to the north until it crosses south over US 322 near Neff Road in Tusseyville. The alternative would parallel US 322 to the south before connecting to the newly constructed US 322/PA 144 interchange at Potters Mills Gap. The Build Alternative US 322–1S would be 8.3 miles long.

Build Alternative—US 322–1OEX

The US 322–1OEX Build Alternative (US 322–1OEX) is a hybrid of US 322–1S that attempts to maximize the use of the existing US 322 right-of-way. US 322–1OEX would have logical termini at the US 322 (Mt. Nittany Expressway) in Boalsburg and US 322 at Potters Mills Gap. US 322–1OEX would begin at the existing US 322 interchange with PA 45 near Boalsburg and follow existing US 322 to a point east of the Elks Club Road/Bear Meadows Road intersection. In this area, a two-lane service road would be provided on the north side of the limited access highway to provide connectivity to the local road network. US 322–1OEX would shift off existing US 322 to the north until it crosses back to US 322 near Neff Road in Tusseyville. From there it would follow existing US 322 to the newly constructed US 322/PA 144 interchange at Potters Mills Gap, with the inclusion of a two-lane service road to maintain local access for properties adjacent to the new limited access facility. US 322–1OEX would be 8.3 miles long.

Build Alternative—US 322–5

The US 322–5 Build Alternative (US 322–5) would have logical termini at the US 322 (Mt. Nittany Expressway) in

Boalsburg and US 322 at Potters Mills Gap. US 322–5 would begin at the existing US 322 interchange with PA 45 near Boalsburg and follow existing US 322 to a point east of the Elks Club Road/Bear Meadows Road intersection. A two-lane service road on the north side of the limited access highway would connect to the local road network. US 322–5 would turn southeast off the existing US 322 corridor near Tait Road, and proceed east along the lower slope of Tussey Mountain, paralleling US 322. The corridor would continue paralleling US 322 to the south, crossing over Church Hill Road, Dogtown Road, and Mountain Back Road and connect to the newly constructed US 322/PA 144 interchange at Potters Mills Gap. US 322–5 would be 8.4 miles long.

(c) Brief Summary of Expected Impacts

As part of the PEL process, PennDOT conducted scoping activities for the State College Area Connector Project. Resource data was collected from publicly available web based existing maps and data; direct coordination with various Federal, State, and local government agencies; select site reconnaissance; coordination with private organizations; and public input. This information was used to identify the types of environmental, cultural, and socioeconomic resources present and those likely to be affected. The following resources will be evaluated in the EIS and supporting technical studies: cultural resources (archaeology and historic architecture); hazardous materials; air quality; greenhouse gases and climate change; noise-sensitive areas; natural resources (wildlife and habitat; threatened, endangered, and special concern species; waters of the US; water quality; groundwater; floodplains; and farmlands); visual resources; section 4(f) resources (public recreational facilities, historic properties, and State Game Lands); and socioeconomic resources (communities and community facilities, population and housing, economic resources, land use and right-of-way, and environmental justice). Potential direct, indirect, and cumulative effects will be assessed and documented in the EIS. Preliminary review of the existing conditions with or adjacent to the Build Alternative corridors for the project could result in effects to the following:

- *Environmental Justice*: Minority and/or low-income (environmental justice) populations have been identified within the vicinity of the Project, specifically within Harris Township. An assessment of the potential for disproportionate and

adverse effects on environmental justice populations will be conducted, as described in section 4 of the NOI Additional Project Information document.

- *Regional and local economies*: Within the vicinity of the Project, there are industrial and commercial centers, and agricultural farm businesses. Industrial and commercial centers are clustered along existing US 322 in portions of Potter Township and Harris Township. Agricultural farm businesses are concentrated in the center and eastern portion of the project area. An assessment of the Project's potential effects on regional and local economies will be conducted,

- *Wetland and surface waters*: State and Federal regulated freshwater wetlands and waterways are present in the vicinity of the Project, including but not limited to Sinking Creek, Spring Creek, Boal Gap Run, Sleepy Creek, Galbraith Gap Run, and associated tributaries. A surface water and wetland delineation will be conducted to identify all State-regulated wetlands and Waters of the U.S. within and adjacent to the Build Alternative corridors. An assessment of the Project's potential effects on wetlands and surface waters will be conducted,

- *Threatened and endangered species*: Federally and State-listed threatened and/or endangered species have the potential to occur within the vicinity of the Project. A Pennsylvania Natural Diversity Inventory (PNDI) search was completed to determine potential threatened and endangered species resources within or adjacent to the Build Alternative corridors. The following species were identified in the search:

○ Plant State Species Only

- Serviceberry (proposed endangered)
- Long-fruited anemone (endangered)
- Tall gramma (endangered)
- Roundleaf services (proposed endangered)
- Brome grass (proposed threatened)
- Bebb's sedge (endangered/proposed threatened)
- Hansom sedge (endangered)
- Prairie sedge (threatened)
- Heller's witchgrass (proposed threatened)
- Vetchling (proposed endangered)
- Grooved yellow flax (endangered)
- False gromwell (endangered)
- Hard-leaved goldenrod (proposed endangered)
- Mountain starwort (proposed threatened)
- Tufted buttercup (endangered)
- Northeastern bulrush (endangered/proposed threatened)

- Declined trillium (proposed threatened)
- Mammal Species
 - Indiana Bat (Federal endangered)
 - Northern Long-eared Bat (Federal endangered)
 - Tri-colored Bat (Federal proposed endangered)
 - Eastern Small-footed Bat (State threatened)
- Reptile Species
 - Timber rattlesnake (State protected species)
- Aquatic Species
 - Triangle floater (State protected species)

Coordination with the resource agencies also noted concerns for migratory bird species and bat hibernacula in the area. An assessment of the Project's potential effects on threatened and endangered species will be conducted and coordination with the resource agencies conducted, accordingly.

- *Farmland*: Productive agricultural land and farmland soils pursuant to the Farmland Protection Policy Act are present in the vicinity of the Project. Agricultural evaluations will be conducted including secondary source data collection and farmer interviews. An assessment of the Project's potential effects on productive agricultural land and farmland soils will be conducted.

- *Historic properties*: A reconnaissance survey was conducted for resources within or adjacent to the Build Alternative corridors. The survey included a review of the Pennsylvania Historic and Museum Commission's files of resources identified as listed in or eligible for listing in the National Register of Historic Places (NRHP), and limited field investigation to identify properties potentially eligible for inclusion in the NRHP. An Area of Potential Effects (APE) will be established for the Project and an assessment will be conducted to identify the potential effects on historic properties. Coordination with the State Historic Preservation Office and interested parties will be included as part of the effect's findings.

- *Visual resources*: Visually sensitive resources are present in the vicinity of the Project, including but not limited to historic properties including the Penns Valley/Brush Valley Rural Historic District, and Rothrock State Forest. An assessment of the Project's potential effects on visual resources will be conducted.

- *Air quality*: The project lies in Centre County, Pennsylvania which is currently designated as a maintenance area under the 1997 8-hour ozone

NAAQS. Centre County is in attainment for all other criteria pollutants for which NAAQS are established. An assessment of the Project's potential effects on air quality will be conducted.

- *Traffic noise*: Noise sensitive receptors, as described in 23 CFR part 772, are present within the vicinity of the Project and include, but are not limited to residences and trails. An assessment of the Project's potential effects on traffic noise will be conducted.

- *Construction effects*: Construction of the Project has the potential to affect noise, air quality, traffic and transportation, local and regional economies, water quality, and other environmental resources. Construction effects would be temporary and would cease with the completion of construction. An assessment of the Project's potential construction-related effects will be conducted.

The analyses and evaluations conducted for the EIS will identify the potential for construction-related (short-term) and operational (long-term) effects (direct, indirect, and cumulative); whether the anticipated effects would be adverse; and mitigation measures for adverse effects. Evaluations under section 4(f) of the USDOT Act of 1966, 23 CFR part 774, and section 6(f) of the Land and Water Conservation Fund Act of 1965, 54 U.S.C. 200302, will be prepared, and consultation under section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 300101–307108, will be undertaken concurrently with the NEPA process. Additional information on the expected impacts is provided in the NOI Additional Project Information document available for review in the docket established for this project and on the project website as noted in the ADDRESSES section. Comments on the expected effects to be analyzed in the Draft EIS (DEIS) are welcomed during the NOI comment period. The identification of environmental effects for analysis in the DEIS may be revised due to the consideration of public comments.

(d) Anticipated Permits, Other Authorizations, and Cooperating and Participating Agencies

A Clean Water Act Section 404 permit decision from the U.S. Army Corps of Engineers (USACE) is anticipated in September 2026. Other anticipated State authorizations include a Pennsylvania Department of Environmental Protection (PADEP) Section 401 Water Quality Certification/Chapter 105 Standard Permit in August 2026. Section 7 consultation under the Endangered

Species Act is expected to be concluded in September 2025, and Section 106 consultation under the National Historic Preservation Act is anticipated to be concluded in December 2024. A U.S. Department of Transportation Act of 1966, Individual Section 4(f) authorization is anticipated in April 2026. See the NOI Additional Project Information document for more detail on the anticipated permits and other authorizations. Cooperating Agencies include the USACE, U.S. Fish and Wildlife Service, Environmental Protection Agency, Pennsylvania State Historic Preservation Office, and PADEP. Participating Agencies include the PA Fish and Boat Commission, PA Department of Conservation and Natural Resources, PA Game Commission, PA Department of Agriculture, Centre County Conservation District, Centre County Board of Commissioners, Harris Township Board of Supervisors, College Township Council, Seneca Nation of Indians, and Delaware Tribe of Indians.

(e) Scoping and Public Review

Agency Scoping

PennDOT has conducted agency coordination to inform the purpose and need and preliminary project alternatives, scoping meeting, and other elements outlined in this document. An Agency Coordination Plan was reviewed and agreed to by the Pennsylvania resource agencies, including the Cooperating and Participating agencies. It is a living document that will be updated through the EIS process. The resource agency meetings in Pennsylvania are referred to as Agency Coordination Meetings (ACM). Since PennDOT is the lead agency for this project, the agency meetings are typically held on the ACM's regularly scheduled meeting dates. A total of 12 agency coordination meetings were held between February 2020 and January 2024.

Public Review

PennDOT conducted public outreach activities during the PEL Study for the State College Area Connector to present information and collect public input. The PEL Study had a Public and Agency Coordination Plan which provided the foundation for the outreach activities.

Additionally, PennDOT conducted four public open house meetings. These meetings solicited public comment on the presented information which included:

- Virtual Open House Meeting—October 2020
 - overview of the transportation development process

- PEL Study process
- environmental resources
- engineering and traffic data
- purpose and need.
- Open House Public Meeting—September 21 and 22, 2021
 - PEL Study process
 - range of alternative concepts
 - Upgrade Existing and Build Alternative corridor concepts
 - alternative screening process
 - preliminary environmental and traffic analysis.
- Open House Public Meeting—April 5 and 6, 2022
 - environmental data collection efforts
 - traffic analyses
 - Upgrade Existing and Build Alternative corridor refinements
 - key resource and alternative changes since September 2021 meetings.
- Open House Public Meeting—October 19 and 20, 2022
 - PEL Study Report draft recommendations for alternatives to move forward
 - potential environmental and traffic impacts/benefits.

In addition, public official kick-off meetings were held in August, September, and November 2020 (Harris Township/August 10, Centre Hall Borough/August 13, Potter Township/August 17, College Township/August 20, Benner Township/September 3, Spring Township/September 8, Centre County/November 24, 2020). These meetings introduced the data presented in the Virtual Open House Meeting.

Combined public official meetings were also held:

- August 31, 2021, in advance of the September 2021 open house meeting.
- March 30, 2022, in advance of the of the April 2022 open house meeting.
- September 7, 2022, in advance of the October 2022 open house meetings.

The public and agency scoping process is continuing with the publication of this NOI. PennDOT will maintain and update the project website, as identified in the **ADDRESSES** section of this notice, to direct the public to the Final State College Area Connector Planning and Environmental Linkages Report and associated scoping documents and solicit public input. Additionally, PennDOT will continue to conduct targeted outreach to communities in and around the project area. A 30-day public comment period is being held in association with the publication of the NOI in the **Federal Register**. There will be at least three more public involvement opportunities for the State College Area Connector

Project. During project Scoping, there will be two public open house meetings. The first Scoping public open house meeting will occur after the NOI is issued and will present detailed traffic analysis, updated environmental features, and preliminary engineering alignment alternatives. The second Scoping public open house meeting will be held following alternative refinement and identification of a draft recommended preferred alternative. This public open house meeting will also present the revised preliminary alignment alternatives, associated potential environmental effects, and conceptual mitigation. Lastly, following the issuance of the Notice of Availability of the Draft EIS, a public hearing with an option for multiple nights, if necessary, will be held. Refer to the Coordination Plan for Public Involvement for more information.

(f) Schedule for the Decision-Making Process

Following the issuance of this notice, FHWA and PennDOT will coordinate with the Participating and Cooperating Agencies to develop study documentation and the Draft EIS.

- The Draft EIS is anticipated to be issued in July 2025.
- The combined Final EIS/Record of Decision is anticipated in July 2026.
- A section 404 permit decision from the USACE is expected in September 2026.

See the NOI Additional Project Information document for schedule details.

(g) Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

To ensure that a full range of issues related to the project are addressed and all potential issues are identified, FHWA invites comments and suggestions from all interested parties. The project team requests comments and suggestions on purpose and needs, potential alternatives and impacts, and the identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. Any information presented herein, including the project-specific purpose and need, preliminary range of alternatives and identification of impacts may be revised after consideration of the comments. The purpose of this request is to bring relevant comments, information, and analyses to the agency's attention, as early in the process as possible, to enable the agency to make maximum use of this information in decision

making. Comments may be submitted according to the instructions in the **ADDRESSES** section of this notice.

(h) Contact Information

FHWA: Julia Moore, Senior Environmental Specialist, Federal Highway Administration, Pennsylvania Division, 30 North Third Street, Suite 700, Harrisburg, PA 17101; email Julia.Moore@dot.gov; 717-221-4585.

Pennsylvania Department of Transportation: Eric Murnyack, PE, Project Manager, 70 PennDOT Drive, Clearfield, PA 16830; email emurnyack@pa.gov; 814-765-0435.

Jennifer Maureen Crobak,
*Director of Planning, Environment, Finance,
Federal Highway Administration.*

[FR Doc. 2024-16257 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces action taken by FHWA and other Federal agencies that are final. The actions relate to the Rebuild of the I-695 (Baltimore Beltway) Francis Scott Key Bridge over Patapsco River and its approaches. The actions grant licenses, permits, or approvals for the Project. The emergency Categorical Exclusion (CE) under the National Environmental Policy Act (NEPA) and other documents in the Project file provide details on the Project and FHWA's actions.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 23, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Valeriya Remezova, Division Administrator, Federal Highway Administration, 31 Hopkins Plaza, Suite 1520, Baltimore, MD 21201, Telephone (410) 962-4440.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following emergency bridge rebuild along with its approaches project in Maryland: the Francis Scott Key Bridge (Project).

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the CE and the associated agency records. That information is available by contacting FHWA at the address provided above and can also be viewed and downloaded from the project website at: <https://keybridgerebuild.com/>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109].
3. Clean Air Act [42 U.S.C. 7401–7671(q)].
4. Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601–4 *et seq.*].
5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
6. Endangered Species Act [16 U.S.C. 1531–1544 and 1536].
7. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].
8. Migratory Bird Treaty Act [16 U.S.C. 703–712].
9. Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c].
10. Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306101 *et seq.*].
11. Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*].
12. Farmland Protection Policy Act [7 U.S.C. 4201–4209].
13. Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377].
14. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].
15. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 *et seq.*].
16. Noise Control Act of 1972 [42 U.S.C. 4901 *et seq.*].
17. Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
18. Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].
19. Americans with Disabilities Act of 1990 [42 U.S.C. 12101].
20. Executive Order 11990 Protection of Wetlands.
21. Executive Order 11988 Floodplain Management.

22. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

23. Executive Order 11593 Protection and Enhancement of Cultural Resources.

24. Executive Order 13007 Indian Sacred Sites.

25. Executive Order 13287 Preserve America.

26. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments.

27. Executive Order 11514 Protection and Enhancement of Environmental Quality.

28. Executive Order 13112 Invasive Species.

29. Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency.

30. Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

31. Executive Order 14096 Revitalizing Our Nation's Commitment to Environmental Justice for All.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141, 126 Stat. 405).

Valeriya Remezova,

Division Administrator, Baltimore, Maryland.

[FR Doc. 2024–16217 Filed 7–23–24; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0108; FMCSA–2013–0443; FMCSA–2014–0381; FMCSA–2015–0115; FMCSA–2015–0320; FMCSA–2015–0321; FMCSA–2017–0254; FMCSA–2018–0050; FMCSA–2019–0034; FMCSA–2020–0045; FMCSA–2022–0042; FMCSA–2022–0043]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 18 individuals from the requirement in the Federal Motor Carrier Safety

Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 28, 2024. The exemptions expire on June 28, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, fmcamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2013–0108, FMCSA–2013–0443, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2019–0034, FMCSA–2020–0045, FMCSA–2022–0042, or FMCSA–2022–0043) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/>

individuals/privacy/privacy-act-system-records-notices, the comments are searchable by the name of the submitter.

II. Background

On June 11, 2024, FMCSA published a notice announcing its decision to renew exemptions for 18 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (89 FR 49261). The public comment period ended on July 11, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 18 renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of June 28, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 18 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (89 FR 49261):

Randall Bernath (MI)
James Craw (ME)
Paul Drewer (WA)
Jeremy Fehrman (WI)
David Funk (OH)
Scott Gessner (PA)

Daniel Halstead (NV)
Aaron Harms (MO)
John Holland, II (IN)
Scott Hughes (IL)
Brian Johnson (MN)
Larry Lintelman (AK)
Michael Miller (WI)
Chad Smith (MA)
Daniel Verduzco (CA)
Mohammad Warrad (IA)
Michael Weymouth (NH)
Karl Wilson, Jr. (GA)

The drivers were included in docket number FMCSA–2013–0108, FMCSA–2013–0443, FMCSA–2014–0381, FMCSA–2015–0115, FMCSA–2015–0320, FMCSA–2015–0321, FMCSA–2017–0254, FMCSA–2018–0050, FMCSA–2019–0034, FMCSA–2020–0045, FMCSA–2022–0042, or FMCSA–2022–0043. Their exemptions were applicable as of June 28, 2024 and will expire on June 28, 2026.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–16192 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0013]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 23, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2024–0013 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number (FMCSA–2024–0013) in the keyword box and click “Search.” Next, choose the only notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments. **FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2024–0013), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0013>. Next, sort the results

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

by “Posted (Newer-Older),” choose the only notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2024–0013) in the keyword box and click “Search.” Next, choose the only notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET 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.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The 11 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR

391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, “Qualification of Drivers; Application for Exemptions; National Association of the Deaf,” (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency’s physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency’s physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Gustavo Aro

Gustavo Aro, 44, holds a class C driver’s license in Nevada.

Amber Bivens

Amber Bivens, 47, holds a class D driver’s license in Ohio.

Jerry Burleson

Jerry Burleson, 76, holds a class AMV commercial driver’s license (CDL) in Alabama.

Trenton Eash

Trenton Eash, 22, holds a class E driver’s license in Florida.

Kiser Holiday

Kiser Holiday, 26, holds a class A CDL in California.

Camry McCaleb

Camry McCaleb, 27, holds a class C driver’s license in Texas.

Jeffrey Moore

Jeffrey Moore, 44, holds a class C driver’s license in Pennsylvania.

Henry Pauls

Henry Pauls, 73, holds a class ABCDM CDL in Wisconsin.

Jackson Smith

Jackson Smith, 24, holds a class D driver’s license in New Hampshire.

Robert Webber

Robert Webber, 41, holds a class C driver’s license in North Carolina.

Jason Wooten

Jason Wooten, 45, holds a class C driver’s license in Georgia.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–16190 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0332; FMCSA–2013–0123; FMCSA–2013–0124; FMCSA–2015–0328; FMCSA–2015–0329; FMCSA–2017–0059; FMCSA–2017–0061; FMCSA–2019–0111; FMCSA–2021–0013; FMCSA–2022–0032]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on August 22, 2024. The exemptions expire on August 22, 2026. Comments

must be received on or before August 23, 2024.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2015–0328, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2017–0061, Docket No. FMCSA–2019–0111, Docket No. FMCSA–2021–0013, or Docket No. FMCSA–2022–0032 using any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov/, insert the docket number (FMCSA–2012–0332, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2019–0111, FMCSA–2021–0013, or FMCSA–2022–0032) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0332, Docket No. FMCSA–2013–0123, Docket No. FMCSA–2013–0124, Docket No.

FMCSA–2015–0328, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2017–0061, Docket No. FMCSA–2019–0111, Docket No. FMCSA–2021–0013, or Docket No. FMCSA–2022–0032), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number (FMCSA–2012–0332, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2019–0111, FMCSA–2021–0013, or FMCSA–2022–0032) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2012–0332, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2019–0111, FMCSA–2021–0013, or FMCSA–2022–0032) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET 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.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 11 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these

drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 11 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 11 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 22, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Thomas Buretz (FL)
Adrian Crutchfield (MO)
Ruben Faulkwell (TX)
Nicholas Green (FL)
Jada Hart (IA)
Paul Micolichek (WA)
Christopher Poole (OH)
James Queen (FL)
Wayne Turner (IL)
Joshua Weaver (GA)
James Weir (AZ)

The drivers were included in docket number FMCSA–2012–0332, FMCSA–2013–0123, FMCSA–2013–0124, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2019–0111, FMCSA–2021–0013, or FMCSA–2022–0032. Their exemptions are applicable as of August 22, 2024 and will expire on August 22, 2026.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each

driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–16255 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0076]

Parts and Accessories Necessary for Safe Operation; Convoy Technologies, Inc Application for an Exemption

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

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant a limited 5-year exemption to Convoy

Technologies, Inc. (Convoy) to allow motor carriers to operate commercial motor vehicles (CMVs) with the company's Electronic Rear View System (ERVS) camera monitor system (CMS) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency has determined that granting the exemption would likely achieve a level of safety equivalent to or greater than the level of safety provided by the regulation.

DATES: This exemption is effective July 24, 2024 and ending July 24, 2029.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–9209; MCPSV@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

Docket: For access to the docket to read background documents or comments submitted in response to the notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, 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 Docket Operations. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

I. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain parts of the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice

will identify the regulatory provision from which the applicant will be exempt, the effective period (up to 5 years), and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

II. Convoy's Application for Exemption

Convoy has applied for an exemption from 49 CFR 393.80(a) to allow motor carriers to operate CMVs equipped with the company's ERVS CMS installed as an alternative to the two rear-vision mirrors required by the FMCSRs. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's (NHTSA) standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard [FMVSS] No. 111, "Rear Visibility"). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

The ERVS CMS consists of six cameras: two camera assemblies each with two high-definition cameras firmly mounted high on each side of the CMV exterior for optimal visibility, along with the option to add one additional rear-view camera per assembly. Each camera has a specific field of view (FOV) and is enclosed in an aerodynamic package that provides environmental protection for the cameras. Each camera presents a clear image to the driver by means of an internal monitor firmly mounted to the left and right A-pillar of the CMV, *i.e.*, the structural member between the windshield and door of the cab. The installation of the monitors on the A-pillars creates no additional visual obstruction, while eliminating the substantial blind spots created by conventional mirrors. Convoy states that its ERVS CMS meets and/or exceeds the visibility requirements provided in

FMVSS No. 111 based on the following factors:

- Expanded FOV: the ERVS provides approximately 25% expansion of driver FOV.
- Left/Right Blind Zone Rear View: a super-wide view angle that reduces left/right blind zones and transmits the images through a high-speed video transmission to produce a clear, real-time display.
- A-pillar Blind Zone Elimination: camera angles provide drivers with full 180-degree views from the side of the CMV, eliminating A-pillar blind zones.
- Front Corner Blind Zone Elimination: a unique forward-facing camera that provides clear visibility over the front right corner of the CMV, a high-risk blind spot that causes crashes.
- HD [high definition] Night Vision System: auto-dimming night vision technology that provides clear imaging and superior nighttime visibility through an HD image display.
- Camera LED [light-emitting diode] Auto Light: a built-in LED light in the camera that automatically adjusts to different road conditions to create a clearer display and appropriate screen brightness in low-light conditions.
- Screen Brightness Auto Adjustment: backlight brightness that adjusts automatically at day and night to reduce low-light and high-light/glare environments and provide optimal image quality.
- Uninterrupted, Fail-Safe Display: the ERVS is made up of multiple cameras to protect against malfunctions in the unlikely event of an individual camera failure. It also features defrosting elements and heat chips to provide continuous camera functioning in cold weather.
- Weather Resilient: unlike traditional mirrors, the ERVS internally mounted displays are protected from the elements; high camera placement and shielded, downward-facing camera orientation protects cameras from inclement weather.
- Fatigue Reduction: the system is ergonomically designed to reduce driver head movements and therefore reduce driver fatigue.
- HD Dual DVR [digital video recorder] Recording and Playback: dual HD recording that can provide important data for accident reconstruction and crash accountability.

Convoy believes that mounting the system as described would maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

III. Summary of Comments

FMCSA published a notice of the application in the **Federal Register** on February 29, 2024, requesting public comment (89 FR 14928). The Agency received comments from three individuals. Two generally opposed to the application and one supported it.

Two commenters who opposed the exemption generally discourage the use of cameras to replace mirrors. They highlight the potential dangers of relying solely on electronic systems and advocate for the continued use of traditional mirrors. Their concern is that relying solely on cameras could create unsafe operating conditions in the event of a camera failure.

Although the Agency received two comments opposing this exemption, FMCSA has received numerous positive comments in support of other, similar camera-based mirror system exemptions, such as in Stoneridge, Inc. "MirrorEye Camera Monitor System" (84 FR 5557, February 21, 2019), Vision Systems North America "SmartVision System" (85 FR 2486, January 15, 2020), Robert Bosch, LLC and Mekra Lang North America, LLC (Bosch) "Digital Mirror System" (85 FR 58106, September 17, 2020), and Rosco Vision, Inc. "Commercial Vehicle Digital Camera Monitor System" (87 FR 73386, December 4, 2022). Seventeen motor carriers, associations and individuals supported the Stoneridge application, specifically noting the following benefits: (1) superior total FOV around a CMV, including reduction/elimination of blind spots (2) increased visibility when driving at night and during inclement weather, (3) enhanced vehicle maneuverability in backing, turning, and lane changes through use of trailer scanning, (4) and reduced driver fatigue.

Vision Systems North America's application was supported by 5 motor carriers, associations, and individuals. These commenters specifically noted the following benefits of the camera-based mirror system proposed: (1) improved FOV around a CMV, including reduction/elimination glare and blind spots, (2) increased visibility when driving at night and during inclement weather, and (3) reduced driver fatigue.

The American Bus Association (ABA) commented in support of the Bosch Digital Mirror System. The ABA noted that the Bosch system provided the following visibility benefits: (1) anti-glare, (2) improved visibility at night and during adverse weather conditions, and (3) elimination of blind spots by providing a broader FOV around the vehicle.

In addition to the positive comments received relating to other CMS systems, the Agency has not received any reports of crashes or other safety concerns relating to the previously granted CMS exemption applications.

IV. FMCSA Decision Granting Exemption

FMCSA evaluated Convoy's application for exemption and the comments received. For the reasons discussed below, FMCSA grants the exemption to allow motor carriers to install and operate CMVs with the company's ERVS CMS as an alternative to the two rear-vision mirrors required by the FMCSRs. FMCSA believes that the ERVS CMS is likely to achieve a level of safety equivalent to or greater than the level of safety achieved by the regulation.

A. Equivalent Level of Safety Analysis

Section 393.80 cross-references FMVSS No. 111 which requires CMVs with a GVWR of 11,340 kg (25,000 pounds) or more to be equipped with a rearview mirror size of unit magnification of no less than 323 cm² (50 in²) on each side of the vehicle. In its comments to a 2019 NHTSA Advance Notice of Proposed Rulemaking on rear visibility, the Engine Manufacturers Association¹ (EMA) noted that CMV manufacturers are equipping CMVs with mirrors that are more than twice the minimum size required for each side of the vehicle, as well as adding convex mirrors to provide the driver a still greater FOV. The manufacturers install these larger, less aerodynamic mirrors to provide the driver the enhanced visibility that is crucial to the safe operation of a large truck. Similarly, CMS like Convoy's ERVS CMS are capable of providing an enhanced FOV that exceeds FMVSS No. 111 and the current rear-vision mirrors installed on CMVs.

FMCSA notes that CMS are authorized for use in a number of European countries as a legal alternative to the traditional rear-vision mirrors under the requirements of United Nations Economic Commission for Europe (UNECE) R46 which specifies minimum safety, ergonomic, and performance requirements for CMS in place of mandatory inside and outside rearview mirrors for road vehicles. This regulation references ISO (International Organization for Standardization)

standard 16505 Rev 2019 which addresses CMS definitions and required performance for use in road vehicles. The specifications for CMS systems in ISO 16505 exceed the FOV requirements in FMVSS No. 111.

FMCSA has reviewed Convoy's exemption application and has determined that its ERVS CMS exceeds both the FOV required by FMVSS No. 111 and the standards of rear-vision mirrors currently installed by manufacturers.

FMCSA acknowledges the concerns of the two individual commenters regarding potential system failure of the ERVS CMS. FMCSA notes that the ERVS CMS is designed with redundancy in the event of camera failure such that if one of the cameras within the camera assembly were to fail, the system automatically adjusts the view of the interior monitor for that side of the vehicle to a full screen view of the remaining working camera. Furthermore, if the entire camera assembly on one side were to fail, the functionality of the other side remains unaffected.

In the event of camera or monitor failure, the CMV would not be subject to an out-of-service (OOS) order because it is not a critical inspection item under CVSA's OOS criteria,² in the same way conventional mirrors are not out of service if cracked or damaged while in operation. Instead, the CMV would be subject to the requirements of 49 CFR 396.11 which would require a driver to complete a driver vehicle inspection report at the end of the workday and the motor carrier to correct any identified safety defects before permitting or requiring a driver to operate the CMV again.

Additionally, under 49 CFR 392.7(a), CMV drivers must satisfy themselves that a vehicle is in safe condition before operating the vehicle. This obligation would include ensuring that both rear-vision mirrors (or in this case, all components of the ERVS CMS including all external cameras and both internal monitors) are in good working order. CMVs are also subject to the periodic inspection requirements under 49 CFR 396.17 which would include an inspection of the ERVS CMS. To further ensure that the ERVS CMS system is

properly maintained, the terms and conditions of the exemption specify that motor carriers and drivers operating CMVs equipped with the ERVS CMS must inspect them before operating the vehicle.

FMCSA believes that the ERVS CMS is likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved by standard rear-view mirrors because it provides a greater FOV, eliminates the blind spots on both sides of the vehicle, provides a monitor with low-light sensitivity feature, and includes a camera heating system, all of which exceed the current requirements of 49 CFR 393.80. The FMCSRs impose several operational controls that will help ensure that the ERVS CMS is functioning properly. Before driving a vehicle, a driver must be satisfied that the vehicle is in safe operating condition, and that any system failures reported have been corrected prior to vehicle re-dispatch. Additionally, the driver must complete a driver vehicle inspection report at the completion of the workday, noting any system defects or failures that occurred during operation of the vehicle.

B. Duration of Exemption

The Agency grants the exemption for a 5-year period, beginning July 24, 2024 and ending July 24, 2029 unless rescinded earlier by FMCSA. During the exemption period, motor carriers operating CMVs may install and utilize Convoy's ERVS CMS in lieu of the two rear-vision mirrors required by section 393.80 of the FMCSRs. The Agency encourages drivers operating CMVs under this exemption to carry a copy of the exemption in the vehicle.

C. Conditions of Exemption

1. This exemption is limited to Convoy's ERVS CMS installed on CMVs and does not apply to any other camera-based mirror-replacement system/technology.

2. Drivers operating CMVs under this exemption must inspect the ERVS CMS each time before operating the CMV and ensure that it is in proper working order.

3. Drivers operating CMVs under this exemption must inspect the equipment at the end of each day and note any defects in the equipment. The motor carrier must repair any defects noted by the driver before allowing the operation of the CMV.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this

¹ Engine Manufacturers Association (EMA) comments to NHTSA ANPRM Federal Motor Vehicle Safety Standard No. 111, Rear Visibility (84 FR 54533, October 10, 2019), <https://www.regulations.gov/comment/NHTSA-2018-0021-0493>.

² The CVSA OOSC states that any motor vehicle which by reason of its mechanical condition or loading that would be likely to cause an accident or breakdown is considered "Out-of-Service." Violations, other than Out-of-Service conditions, detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach. See <https://www.cvsa.org/inspections/out-of-service-criteria/>.

exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemption will experience any deterioration of their safety records. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption without prior notice. The exemption will be rescinded if: (1) motor carriers and/or CMV drivers fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) or 31315(b).

The motor carrier must, in addition to existing periodic inspections required by 49 CFR 396.17, periodically inspect the ERVS CMS. Interested parties possessing information that would demonstrate that motor carriers operating CMVs utilizing Convoy's ERVS CMS installed as an alternative to two rear-vision mirrors are not achieving the requisite statutory level of safety should immediately notify FMCSA by email at MCPSV@DOT.GOV. The Agency will evaluate any such information and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption. We encourage drivers operating CMVs under this exemption to carry a copy of the exemption in the vehicle.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024-16208 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0123; FMCSA-2013-0125; FMCSA-2013-0126; FMCSA-2014-0102; FMCSA-2014-0107; FMCSA-2015-0327; FMCSA-2015-0328; FMCSA-2015-0329; FMCSA-2017-0057; FMCSA-2017-0059; FMCSA-2017-0060; FMCSA-2018-0139; FMCSA-2019-0109; FMCSA-2019-0110; FMCSA-2020-0024; FMCSA-2020-0025; FMCSA-2022-0032; FMCSA-2022-0033]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 34 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001, (202) 366-4001, fmcsmmedical@dot.gov. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA-2013-0123, FMCSA-2013-0125, FMCSA-2013-0126, FMCSA-2014-0102, FMCSA-2014-0107, FMCSA-2015-0327, FMCSA-2015-0328, FMCSA-2015-0329, FMCSA-2017-0057, FMCSA-2017-0059, FMCSA-2017-0060, FMCSA-2018-0139, FMCSA-2019-0109, FMCSA-2019-0110, FMCSA-2020-0024, FMCSA-2020-0025, FMCSA-2022-0032, or FMCSA-2022-0033) in the keyword box and click "Search."

Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On June 11, 2024, FMCSA published a notice announcing its decision to renew exemptions for 34 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 49259). The public comment period ended on July 11, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR

6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 34 renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of June 3, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 49259):

Carlos Arellano (CA)
Michael Beam (MI)
Arthur Brown (FL)
Gregory Cane (AZ)
Gabriel Garza (TX)
Scott Gentry (FL)
Michael Quinonez (NM)
Robert Rollins (NC)
Roderick Thomas (GA)

The drivers were included in docket number FMCSA–2017–0057, FMCSA–2019–0110, FMCSA–2013–0126, FMCSA–2022–0032, or FMCSA–2022–0033. Their exemptions were applicable as of June 3, 2024 and will expire on June 3, 2026.

As of June 17, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 49259):

Paul Aseka (TX)
Forrest Carroll (OH)
Glenn Ferguson (TX)
Ariel Gonzalez (RI)
Richard Hadlock (IL)
Jesus Javier (NJ)
Yoel Lopez-Perez (FL)
Darren Nordquist (WI)
Anthony Panto (NJ)
Ernest Pratt (PA)
William Symonds (IL)
Steven Tipton (IA)
Daniel Tricolici (MA)
Fernando Velasquez (TX)
Scott Weeaks (OK)

The drivers were included in docket number FMCSA–2013–0123, FMCSA–2013–0125, FMCSA–2014–0107, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, FMCSA–2018–0139, FMCSA–2019–0109, or FMCSA–2020–0024. Their exemptions were applicable as of June 17, 2024 and will expire on June 17, 2026.

As of June 18, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 49259):

Joshua Affholter (MI)
Gantugla Badarch (IL)
Awash Demoz (MD)
Charles O'Bryan (NY)
Kyle Taylor (GA)

The drivers were included in docket number FMCSA–2020–0025. Their exemptions were applicable as of June 18, 2024 and will expire on June 18, 2026.

As of June 25, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 49259):

Alfredo Ramirez (TX); Julie Ramirez (TX); and Hayden Teesdale (TX).

The drivers were included in docket number FMCSA–2014–0102. Their exemptions were applicable as of June 25, 2024 and will expire on June 25, 2026.

As of June 29, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 49259):

Leroy Carter (OH); and Richard Fisher (PA).

The drivers were included in docket number FMCSA–2017–0060. Their exemptions were applicable as of June 29, 2024 and will expire on June 29, 2026.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–16191 Filed 7–23–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0011]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on July 16, 2024. The exemptions expire on July 16, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, fmcamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2024–0011) in the keyword box and click “Search.” Next, sort the results by “Posted (Older–Newer),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On June 11, 2024, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 49264). The public comment period ended on July 11, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the

maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting

the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Anderson Aberdeen (CO)
Ismael Aguirre (CA)
Ulises Coria (UT)
Manual Llano Hevia (NV)
Stan Lockett (TX)
Joe Martens (IL)
Dejan Ortiz (TX)
Elyssa Simmons (VA)
Tamel Smith (NY)
Anton Syntax (PA)
Jonathan Wilke (IA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-16189 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0096]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LONER (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has

been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 23, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2024-0096 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2024-0096 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2024-0096, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LONER is: *Intended Commercial Use of Vessel:* Requester intends to offer passenger sportfishing charters.

Geographic Region Including Base of Operations: Florida. Base of Operations: Islamorada, Florida.

Vessel Length and Type: 40' Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024-0096 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD-2024-0096 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such

confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024-16154 Filed 7-23-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Mental Health (OMH), Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that VA is establishing a new system of records titled, "Law Enforcement Officer Evaluations (LEO Evals)—VA" (216VA10). This system will be used to assist with the occupational placements of VA police officer candidates and officers undergoing psychological evaluations for hire and annually thereafter. Psychological evaluations, testing, and notes will contain data to assess the applicant's or employee's psychological fitness to meet the functional requirements of a VA police officer position.

DATES: Comments on this new system of records must be received no later than August 23, 2024. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by

VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to “Law Enforcement Officer Evaluations (LEO Evals)—VA (216VA10)”. Comments received will be available at www.Regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, (105HIG), Washington, DC 20420, stephania.griffin@va.gov, telephone number 704-245-2492 (Note: This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

This system of records is used to assist with occupational placements VA police officer candidates and officers undergoing psychological evaluations for hire and annually thereafter. Psychological evaluations, testing, and notes will contain data to assess the applicant's or employee's psychological fitness to meet the functional requirements of a VA police officer position. VA Handbook 0730, Security and Law Enforcement, appendix A, dated August 11, 2000, describes the medical standards for VA police officer applicants and incumbents. VA Handbook 0730 states that the VA police officers must possess emotional and mental stability. These guidelines are consistent with VA Handbook 0720, Procedures to Arm Department of Veterans Affairs Police, dated January 24, 2000. These standards are based on 25 CFR 339.301.

II. Proposed Routine Use Disclosures of Data in the System

VA is proposing the following routine use disclosures of information maintained in the system.

1. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data Breach Response and Remediation, for VA:* To appropriate

agencies, entities, and persons when (a) VA suspects or has confirmed that there has been a breach of the system of records; (b) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation of law civil. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *Department of Justice (DoJ), Litigation, or Administrative Proceeding:* To DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

- (a) VA or any component thereof;
- (b) Any VA employee in his or her official capacity;
- (c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or
- (d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that

use of such records is relevant and necessary to the proceedings.

6. *Office of Management and Budget (OMB):* To OMB for the performance of its statutory responsibilities for evaluating Federal programs.

7. *OMB:* To OMB at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

8. *National Archives and Records Administration (NARA):* To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

9. *Equal Employment Opportunity Commission (EEOC):* To EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

10. *Federal Labor Relations Authority (FLRA):* To FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

11. *Merit Systems Protection Board (MSPB):* To MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

12. *Health Care Providers, for Referral by VA:* To: (a) a Federal agency or a health care provider when VA refers a patient for medical and other health services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (b) a Federal agency or a health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

13. *Health Care Providers, for Referral to VA:* To a non-VA health care provider when that health care provider has

referred the individual to VA for medical or other health services.

14. *Covered Entities, for their Health Care Operations*: To a covered entity for their health care operations, provided that the entity either has or had a relationship with the individual, and the disclosure is for the purpose of:

(a) Conducting quality assessment and improvement activities; patient safety activities as defined in 42 CFR 3.20; population-based activities relating to improving health or reducing health care costs, protocol development, case management, and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance, and health plan performance; conducting training programs for health care practitioners, trainees, and students; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or

(c) Health care fraud and abuse detection or compliance.

15. *Guardians, for Incompetent Veterans*: To a legal guardian who is responsible for the care of the mentally incompetent individual, provided that information is about the incompetent individual and only disclosed to the extent necessary.

16. *Agency-Appointed Representatives, Regarding Examinations*: To the agency-appointed representative of an employee including all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under: (a) medical evaluation (formerly Fitness for Duty) examinations procedures, or (b) agency-filed disability retirement procedures.

17. *Other Agencies, for Injury Reporting*: To a requesting agency, organization, or individual including the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

18. *Governmental Agencies, for VA Hiring, Security Clearance, Contract, License, Grant*: To a Federal, State, local, or other governmental agency maintaining civil or criminal violation records, or other pertinent information, such as employment history, background investigations, or personal or educational background, to obtain information relevant to VA's hiring,

transfer, or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

19. *Federal, State, Local Agencies, for Workplace Health and Safety Matters*: To any Federal, State, or local government agency, in response to its request or at the initiation of the VA, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose as it relates to the conduct of job-related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

20. *State Licensing Board (SLB), for Licensing*: To a Federal agency, a State or local government licensing board, the Federation of State Medical Boards, or a similar non-governmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, to inform such non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

21. *Licensing Investigators or Supervisory Officials*: To a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

22. *National Practitioner Data Bank (NPDB), for Hiring, Privileging*: To the NPDB at the time of hiring or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging,

retention, or termination of the applicant or employee.

23. *NPDB, SLB, for Medical Malpractice*: To the NPDB or a SLB in the State in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) any payment for the benefit of a physician, dentist, or other licensed health care practitioner that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual; (b) a final decision that relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

24. *Health and Wellness Program Evaluation*: To third parties under contract with the agency to conduct evaluations of health and wellness programs.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on June 14, 2024 for publication.

Dated: July 19, 2024.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

“Law Enforcement Officer Evaluations (LEO Evals—VA” (216VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

These records are the responsibility of the Office of Mental Health (OMH), Veterans Health Administration (VHA), Department of Veterans Affairs (VA). The OMH is located at 810 Vermont Avenue NW, (11MH), Washington, DC 20420. Records are maintained at VA health care facilities. Addresses are listed in VA Appendix 1 of the biennial publication of the VA Privacy Act Issuances.

SYSTEM MANAGER(S):

Christopher Loftis, Ph.D., National Mental Health Director, Office of Mental Health, 810 Vermont Avenue NW, Washington, DC 20420, *Christopher.loftis2@va.gov*, telephone number 202-461-0420 (Note: This is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

VA Handbook 0730; VA Handbook 0720; 5 CFR 339.301.

PURPOSE(S) OF THE SYSTEM:

Records in this system will be used to assist with occupational placements of VA police officer candidates and officers undergoing psychological evaluations for hire and annually thereafter. Psychological evaluations, testing, and notes will contain data to assess the applicant's or employee's psychological fitness to meet the functional requirements of a VA police officer position.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in the system are on VA police officer employees and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include demographic information such as name, address, phone number, email address, and the last four of the applicant/employee social security number. Records will also contain information regarding the psychological suitability to meet the functional requirements of the VA police officer position requirements, to include test data, interview notes, screening measures, behavioral history, references, and background data.

RECORD SOURCE CATEGORIES:

Records in this system are provided by VA police officer employees and candidates, VA psychologists and psychiatrists conducting psychological evaluations, VA police chiefs and supervisors, and human resource and occupational health staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by The HIPAA Privacy Rule and 38 U.S.C. 7332 that information cannot be disclosed under a routine use unless there is also specific disclosure authority in both provisions.

1. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities, and persons when (a) VA suspects or has confirmed that there has been a breach of the system of records; (b) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, State, local, territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation of law civil. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *Department of Justice (DoJ), Litigation, or Administrative Proceeding:* To DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Office of Management and Budget (OMB):* To OMB for the performance of its statutory responsibilities for evaluating Federal programs.

7. *OMB:* To OMB at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

8. *National Archives and Records Administration (NARA):* To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

9. *Equal Employment Opportunity Commission (EEOC):* To EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

10. *Federal Labor Relations Authority (FLRA):* To FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

11. *Merit Systems Protection Board (MSPB):* To MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

12. *Health Care Providers, for Referral by VA:* To: (a) a Federal agency or a health care provider when VA refers a patient for medical and other health

services, or authorizes a patient to obtain such services and the information is needed by the Federal agency or health care provider to perform the services; or (b) a Federal agency or a health care provider under the provisions of 38 U.S.C. 513, 7409, 8111, or 8153, when treatment is rendered by VA under the terms of such contract or agreement or the issuance of an authorization, and the information is needed for purposes of medical treatment or follow-up, determination of eligibility for benefits, or recovery by VA of the costs of the treatment.

13. *Health Care Providers, for Referral to VA:* To a non-VA health care provider when that health care provider has referred the individual to VA for medical or other health services.

14. *Covered Entities, for their Health Care Operations:* To a covered entity for their health care operations, provided that the entity either has or had a relationship with the individual, and the disclosure is for the purpose of:

(a) Conducting quality assessment and improvement activities; patient safety activities as defined in 42 CFR 3.20; population-based activities relating to improving health or reducing health care costs, protocol development, case management, and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance, and health plan performance; conducting training programs for health care practitioners, trainees, and students; training of non-health care professionals; accreditation, certification, licensing, or credentialing activities; or

(c) Health care fraud and abuse detection or compliance.

15. *Guardians, for Incompetent Veterans:* To a legal guardian who is responsible for the care of the mentally incompetent individual, provided that information is about the incompetent individual and only disclosed to the extent necessary.

16. *Agency-Appointed Representatives, Regarding Examinations:* To the agency-appointed representative of an employee including all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under: (a) medical evaluation (formerly Fitness for Duty) examinations procedures, or (b) agency-filed disability retirement procedures.

17. *Other Agencies, for Injury Reporting:* To a requesting agency, organization, or individual including the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

18. *Governmental Agencies, for VA Hiring, Security Clearance, Contract, License, Grant:* To a Federal, State, local, or other governmental agency maintaining civil or criminal violation records, or other pertinent information, such as employment history, background investigations, or personal or educational background, to obtain information relevant to VA's hiring, transfer, or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

19. *Federal, State, Local Agencies, for Workplace Health and Safety Matters:* To any Federal, State, or local government agency, in response to its request or at the initiation of the VA, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose as it relates to the conduct of job-related epidemiological research or the assurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

20. *State Licensing Board (SLB), for Licensing:* To a Federal agency, a State or local government licensing board, the Federation of State Medical Boards, or a similar non-governmental entity that maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, to inform such non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal Agency. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

21. *Licensing Investigators or Supervisory Officials:* To a State or local government entity which has the legal authority to make decisions concerning

the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

22. *National Practitioner Data Bank (NPDB), for Hiring, Privileging:* To the NPDB at the time of hiring or clinical privileging/re-privileging of health care practitioners, and other times as deemed necessary by VA, in order for VA to obtain information relevant to a Department decision concerning the hiring, privileging/re-privileging, retention, or termination of the applicant or employee.

23. *NPDB, SLB, for Medical Malpractice:* To the NPDB or a SLB in the State in which a practitioner is licensed, in which the VA facility is located, or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (a) any payment for the benefit of a physician, dentist, or other licensed health care practitioner that was made as the result of a settlement or judgment of a claim of medical malpractice, if an appropriate determination is made in accordance with Department policy that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the individual; (b) a final decision that relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (c) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist, either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

24. *Health and Wellness Program Evaluation:* To third parties under contract with the agency to conduct evaluations of health and wellness programs.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper folders and electronic storage media in VA Information Technology systems.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the employee or applicant name, the last four of their social security number, date of evaluation, or by any combination of these identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, VHA Records Control Schedule 10–1, Item 6400.3.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. On an annual basis, employees are required to sign a computer access agreement acknowledging their understanding of confidentiality requirements. In addition, all employees receive annual privacy awareness and information security training.

2. Access to electronic records is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

3. Strict control measures are enforced to ensure that access to and disclosure from all records are limited to VA and the employees whose official duties warrant access to those files.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or inquire in person at the VA health care facility where services were provided. A request for access to records must contain the

requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above, or may visit the applicable VA facility. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Under title 5 U.S.C. 552a(k)(6), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is testing or examination material used solely to determine police officers' qualifications for appointment or fitness for duty in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process. The Law Enforcement Officer Evaluation records within this system of records are considered examination material used to determine if an individual has the qualifications to become a VA police officer. The function of the VA Police Service is to provide for the

maintenance of law and order and the protection of persons and property on Department property, and having qualified individuals is critical to this function. This system of records has been created to collect testing and examination materials used to determine qualifications for VA police officers' fitness for service within VA.

Based upon the foregoing, the VA Secretary has exempted this system of records, to the extent that it encompasses information pertaining to testing or examination material used solely to determine qualifications for appointment or fitness for duty in the Federal service from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k); 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d)(1) through (d)(4); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4)(G), (H) and (I); and 5 U.S.C. 552a(f).

Reasons for exemptions: The exemption of information and material in this system of records is necessary to assist in the accomplishment of the law enforcement functions of the VA Police Service by ensuring qualified individuals are determined fit for duty and selected as VA Police Officer. Sharing the testing and examinations materials and records with individuals seeking a position with the VA Police Service would compromise the examination process and undermine VA's ability to ensure qualified individuals are determined fit for service within the VA Police Service.

HISTORY:

None.

[FR Doc. 2024–16267 Filed 7–23–24; 8:45 a.m.]

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Part II

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, et al.

Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments To Form N-4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, and 274

[Release No. 33–11294; 34–100450; IC–35273; File No. S7–16–23]

RIN 3235–AN30

Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities; Amendments To Form N–4 for Index-Linked Annuities, Registered Market Value Adjustment Annuities, and Variable Annuities; Other Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting rule and form amendments to provide a tailored form to register the offerings of registered index-linked annuities (“RILAs”). Specifically, the Commission is amending 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 amending certain filing rules and making other related amendments. These changes will implement the requirements relating to RILAs contained in the Consolidated Appropriations Act, 2023. The Commission is also extending the registration, filing, and disclosure requirements that the Commission is adopting for RILA offerings to the offerings of registered market value adjustment annuities. Further, the Commission is adopting other amendments to Form N–4 that will apply to all issuers that use that form. The Commission is applying to RILA and registered market value adjustment annuity advertisements and sales literature a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws. Finally, the Commission is adopting technical amendments to Forms N–6 and N–3 to

correct errors from prior Commission rulemakings.

DATES:

Effective date: This rule is effective September 23, 2024.

Compliance dates: The applicable compliance dates are discussed in section II.J of this Release.

FOR FURTHER INFORMATION CONTACT:

Pamela Ellis, Alexis Hassell, Rachael Hoffman, Michael Khalil, Amy Miller, or Gregory Scopino, 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; Min Oh, Senior Counsel; or Elizabeth Bentzinger or Michael Kosoff, Senior Special Counsels, 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 amending 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 433	§ 230.433.
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–3	§ 239.17a and 274.11b.
Form N–4	§ 239.17b and 274.11c.
Form N–6	§ 239.17c and 274.11d.
Form 24F–2	§ 239.66 and § 274.24.

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¹ 15 U.S.C. 77a et seq.

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I. Introduction and Background

The Commission is adopting rule and form amendments (“final amendments”) that are designed to help investors make informed decisions regarding RILAs. To modernize and enhance the registration and disclosure framework for RILAs, we are adopting amendments that will require offerings of RILAs to be registered on Form N-4, the registration form for most variable annuities, as well as adapt that form to accommodate RILAs. These amendments finalize rule and form amendments that the Commission proposed in September 2023.²

² See Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities, Investment Company Act Release No. 35028 (Sept. 29, 2023) [88 FR 71088 (Oct. 13, 2023)] (“Proposing Release” or “proposal”). The Commission voted to issue the Proposing Release on September 29, 2023. The release was posted on the Commission website that day, and comment letters were received beginning

The amendments implement Congress’ directive to the Commission in Division AA, Title I of the Consolidated Appropriations Act, 2023 (“RILA Act”) to adopt a new registration form for RILAs within 18 months of enactment.³ 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 Commission’s amendments will result in disclosure requirements for RILAs that are tailored to the particular characteristics of RILAs and comparable to variable annuity disclosure. We are also adopting related amendments to various Commission rules to effectuate the new disclosure requirements for RILAs and for further consistency in the registration, filing, and disclosure framework for RILAs compared to other similar annuity products. These amendments include, among other things: amendments permitting RILA issuers to use summary prospectuses; amendments that will result in the same requirements for RILAs and variable annuities in terms of updating the issuer’s prospectus each year; and amendments that address how RILAs will register and pay for new shares, as well as other aspects of the registration and offering process. Furthermore, we are adopting amendments to extend the registration, filing, and disclosure approach we are adopting for RILAs to annuity contracts that offer fixed investment options and apply market value adjustments (“MVAs”) to amounts withdrawn from a fixed option before the end of the fixed option’s term, where the offering is required to be registered with the Commission because of the MVA (“registered MVA annuities” and, collectively with RILAs, “non-variable annuities”).⁴ We are

the same day. The comment period closed on November 28, 2023. We have considered all public comment received through May 28, 2024. The comment letters on the Proposing Release are available at <https://www.sec.gov/comments/s7-16-23/s71623.htm>.

³ Publix Law 117–328; 136 Stat. 4459 (Dec. 29, 2022). The RILA Act provides that, if the Commission fails to adopt the form within 18 months of enactment, RILA issuers can begin registering RILA offerings on existing Form N-4.

⁴ See facing page of final Form N-4 in final Form N-4; see also *infra* footnote 16 and accompanying text (discussing the operation of MVAs); Section II.B (discussing the final amendments’ requirement for registered MVA annuities to register on Form N-4). The term “non-variable annuities” distinguishes these annuities from variable annuities whose

additionally adopting other amendments to Form N-4 that will apply to all issuers that use that form, which are informed by the staff’s historical experience in administering the form and relevant investor testing.⁵ We are also adopting amendments that will apply a current Commission rule—which provides guidance as to when sales literature is materially misleading under the Federal securities laws—to RILA and registered MVA annuity advertisements and sales literature. Finally, we are adopting technical amendments to Forms N-6 and N-3 to update certain references used in those forms.

The Commission received comments on the proposal from a variety of interested parties, including life insurance companies, professional and trade associations, a public interest advocacy organization, and individuals.⁶ Commenters broadly supported the proposal, including the proposed approach of requiring insurance companies to use Form N-4 to register RILA offerings, the amendments that would permit the use of summary prospectuses, and the amendments to filing and fee-payment rules. Some commenters suggested modifications and additions to the proposed approach, including changes to some of the specific disclosures that Form N-4 would require for RILAs. Others suggested we include registered MVA annuities (which currently, like RILAs, register on Forms S-1 and S-3) and certain other insurance products among those required to register on Form N-4. Some commenters also urged the Commission to extend rule 482 under the Securities Act, which addresses investment company advertising, to RILAs.

After consideration of the comments received, we are adopting the proposed

offerings are registered on Form N-4, in which investors allocate their purchase payments to a range of investment options—typically mutual funds—and the investor’s account value changes depending on the performance of the investment options selected. We understand that this term is understood in the industry to refer to annuities other than variable annuities.

⁵ See *infra* section I.D.1.

⁶ Some commenters raised topics that relate to various insurance product issues but not to the proposed rulemaking. See, e.g., Comment Letter of the Committee of Annuity Insurers (Nov. 28, 2023) (“CAI Comment Letter”) (suggesting the Commission adopt amendments for life insurance products that are similar to RILAs). Another commenter sought clarification on topics related to variable and non-variable annuities that are unrelated to the proposed amendments. VIP Working Group Comment Letter (e.g., seeking guidance on the application of Regulation D to certain offerings of variable and non-variable annuities). These comments are beyond the scope of this rulemaking.

amendments, with certain modifications. The final amendments retain each of the key elements of the proposed rules—the required registration of RILA offerings on Form N-4, the core aspects of the proposed disclosure requirements, the optional use of summary prospectuses by RILAs, the amendments to filing and fee-payment rules, and the amendments addressing materially misleading RILA sales literature. The resulting framework implements the RILA Act's mandate while making the RILA offering process similar to that for other insurance investment products, enhancing the information insurance companies disclose about RILAs, and extending certain antifraud guidance to RILA advertisements. However, we have modified certain proposed disclosure requirements and other aspects of the proposal to address the comments the Commission received. Additionally, the final amendments, in a change from the proposal and in response to comments received addressing the Commission's requests for comment about the registration of offerings of registered MVA annuities, will require these offerings to register on Form N-4. This, along with other amendments we are adopting extending the registration, filing, and disclosure framework we are adopting for RILAs to registered MVA annuities, and extending certain antifraud guidance to registered MVA annuity advertisements and sales literature, will result in greater uniformity in the regulation of non-variable annuities.

A. Overview of RILA Features

A RILA is one of several types of annuity contracts that insurance companies offer.⁷ 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"). A RILA may be offered on a standalone basis with various index-linked investment options ("index-linked options") that investors may choose.⁸ Alternatively, an insurance

company may 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") or fixed investment options, including fixed options subject to an MVA ("MVA options").⁹ The market for RILAs has grown significantly in recent years, with annual RILA sales of \$47.4 billion in 2023 alone, 15% higher than in the prior year, and more than quintupling since 2017.¹⁰

RILAs are complex financial products that are sold to retail investors.¹¹ The Proposing Release describes 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

that the Commission should use a term other than "RILA," as the term "registered" in "RILA" may serve to confuse investors because there are other investment products that are registered under both the Securities Act and the Investment Company Act of 1940 (the "Investment Company Act") that do not include the term "registered" (e.g., variable annuities, mutual funds, and exchange-traded funds). See Comment Letter of VIP Working Group (Nov. 10, 2023) ("VIP Working Group Comment Letter"). We continue to use the term "RILA" in the final amendments and in this Release for consistency with the RILA Act, as well as our understanding of common industry practice. See, e.g., The Design and Regulatory Framework of Registered Index-Linked Annuities, ALI CLE Conference on Life Insurance Products 2022.

⁹ 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, 8, and accompanying text (describing the key features of variable annuity contracts and variable life insurance contracts (together, "variable contracts")). An investor 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.

¹⁰ See LIMRA, "LIMRA: Record-High 2023 Annuity Sales Driven by Extraordinary Growth in Independent Distribution," news release (Mar. 12, 2024) (reporting 2023 RILA sales of \$47.4 billion), available at <https://www.limra.com/en/newsroom/news-releases/2024/limra-record-high-2023-annuity-sales-driven-by-extraordinary-growth-in-independent-distribution/> (stating that high annuity sales were "largely due to broader engagement with independent distribution" and that "[r]ising interest rates have made annuities very attractive to a larger group of investors"). The fourth quarter of 2023 marked the first time RILA product sales surpassed variable annuity sales. See also 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), available at <https://www.limra.com/en/newsroom/news-releases/2018/limra-secure-retirement-institute-total-annuity-sales-continued-to-decline-in-2017/>.

¹¹ We understand that RILAs are predominantly sold by broker-dealers.

profile of a RILA.¹² 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 a specified index, rate, or benchmark (e.g., the S&P 500).¹³ One aspect of RILAs' complexity involves the various ways that interest may be credited, and how contract features that affect how interest is credited work together. The Proposing Release details RILAs' traditional bounded return structure, which typically limits investors' ability to participate in upside index performance (through features such as "cap rates" and/or "participation rates," collectively "limits on gains"), and also limits investors' losses if the performance of the index goes down in value (through features such as "buffers" or "floors," collectively "limits on losses").¹⁴ For many RILAs, the investor pays no direct or explicit ongoing fees and expenses under the RILA, and this is sometimes a feature communicated in RILA marketing materials. However, the RILA's bounded return structure requires investors to agree to tradeoffs that come with their own economic costs. That is, RILAs limit or reduce downside risk, but also limit upside performance. In exchange for some protection against losses if the index goes down in value, investors must also agree to contractual provisions limiting the gains they will receive if the index goes up in value. RILAs allow investors some ability to customize a level of risk with which they are comfortable.¹⁵ But 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.

Charges and penalties for early withdrawals are another prevalent feature of RILAs. Investors can lose significant money if they withdraw their money early from an investment option or from the contract. This can arise in

¹² See Proposing Release at Section I.A. This paragraph and the paragraphs that follow summarize the RILA features that Section I.A. of the Proposing Release discusses.

¹³ 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.

¹⁴ See Proposing Release at paragraph accompanying n.10. A cap rate places an upper limit on an investor's ability to participate in the index's upside performance directly. A participation rate sets an investor's return to some specified percentage of the index's return. A buffer limits the investor's exposure to losses up to a fixed percentage. A floor places a lower limit on the investor's exposure to loss.

¹⁵ See *infra* Section IV.B.3.

⁷ 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.

⁸ Depending on the context, this Release uses the term "RILA" to refer collectively to stand-alone 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." One commenter suggested

several circumstances: (1) “surrender charges” that apply when an investor withdraws money from the contract within a certain period following the investor’s last premium payment; (2) “interim value adjustments” (or “IVAs”), which adjust the investor’s contract value if amounts are withdrawn (for instance, because of movements to a different investment option, movements out of the contract, or payment of certain benefits) from an index-linked option before the end of its crediting period;¹⁶ and (3) a positive or negative MVA (collectively with IVAs, a “contract adjustment”) to the amount paid to the investor resulting from changes in interest rates if the investor partially or fully withdraws amounts from the contract or from certain fixed options.¹⁷ Contract adjustments can occur 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. These adjustments also can negatively affect other values under the contract, such as the surrender value and death benefit. Moreover, these fees and adjustments are not always mutually exclusive.¹⁸ As a result of these charges and penalties, the investor could lose a significant amount of money in a RILA investment, even if the index has a gain at the time of the withdrawal.

In addition to the complexities that RILAs’ bounded return structure and potential charges and penalties for early withdrawals entail, under virtually all RILA investments the insurance company may change or remove key features of index-linked options, such as the cap rates, floors, or even the index.¹⁹ 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. Furthermore, special tax rules generally apply to RILAs and other

annuities, with both tax advantages and potential adverse tax impacts in certain circumstances.²⁰

For all of these reasons, 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.

B. Overview of Registered MVA Annuity Features

Registered MVA annuities are annuity contracts that offer fixed investment options (where the insurance company promises to pay a fixed and stated minimum rate of interest) and apply MVAs to amounts withdrawn before the end of the fixed option’s term.²¹ The insurance company might apply an MVA, for example, when an investor withdraws money from the contract, transfers money among investment options, or annuitizes the contract. For these annuities, fixed options are either offered on their own or in a combination contract with index-linked options and/or variable options.

As the Commission explained in the Proposing Release, RILAs and registered MVA annuities differ only with respect to the manner in which interest is calculated and credited.²² Interest in a RILA contract is calculated and credited at the end of the crediting period based at least in part on the performance of an index or other benchmark, whereas interest in a registered MVA annuity is guaranteed and typically credited daily at a fixed rate.²³ Registered MVA annuities, however, like RILAs, apply contract adjustments upon withdrawals prior to term maturity. An investor in a RILA or registered MVA annuity therefore can lose money—and potentially a significant amount of money—due to a contract adjustment,

and the way in which these adjustments are calculated may be complex.

Existing disclosure for registered MVA annuities has many similarities to disclosure for RILAs. Like RILA disclosure, registered MVA annuity disclosure describes the operation of contract adjustments and the risks associated with such contract adjustments.²⁴ Disclosure for registered MVA annuities, like disclosure for RILAs and other annuity contracts, also describes basic annuity features (including, as for RILAs, information about surrender charges and applicable tax treatment) and the issuer’s financial strength.²⁵

C. Current Registration Requirements for RILAs and Registered MVA Annuities

RILAs are securities for purposes of the Securities Act.²⁶ Unlike variable annuity contracts for which the Commission has adopted a specific tailored registration form, insurance companies currently register offerings of RILAs on Securities Act registration Forms S-1 or S-3.²⁷ As the Proposing Release describes in detail and this Release summarizes, the current requirements for issuers offering RILAs and variable annuities (that is, the requirements prior to the amendments

²⁴ See CAI Comment Letter.

²⁵ See *id.*

²⁶ Under the final amendments, the final Form N-4 will not register the RILA or registered MVA annuity issuers themselves, only the offering of RILA or registered MVA annuity securities. Unlike separate accounts which register variable annuities, RILA and registered MVA annuity issuers are not investment companies, and thus need not register with the Commission as an investment company as separate accounts do. Index annuities that meet the requirements of section 989J 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 and registered MVA annuities do not fall within this exemption due, in large part, to the shifting of a significant level of investment risk from the issuer to the investor. RILAs and index-linked options, 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 the RILA Act. Similarly, registered MVA annuities and MVA fixed account options, as used in this release, refer only to annuities that are securities for the purposes of the Securities Act. See *infra* footnote 29 and accompanying text.

²⁷ 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”). The registration forms for variable annuity contracts are Form N-3 (for variable annuity separate accounts structured as management investment companies) and Form N-4 (for variable annuity separate accounts structured as unit investment trusts). See Proposing Release at n.6 and accompanying text. 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 most variable annuity contracts.

¹⁶ See *id.* at n.11 and accompanying paragraph. 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.

¹⁷ MVAs can apply to RILAs, but, as discussed below, they also can apply to a fixed option available under an annuity contract. See *infra* Sections I.B and II.B.

¹⁸ See Proposing Release at n.13 and accompanying paragraph. 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.

¹⁹ See *id.* at paragraph following n.13.

²⁰ See *id.* at n.14 and accompanying paragraph.

²¹ See Proposing Release at Section II.H. The Proposing Release referred to registered MVA annuities as “registered MVAs.” For clarity and parallelism with the terms “RILA” and “variable annuity” (which also refer to different types of annuities), we refer to these products instead as “registered MVA annuities” in this Release.

²² See *id.* One commenter stated that it largely agrees with this characterization. See CAI Comment Letter. No commenters disagreed with this characterization. See also *infra* section II.B (discussing more broadly the comments received on the Commission’s request for comment in the Proposing Release on whether to require insurance companies to register the offerings of registered MVA annuities on Form N-4).

²³ See *id.*; see also CAI Comment Letter (agreeing with the Commission’s statement in the Proposing Release that RILAs and registered MVA annuities differ only with respect to the manner in which interest is calculated and credited).

the Commission is adopting in this Release) differ in many respects, both in terms of the disclosure issuers must provide and the registration process.²⁸

Registered MVA annuities also are securities for purposes of the Securities Act. They are securities because the MVA feature imposes certain investment risks on purchasers.²⁹ Like RILA offerings, offerings of registered MVA annuities are currently registered on Forms S-1 or S-3. While this section of the Release discusses the registration requirements for RILAs, the current registration requirements for registered MVA annuities are the same as those for RILAs and present the same considerations.

In general, the disclosure requirements of Forms S-1 and S-3 are not specifically tailored to particular kinds of securities given the wide range of securities offerings that issuers can register on these forms.³⁰ Forms S-1 and S-3 thus do not include specific line-item requirements addressing disclosures about RILAs and their complex features. These forms also require issuers to disclose information about the offering itself as well as extensive information about the registrant issuing the securities that a RILA investor may view as less important than information about the contract's features. Domestic registrants also must include financial statements prepared in accordance with U.S. generally accepted accounting principles ("GAAP").³¹

The Form N-4 disclosure requirements for variable annuities, on the other hand, are tailored for variable annuities.³² Form N-4's disclosure requirements are designed to provide investors with key information relating to a variable contract's provisions, benefits, and risks, along with information about the insurance company and the offering. In addition, rule 498A and Form N-4 together implement 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.³³ Structured data requirements for RILA and variable annuity disclosure also differ.³⁴

The Proposing Release also details key differences in the current registration process for RILAs versus variable annuities.³⁵ While insurance companies pay registration fees at the time they register the offer and sale of RILA securities, a separate account that registers under the Investment Company Act and offers variable annuity securities on Form N-4 pays registration fees based on the net issuance of securities, no later than 90 days after each fiscal year end.³⁶ Updates to RILA offering registration statements occur by filing a post-effective amendment to a Form S-1 registration statement (which must be declared effective, typically by staff acting pursuant to delegated authority) or by the filing of the insurance company's annual report on Form 10-K containing audited financial statements, which operates as a post-effective amendment to a registration statement on Form S-3.³⁷ In contrast, a variable annuity registration statement on Form N-4 may be updated by filing an immediately-effective post-effective amendment under rule 485. This permits the efficient registration of continuous offerings of variable annuities.

D. Developments and Analysis Informing Final Amendments

1. Investor Testing Informing Final Amendments

In addition to the RILA Act's requirements described above, 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 new registration form for RILAs,

with the goal of ensuring that key information is conveyed in terms that a purchaser can understand. Consistent with the RILA Act, the Commission received feedback on individuals' comprehension and views on RILA disclosure through investor testing. Specifically, the Commission's Office of the Investor Advocate ("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. The results of the two rounds of qualitative testing then helped inform a round of quantitative testing with approximately 2,500 participants.

This investor testing, which the Proposing Release and a report describing investor testing that OIAD conducted describe in detail, helped us to identify areas of Form N-4 that we proposed to amend to help ensure that a RILA purchaser receives key information that the purchaser is able to understand.³⁸ 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 disclosure that could appear in select rows of the "Key Information Table" (or "KIT") in RILA registration statements. 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. Although 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.

The investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosure. However, with few exceptions, the variations in RILA disclosures presented to participants did not result in significant improvements in investor

²⁸ See Proposing Release at Section I.B.

²⁹ 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).

³⁰ See Proposing Release at nn.15-17 and accompanying paragraph.

³¹ 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 Proposing Release at n.20.

³² See Proposing Release at nn.18-20 and accompanying paragraph.

³³ 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. See *id.* at n.20 and accompanying text.

³⁴ See Proposing Release at n.25 and accompanying text, and text following n.26.

³⁵ See *id.* at paragraphs accompanying nn.21-26.

³⁶ See *id.* at nn.21 and 26 and accompanying text.

³⁷ See *id.* at nn.22-24 and accompanying text.

³⁸ Office of Investor Advocate Division, Investor Testing Report on Registered Index-Linked Annuities (OIAD Working Paper 2023-01), (Sep. 2023) ("OIAD Investor Testing Report") available at <https://www.sec.gov/files/rila-report-092023.pdf>; see also Proposing Release at Section I.C.

comprehension.³⁹ The Commission incorporated the investor testing results in its design of the proposed Form N-4 amendments, endeavoring to give particular attention to: (1) disclosure variations that resulted in statistically significant improvements in investor comprehension (specifically, the use of Q&A KIT format); and (2) areas of identified investor confusion while leveraging existing disclosure requirements.⁴⁰ Because investor testing did not, for the most part, provide persuasive evidence of superior disclosures, the Commission proposed largely to utilize the existing Form N-4 disclosures that have been developed over time, and with which staff, investors, and RILA issuers are already familiar.

The Commission sought comment on this proposed approach, and it also sought comment throughout the Proposing Release on specific areas for improvement that would aid investor comprehension. Furthermore, the Commission requested specific input from the retail investor community through a short feedback flyer seeking input on their experiences with annuities generally and RILAs specifically (“Feedback Flyer”).⁴¹ Commenters did not generally address the investor testing that informed the proposed approach, and the Commission received no Feedback Flyer responses.⁴²

The Commission’s Investor Advocate also provided comments discussing the investor testing process and supporting the proposed rules, stating the belief that the proposed RILA registration form would make it easier for investors to understand RILAs.⁴³ The Investor Advocate stated that the proposed rule’s registration form would be more helpful for investors than the forms currently used for RILA registration. The Investor Advocate also stated that modified Form N-4 “is likely to improve investor

comprehension related to the features, costs, and risks of RILAs.”

In addition to these statements, the Investor Advocate suggested areas in which “more work can be done to help investors make well-informed decisions about RILAs and other complex financial products.” The Investor Advocate stated that the proposed rule’s registration form for RILAs, while informed by investor testing efforts, was not tested itself, and that this represents a missed opportunity in the Commission’s rulemaking process. While the RILA Act directed the Commission to “engage in investor testing” when developing the registration form for RILAs, the Act did not require that the entirety of the form be investor tested, and doing so would have been impracticable under the circumstances due to the statutory rulemaking timeline, taking into account the time it takes to develop and execute well-designed and probative investor testing. As a result, investor testing efforts necessarily entailed strategic choices about topics on which to focus. These timing factors also required consideration of disclosure areas where maximizing comprehension could be particularly impactful.

For these reasons, investor testing of RILA registration statement disclosure focused primarily on a sample of RILA-related disclosures that could appear in the KIT, if Form N-4 were amended to address RILA offerings.⁴⁴ As discussed in the Proposing Release and below, the KIT—which provides summary disclosure in a specific sequence and in a standardized presentation—appears in variable annuity prospectuses, and the Commission proposed to include KIT disclosure in RILA prospectuses.⁴⁵ The required ordering, contents, and standardization of KIT disclosure made the sample RILA-related disclosure especially amenable to investor testing, as these structural aspects made it possible to test variations on required disclosure elements easily. The summary disclosure in the KIT covers core features and risks of the annuity that the registration statement describes, with more detail elsewhere in the registration statement. For this reason, using the KIT to determine areas where investor comprehension could be enhanced was particularly impactful, as knowledge gained from this investor testing could be applied to disclosure in multiple other areas of the registration

statement. The KIT is one of the first disclosure items that appears not only in the statutory prospectus, but also in the summary prospectus for issuers that choose to use summary prospectuses. It is also formatted in a manner that is designed to enhance readability. The investor testing therefore focused on disclosure that could have maximal impact in terms of investor attention.

While the Investor Advocate states that there is no “data to indicate whether the registration form effectively conveys the information necessary for investors to make well-informed investment decisions about RILAs,” the sample KIT disclosure did include topics that comprise the primary features and risks of RILAs, and the investor testing did identify aspects of this disclosure that investors may find particularly challenging to understand. This in turn provided helpful input in identifying the disclosure areas where clear language, and enhanced focus in the registration statement, could help investors understand unique, and often complex, aspects of RILAs. We discuss these disclosure areas in more depth in Section II below.

The Investor Advocate further stated that, although the Commission has “made commendable efforts to improve the clarity and conciseness of disclosure provided to investors within the existing regulatory disclosure infrastructure,” new and innovative approaches to disclosure are encouraged to significantly reduce investors’ disclosure burden. The Investor Advocate encouraged the Commission “to explore more significant departures from the status quo in the realm of disclosure related to RILAs and other complex products.” We agree that exploring innovative disclosure approaches could enhance the investor experience for investors in complex products.⁴⁶ A wholesale reimagining of disclosure for funds and other registered investment products, however, is outside of the scope of this rulemaking and impracticable in the context of this rulemaking given statutory time constraints. We also believe that requiring RILAs to use Form N-4, and adapting the current disclosure approach for variable annuities to RILAs, is consistent with the RILA Act’s mandate as discussed below.⁴⁷

⁴⁶ The Commission is continually considering ways to enhance disclosure and the retail investor experience. *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”).

⁴⁷ *See infra* Section II.A.

³⁹ *See* Proposing Release at n.58 and accompanying text, and paragraphs following n.58.

⁴⁰ *See id.* (stating that the Q&A KIT format demonstrated a statistically significant, albeit quantitatively small, improvement over the non-Q&A KIT format, and stating that investor testing successfully identified a range of barriers to investor understanding of RILAs and associated disclosures).

⁴¹ *See id.* at n.59 and accompanying text; *see also* Feedback Flyer available at <https://www.sec.gov/files/rules/proposed/2023/rila-feedback-flyer.pdf>.

⁴² One commenter, while not commenting on the investor testing substantively, discussed the RILA trends that the OIAD Investor Testing Report described, as discussed in more detail below. *See infra* footnote 305 and accompanying text.

⁴³ *See* Comment Letter of Cristina Martin Firvida, SEC Investor Advocate (Dec. 22, 2023) (“Investor Advocate Comment Letter”).

⁴⁴ *See* OIAD Investor Testing Report.

⁴⁵ *See* Proposing Release at Section II.B.2; *see also* Item 2 of current Form N-4 (current KIT requirements); *infra* Section II.C.3 (describing amendments to current KIT requirements).

Furthermore, we agree that continuing to test specific Commission-mandated disclosures, including to assess how investors respond to these disclosures, as well as continuing to analyze the Commission's approach to its disclosure regime generally, are important complements to our regulatory program. We encourage Commission staff to incorporate these investor testing principles not only in the course of recommending new disclosure requirements, but also in continuing to develop its investor testing program outside of the confines of particular rulemaking actions.

In addition to investor testing focused specifically on sample RILA disclosure, our final amendments—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.⁴⁸ The Commission has historically received feedback showing that investors generally prefer concise, layered disclosure.⁴⁹ 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.⁵⁰ 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 the final amendments' approach to RILA disclosure.

2. Analysis of Comments on Recurring Disclosure Topics Informing Final Amendments

The proposed amendments collectively were designed to provide

investors with disclosures tailored to RILAs and to highlight key information about these complex products, building on the Commission's layered disclosure framework for variable annuities. The proposed requirements were developed with consideration for clear, concise, and understandable disclosure about RILA features and risks. Certain commenters expressed concern, however, that the proposed disclosure requirements included "excessive repetition," especially with respect to certain topics.⁵¹ Commenters stated that excessive repetition adds to the length of the prospectus without commensurate value to investors, obscures new information that investors should be focusing on, and is not consistent with plain English principles. In addition to general concerns about repetition in the proposed requirements, commenters expressed concerns about specific disclosure areas where they viewed the proposed requirements as resulting in particularly repetitive disclosure.⁵²

We agree that no disclosure should be repeated simply for the sake of repetition, and we also agree that repetition in disclosure can have negative effects on investor understanding as commenters expressed. As discussed below, the final form amendments take commenters' concerns into account. There are certain areas where the final amendments reduce the discussion of the same or similar topics in multiple locations, where this reduction could appropriately be made while continuing to promote the goal of highlighting key information about RILAs and enhancing understanding of RILA features and risks.⁵³

The final amendments, like the proposal, continue to incorporate the principle of layered disclosure. Layered disclosure aims to provide investors with key information relating to an investment's features, benefits, and risks in a concise and reader-friendly presentation, with more-detailed or technical information available to those investors who find the information valuable. The use of layered disclosure means that the disclosure requirements

we are adopting necessarily address particular topics in more than one location in the registration statement. Where this occurs, the disclosure requirements intentionally include summary disclosure in the first "layer," and additional details building on the summary in the second "layer."⁵⁴ This approach is designed to help investors with different informational needs access the information that will be most useful to them.

Additionally, and as discussed in more detail below, there are certain disclosure requirements in Form N-4 as amended that address similar topics as other disclosure requirements, where investors could benefit from considering these topics in several different contexts. This also reflects that, except with respect to certain disclosure items that are designed to be read in tandem, RILA investors may not necessarily read a prospectus from cover to cover, but instead may choose to read sections of the prospectus about topics where they are seeking particular information.⁵⁵ For instance, in addition to the numeric examples illustrating maximum potential loss, the final disclosure requirements include narrative discussion of a RILA's maximum potential loss from poor index performance in several locations in the prospectus. This is intentional. RILAs are frequently marketed as a product that will protect against investment losses through loss-limiting features. Information about maximum potential loss is relevant in the contexts of the contract overview and KIT, as well as in considering principal risks and more in-depth disclosure about the investment options a contract offers.⁵⁶ Therefore, disclosure that is designed to enhance understanding of this aspect of a RILA contract, in varying contexts, will help investors make informed decisions that take into account this often-misunderstood aspect of investing in a RILA.⁵⁷

⁴⁸ 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)] ("VASP Proposing Release") at paragraphs accompanying nn.38–43.

⁴⁹ See, e.g., Investor Experience RFC; see also Proposing Release at n.61 (discussing feedback in comments on the Investor Experience RFC, generally showing that retail investors prefer concise, layered disclosure and feel overwhelmed by the volume of information they currently receive, and reflecting a preference for shorter summary disclosures, with additional information available online or upon request).

⁵⁰ See Proposing Release at n.62.

⁵¹ See CAI Comment Letter; see also Comment Letter of Ova Datop (Oct. 25, 2023) ("Datop Comment Letter").

⁵² See CAI Comment Letter (discussing proposed maximum potential loss disclosure requirements); Datop Comment Letter (discussing proposed risk warnings).

⁵³ See, e.g., discussion below about changes from the proposal to remove some of the numeric examples illustrating maximum potential loss that, as proposed, would have appeared in multiple locations throughout the prospectus (at *infra* Sections II.C.2 and II.C.4).

⁵⁴ For example, the KIT will put investors on notice of the existence and general impact of a contract adjustment, while other disclosure later in the prospectus discusses contract adjustments in detail, including a brief discussion in simple terms of the manner in which contract adjustments are determined. See Items 3 and 7(e) of final Form N-4. If an investor wants more details about the specific formulas that are used to calculate contract adjustments, this information is available in the SAI. See Item 22(d) of final Form N-4.

⁵⁵ As discussed below, we anticipate that investors will read the Overview and KIT sections of the prospectus together. See *infra* Sections II.C.2 and II.C.3.

⁵⁶ See, e.g., *infra* Sections II.C.2, II.C.3, II.C.4, and II.C.5.

⁵⁷ See, e.g., Proposing Release at Section I.C.

E. Overview of the Final Amendments

We are adopting rule and form amendments that modernize and enhance the registration, filing, and disclosure framework for RILAs by adapting the existing framework that is familiar to investors and issuers for variable annuity separate accounts to accommodate RILAs. The final amendments implement the RILA Act's mandate.

- *Use of Form N-4 to Register RILA Offerings.* As proposed, we are amending Form N-4 so that issuers seeking to register the offering of RILAs must use that form. To accommodate this, we are also adopting amendments to Form N-4 that specifically address the features and risks of RILAs, with certain modifications from the proposal in consideration of comments received. These modifications address, among other things, disclosure relating to the potential for investment loss from an investment in a RILA, current limits on index gains, and guaranteed limits on index losses or gains. Further, because the insurance company will register the offering of a RILA on Form N-4 under the final amendments, it will be subject to the requirements in the form related to financial statements. This includes, as proposed, the form instruction that currently permits variable annuity issuers to file insurance company SAP financial statements in certain circumstances. Generally as proposed, the final amendments require RILA issuers to tag certain information in Inline eXtensible Business Reporting Language ("Inline XBRL") format.

- *Use of Form N-4 for Registered MVA Annuities.* In a change from the proposal, the final amendments extend the registration, filing, and disclosure requirements we are adopting for RILA offerings to offerings of registered MVA annuities on Form N-4.

- *Form N-4 Amendments for Variable Annuity Offerings.* We are adopting form amendments that are applicable to offerings of variable annuities. These 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.⁵⁸ We are adopting these amendments generally as proposed, with some modifications in consideration of comments received.

- *Summary Prospectus.* Consistent with the inclusion of RILAs on Form N-4 and generally as proposed, we are adopting amendments that permit RILA issuers to make use of the summary

prospectus framework available to variable annuity registrants on Form N-4. In a modification from the proposal, issuers of registered MVA annuities also will be able to use the summary prospectus framework, consistent with the inclusion of registered MVA annuities on Form N-4.

- *Updates to the Filing Rules.* To accommodate RILA and registered MVA annuity offering registrations on Form N-4, we are adopting amendments that require issuers of these securities to pay fees in arrears on Form 24F-2, as well as amendments to address RILAs and registered MVA annuities in the rules that variable annuities use to file post-effective amendments and to update prospectuses. We are adopting these amendments as proposed with conforming amendments to address the inclusion of registered MVA annuities on Form N-4.

- *Communications Rules Applicable to Non-Variable Annuities.* The final amendments, as proposed, require RILA issuers to comply with rule 156, which provides guidance as to when sales literature is materially misleading under the Federal securities laws. We are adopting conforming amendments to rule 156 to address the inclusion of registered MVA annuities on Form N-4. Additionally, in a change from the proposal, we are also making a technical amendment to rule 433 to allow those non-variable annuity issuers that can meet the rule's conditions to continue to use a free writing prospectus without it needing to be preceded or accompanied by a prospectus that satisfies the requirements of section 10 of the Securities Act.

II. Discussion

A. Use of Form N-4 for RILAs

Most variable annuity issuers register variable annuity offerings on Form N-4, which the Commission designed to provide investors with product-specific information about annuity contracts, and which utilizes the summary prospectus layered disclosure framework the Commission adopted in 2020 for variable contracts.⁵⁹ As

⁵⁹ 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 *Proposing Release* at n.20. 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 approximately 40 years ago. See *Registration Forms for Insurance Company Separate*

proposed, we are requiring insurance companies to register RILA offerings on Form N-4, leveraging the form's existing insurance-product specific disclosures and framework while incorporating revised disclosures informed by investor testing and staff experience to assist investors in making knowledgeable decisions about RILA offerings.⁶⁰

Commenters broadly supported registering RILA offerings on Form N-4.⁶¹ A number of commenters agreed that proposed Form N-4 would provide RILA investors with more meaningful and helpful disclosures as compared to the disclosures required on the registration forms currently used by RILAs that are not tailored to RILA features.⁶² Some commenters emphasized that the proposed disclosures about the contract and its features and the incorporation of Form N-4's layered disclosure would be of particular benefit to investors.⁶³ Additionally, one commenter suggested that requiring RILAs to register on forms that are not tailored for RILA offerings has impeded the ability of RILA investors to find and understand the information that is most relevant to their investment decisions, and has also slowed product development and impeded the entry of new issuers to the RILA marketplace.⁶⁴ Commenters suggested that investors also would benefit from registering RILAs and variable annuity contracts on the same registration form because it would facilitate the ability of investors to

Accounts that Offer Variable Annuity Contracts, Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26145 (June 25, 1985)] ("Forms N-3 and N-4 Adopting Release").

⁶⁰ See the facing page of final Form N-4 (Form N-4 is "to be used by insurance companies to register the offerings of registered index-linked annuity contracts . . . under the Securities Act"). Accordingly, following the compliance date for the final amendments, insurance companies will no longer be permitted to register RILA offerings on Forms S-1 or S-3, as they do today.

⁶¹ See *Comment Letter of the American Council of Life Insurers* (Nov. 28, 2023) ("ACLI Comment Letter"); *Comment Letter of Better Markets, Inc.* (Nov. 28, 2023) ("Better Markets Comment Letter"); *CAI Comment Letter*; *Comment Letter of Gainbridge Life Insurance Company and Delaware Life Insurance Company* (Nov. 28, 2023) ("Gainbridge Comment Letter"); *Investor Advocate Comment Letter*; *Comment Letter of the Insured Retirement Institute* (Nov. 28, 2023) ("IRI Comment Letter"). No commenters disagreed with the proposed use of Form N-4 to register RILA offerings.

⁶² See *id.* One of these commenters stated that it would object to the inclusion on Form N-4 of additional company-related disclosures applicable to registrations under Forms S-1 and S-3 because those disclosures are less relevant to RILA offerings. See *CAI Comment Letter*.

⁶³ See *Better Markets Comment Letter*; *CAI Comment Letter*; *Gainbridge Comment Letter*; *IRI Comment Letter*; *Investor Advocate Comment Letter*.

⁶⁴ See *IRI Comment Letter*.

⁵⁸ See *id.* at n.63 and accompanying paragraph.

compare and contrast different RILA and variable annuity offerings.⁶⁵ One of these commenters also stated that, by leveraging the experience of investors, registrants, and Commission staff with the existing Form N-4 framework, the proposal would help achieve greater regulatory uniformity, simplify the registration of RILA and variable annuity combination products, and reduce the burdens insurance companies face in preparing RILA registrations.⁶⁶

After considering these comments, we are adopting a registration framework that requires the registration of RILA offerings on Form N-4 as proposed. Consistent with the views expressed by commenters, registering RILA offerings on final Form N-4 should benefit investors by requiring tailored disclosures relevant to RILA investors and facilitating the ability of investors to compare similar products. Registering RILA offerings on final Form N-4 also provides greater regulatory uniformity, reducing burdens for both RILA issuers in preparing RILA registration statements and Commission staff in reviewing them.

Finally, one commenter requested the Commission provide guidance regarding the ability of certain RILA contracts currently registered on Form S-3 to rely on 17 CFR 240.12h-7 (“rule 12h-7”) following their transition to Form N-4.⁶⁷ Rule 12h-7 provides an exemption from Exchange Act reporting applicable to insurance companies with respect to certain securities, including RILAs, that are registered under the Securities Act and regulated under State law. In order to be eligible for this exemption, among other conditions, the issuer of the securities must take steps reasonably designed to ensure that a trading market for the securities does not develop, including requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis (“anti-assignment clause”).⁶⁸ One commenter suggested that there are a number of RILA contracts that do not have an anti-assignment clause because the issuing insurance companies have

chosen to register the offerings on Form S-3 and therefore have not relied on rule 12h-7 because Form S-3 is only available to issuers subject to Exchange Act reporting requirements. This commenter suggested that unilaterally adding an anti-assignment clause now to already-issued contracts previously registered on Form S-3 would violate State law. Now that RILA offerings will be registered on Form N-4, this commenter suggested that issuers of these RILA contracts would like to rely on rule 12h-7. As the Commission explained in rule 12h-7’s adopting release, the anti-assignment clause requirement is an important condition of the exemption from Exchange Act reporting because it ensures that the issuer will take steps reasonably designed to preclude the development of a trading market in the contracts.⁶⁹ Although all issuers relying on rule 12h-7 are required to take such reasonable steps, rule 12h-7 provides that an anti-assignment clause is not required where it is prohibited by State law.⁷⁰ Under that rule, where an issuer of a RILA contract that is currently registered on Form S-3 is seeking now to rely on rule 12h-7, that issuer would not need to modify the contract to include an anti-assignment clause where including such a clause is prohibited by State law.⁷¹ Whether including an anti-assignment clause is prohibited under State law is based on the facts and circumstances and laws of each applicable State.

B. Use of Form N-4 for Registered MVA Annuities

We are adopting amendments to require the offerings of registered MVA annuities to be registered on Form N-4 and, as a result, extend the registration and disclosure requirements we are adopting for RILAs to registered MVA annuities. Similar to the amendments we are adopting for RILAs, these amendments will benefit investors by providing a tailored disclosure regime with clear, relevant, and layered disclosure. Further, by including registered MVA annuities on Form N-4

along with RILAs and variable annuities, investors should benefit from being able to compare and contrast different types of annuity contracts. Both issuers and investors will also benefit by leveraging their existing familiarity with the form.

In the Proposing Release, we solicited comment on whether to require insurance companies to register the offerings of registered MVA annuities on Form N-4, and we detailed the various changes to disclosure that would be necessary to accommodate this change.⁷² Commenters that spoke to this issue supported registering offerings of registered MVA annuities on Form N-4,⁷³ suggesting that investors in registered MVA annuities would benefit from a comparable disclosure regime that provides clear, relevant, and layered disclosure.⁷⁴ One of these commenters stated that registered MVA annuities are a significantly simpler product than RILAs and present a subset of identical risks to investors as RILAs.⁷⁵ Commenters also stated that many of the disclosures that would be required for RILAs on Form N-4 would also be appropriate for registered MVA annuities, such as disclosures on the operation of contract adjustments and the risks associated with such contract adjustments.⁷⁶ One commenter stated that only minor modifications to the disclosures for RILAs would be required to reflect that an investor’s return in a RILA is based on the performance of an index while the return of a registered MVA annuity is based on a stated rate of interest.⁷⁷ Further, this commenter stated that registered MVA annuities

⁷² Proposing Release at Section II.H.

⁷³ No commenters opposed using Form N-4 to register MVA annuity offerings, although one commenter urged that using Form N-4 should be optional in certain circumstances discussed below. See *infra* footnote 79. One commenter stated that contingent deferred annuities (“CDAs”) could be considered covered by the RILA Act and insurers should be permitted to use Form N-4 for these annuities under the provision in that Act allowing insurers to use Form N-4 for RILAs if the Commission does not provide a new registration form for RILAs by the statutory deadline. See VIP Working Group Comment Letter. We disagree. The RILA Act covers annuities that, among other things, have returns based on the performance of a benchmark index 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. CDA lifetime payment guarantees are not based on a benchmark or index and are not subject to such market value adjustments. Additionally, because CDAs are substantially different products than RILAs, significant modifications to Form N-4 would be required to accommodate offerings of CDAs.

⁷⁴ See CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter.

⁷⁵ CAI Comment Letter.

⁷⁶ See IRI Comment Letter; CAI Comment Letter.

⁷⁷ CAI Comment Letter.

⁶⁵ See CAI Comment Letter; Gainbridge Comment Letter.

⁶⁶ See CAI Comment Letter.

⁶⁷ See CAI Comment Letter. Under the final amendments, RILAs that have previously registered offerings of securities on Forms S-1 or S-3 prior to the Compliance Date will need to file a post-effective amendment to their registration statement pursuant to rule 485(a) by May 1, 2026 using Form N-4. See *infra* Section II.J.

⁶⁸ See rule 12h-7(e).

⁶⁹ See Indexed Annuities and Certain Other Insurance Contracts, Exchange Act Release No. 34-59221 (Jan. 8, 2009) [74 FR 3138 (Jan. 16, 2009)] (“12h-7 Adopting Release”) at Section III.B.2.

⁷⁰ See rule 12h-7(e). Consistent with rule 12h-7(e), by “State law” we mean the law of any State or action of the insurance commissioner, bank commissioner, or any agency or officer performing like functions of any State.

⁷¹ Of course, an issuer seeking to rely on rule 12h-7 would also need to comply with the rule’s other requirements, including that it takes steps reasonably designed to ensure that a trading market for the securities does not develop. See rule 12h-7(e).

may be offered in combination products with variable annuities and/or RILAs that will be registered on Form N-4. Given that such products will have one prospectus, this commenter stated that investors, issuers, and the Commission would benefit from such products registering on Form N-4, rather than registering on both Form N-4 (for the variable annuity or RILA component) and Form S-1 or Form S-3 (for the registered MVA annuity component).

At the same time, some commenters generally stated that registered MVA annuities should be permitted, but not required, to register on Form N-4.⁷⁸ Specifically, one commenter stated that, in particular, registration on Form N-4 should be optional for “closed blocks,” or registered MVA annuity offerings that no longer involve the issuance of new contracts.⁷⁹

After considering comments, we have determined to require insurance companies to register offerings of registered MVA annuities on Form N-4 to provide investors with the tailored information necessary to make an

investment decision, as discussed above.⁸⁰ Further, given the parallels outlined above between RILAs and registered MVA annuities and the use of combination contracts that can offer RILAs, registered MVA annuities, and variable annuities, registering offerings of registered MVA annuities on Form N-4 will be efficient for investors, insurance companies, and the Commission. As a result, we are requiring, not just permitting, the use of Form N-4 for registered MVA annuities. Permitting insurance companies to register offerings of closed block registered MVA annuities on Forms S-1 or S-3 would not provide these investor benefits or efficiencies. It also would hamper comparability if different registered MVA annuities provided materially different disclosure. However, the Commission administers the requirements for prospectuses included in registration statements on Form N-4 in a way that allows variances in disclosure or presentation—including now those relating to closed blocks of registered

MVA annuities—if appropriate for the circumstances involved while remaining consistent with the objectives of the form.⁸¹

As a result of this change, registered MVA annuities must make the disclosures required in Form N-4 to the extent applicable. For example, they must meet the requirements of the front and back cover pages to the extent the disclosures apply to the offering of registered MVA annuities being registered.⁸² As outlined in the Proposing Release, we also are adopting a number of specific disclosure requirements for registered MVA annuities designed to accommodate their inclusion on the form and provide investors disclosures tailored to registered MVA annuity products and highlight key information about these products.⁸³

Table 1 outlines the key amendments, including certain conforming amendments, we are adopting to Form N-4 to accommodate offerings of registered MVA annuities:

TABLE 1—OVERVIEW OF FORM N-4 FOR REGISTERED MVA ANNUITIES

Item	Description	Substantive changes from the current form	Discussion
Prospectus (Part A)			
N/A	Facing Page and General Instructions.	Added registered MVA annuity contracts to list of permissible uses.	Section II.C.8(a), Section II.C.8(b).
N/A	General Instructions	Added definition of “Contract Adjustment” to account for MVA fixed account options.	Section II.C.8(b).
6	Description of the Insurance Company, Registered Separate Account, and Investment Options.	New contract adjustment disclosures for MVA fixed account options.	Section II.C.4(a).
7	Charges and Adjustments	New contract adjustment disclosures applicable to MVA fixed account options.	Section II.C.6(b).
17	Investment Options Available Under the Contract.	New contract adjustment disclosures for MVA fixed account options.	Section II.C.4(b).
Statement of Additional Information (Part B)			
26	Financial Statements	Providing that insurance companies can use the relevant instructions with regard to offerings of registered MVA annuities and adding requirements relating to changes in and disagreements with accountants for registered MVA annuities.	Section II.E.
Other Information (Part C)			
31A	Information about contracts with Index-Linked Options and Fixed Options Subject to a Contract Adjustment.	New disclosure of registered MVA annuity specific information.	Section II.C.7.

⁷⁸ CAI Comment Letter; IRI Comment Letter.

⁷⁹ CAI Comment Letter. This commenter urged that if such closed blocks were required to register on Form N-4, the compliance period be extended from 12 months to 24 months to provide the necessary time to convert an additional class of contract to the new registration form. *See infra*

Section II.J. for a discussion of effective and compliance dates for all rules and forms associated with the final amendments.

⁸⁰ *See supra* Sections I.B. and I.C.

⁸¹ *See* final Form N-4, General Instruction C.1.(d). This rulemaking does not affect the Commission

position on existing variable contracts whose issuers provide alternative disclosures to investors as stated in the VASP Adopting Release at Section II.E.3.

⁸² *See, e.g., infra* Section II.C.1.

⁸³ *See* Proposing Release at Section II.H.

In addition to these changes to Form N-4, we are providing to registered MVA annuities the same offering and filing framework we are extending to RILAs for the same reason as we are making these changes for RILAs as discussed in more detail below.⁸⁴ This includes, for example, amendments permitting registered MVA annuities to use a summary prospectus, pay securities fees annually based on net sales, and use the same process to update their registration statements that will apply to RILAs. To implement the inclusion of registered MVA annuities

in the amendments to the rules under the Securities Act, we also are adding a defined term “registered market value adjustment annuity” to rule 405 that is consistent with the amendments to Form N-4.⁸⁵ We are also extending the same requirements as to the use of Inline XBRL to registered MVA annuities for the same reasons we are extending these requirements to RILAs.⁸⁶

C. Contents of Form N-4

Consistent with the proposal, many items of current Form N-4 will apply to

RILAs in final Form N-4. These existing items of current Form N-4 will also apply to registered MVA annuities. We are also adopting amendments to Form N-4 to require disclosures specific to RILAs as well as amendments that also will apply to offerings of variable annuities. Some of these disclosures will also apply to registered MVA annuities. Table 2 outlines the substantive amendments we are adopting to Form N-4.⁸⁷

TABLE 2—OVERVIEW OF FORM N-4

Item	Description	Substantive changes from the current form	Discussion
Prospectus (Part A)			
1	Front and Back Cover Pages	Adding new legends and other standardized disclosures	Section II.C.1.
2	Overview of the Contract	New non-variable annuity-specific disclosures; moving order of appearance up.	Section II.C.2.
3	Key Information	New non-variable annuity-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.C.3.
4	Fee Table	New contract adjustment disclosure	Section II.C.6(a).
5	Principal Risks of Investing in the Contract.	Providing more detailed disclosures applicable to all issuers	Section II.C.5.
6	Description of the Insurance Company, Registered Separate Account, and Investment Options.	New non-variable annuity-specific disclosures and one new item regarding variable options.	Section II.C.4(a).
7	Charges and Adjustments	New disclosures related to contract adjustments; renamed item.	Section II.C.6(b).
8	General Description of Contracts.	No substantive change	Section II.C.9(b).
9	Annuity Period	No substantive change	Section II.C.9(b).
10	Benefits Available Under the Contract.	No substantive change	Section II.C.9(b).
11	Purchases and Contract Value.	No substantive change	Section II.C.9(b).
12	Surrenders and Withdrawals ..	No substantive change	Section II.C.9(b).
13	Loans	No substantive change	Section II.C.9(b).
14	Taxes	No substantive change	Section II.C.9(b).
15	Legal Proceedings	No substantive change	Section II.C.9(c).
16	Financial Statements	No substantive change (but see Item 26)	Section II.E.
17	Investment Options Available Under the Contract.	New non-variable annuity-specific disclosures	Section II.C.4(b).
Statement of Additional Information (Part B)			
18	Cover Page and Table of Contents.	No substantive change	Section II.C.9(b).
19	General Information and History.	No substantive change	Section II.C.9(c).
20	Non-Principal Risks of Investing in the Contract.	No substantive change	Section II.C.9(b).
21	Services	No substantive change	Section II.C.9(b).
22	Purchase of Securities Being Offered.	New disclosure of specific contract adjustment information ...	Section II.C.6(c).

⁸⁴ See *infra* Sections II.C, D, E, and F.

⁸⁵ “Registered market value adjustment annuity” is defined as an annuity or an option available under an annuity, that is not a registered index-linked annuity, and (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) that is not issued by an investment company; and (5) whose contract value may reflect a positive or negative adjustment (based on calculations using a predetermined formula, a change in interest rates, or some other factor or benchmark) if amounts are withdrawn before the end of a specified period. This definition mirrors that of “registered index-linked annuity” we are adding to rule 405 for RILAs, other than the last

provision which is based on the definition of “contract adjustment” we are adding to Form N-4.

⁸⁶ See *infra* Section II.C.10.

⁸⁷ Some of the final amendments 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 discussed in the following table but are instead discussed in Sections II.C.8 and II.C.9 *infra*.

TABLE 2—OVERVIEW OF FORM N-4—Continued

Item	Description	Substantive changes from the current form	Discussion
23	Underwriters	No substantive change	Section II.C.8(c).
24	Calculation of Performance Data.	Clarifying only applies to variable options	Section II.C.8.
25	Annuity Payments	No substantive change	Section II.C.9(b).
26	Financial Statements	Providing that insurance companies can use the relevant instructions relating to financial statements and adding requirements relating to changes in and disagreements with accountants for non-variable annuities.	Section II.E.
Other Information (Part C)			
27	Exhibits	Adding power of attorney for all issuers and accountant letters for non-variable annuity issuers as exhibits.	Section II.C.8(d).
28	Directors and Officers of the Insurance Company.	No substantive change	Section II.C.9(c).
29	Persons Controlled or Under Common Control with the Insurance Company or the Registrant.	No substantive change	Section II.C.9(c).
30	Indemnification	No substantive change	Section II.C.9(c).
31	Principal Underwriters	No substantive change	Section II.C.9(c).
31A	Information about contracts with Index-Linked Options and Fixed Options Subject to a Contract Adjustment.	New disclosure of non-variable annuity specific information ..	Section II.C.7.
32	Location of Accounts and Records.	No substantive change	Section II.C.8.
33	Management Services	No substantive change	Section II.C.9(b).
34	Fee Representation and Undertakings.	Adding new non-variable annuity undertakings	Section II.C.8(d).

1. Front and Back Cover Pages (Item 1)

Currently, issuers using Form N-4 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.⁸⁸ We are adopting amendments to require insurance companies registering offerings of non-variable annuities to include this general information on the front and back cover pages of the

prospectus, as well as non-variable annuity-specific disclosures on the front cover page. We are adopting these amendments substantially as proposed, with modifications in response to comments. The following table summarizes the cover page requirements, as amended:

TABLE 3—INFORMATION REQUIRED BY ITEM 1 OF FORM N-4 AS AMENDED

Item No.	Disclosure	Cover	Changed from proposal?
Identifying Information			
Item 1(a)(1)	Registered separate account's name	Front	No.
Item 1(a)(2)	Insurance company's name	Front	No.
Item 1(a)(3)	Types of contracts offered (e.g., group, individual, etc.)	Front	No.
Item 1(a)(4)	Name and class of contract	Front	No.
Item 1(a)(5)	List of types of investment options offered under the contract with cross references to the appendix with further information about those options.	Front	No.
Item 1(a)(9)	Date of prospectus	Front	No.
Item 1(b)(4)	EDGAR identifier number	Back	No.
Legends			
Item 1(a)(6)	Statement that the contract is a complex investment and involves risks, including potential loss of principal. For contracts that include an index-linked option: A prominent statement, as a percentage, of the maximum amount of loss that an investor could experience from negative index performance after taking into account the current limits on index loss, which may include a range of the maximum amount of loss if the contract offers different limits on index loss	Front	Yes. Revised statements about potential for investment loss, manner in which the insurance company determines the maximum loss due to negative index performance, and minimum limits on index gains and losses.

⁸⁸ See current Form N-4, Item 1.

TABLE 3—INFORMATION REQUIRED BY ITEM 1 OF FORM N-4 AS AMENDED—Continued

Item No.	Disclosure	Cover	Changed from proposal?
	Prominent disclosure of any minimum limits on index losses that will always be available under the contract or, alternatively, a prominent statement that the insurance company does not guarantee that the contract will always offer index-linked options that limit index losses, which would mean risk of loss of the entire amount invested. A prominent statement that the insurance company limits the amount an investor can earn on an index-linked option. A prominent statement, for each type of limit offered (e.g., cap, participation rate, etc.), of the lowest limit on index gains that may be established under the contract.		
Item 1(a)(7)	Statement that the contract is not a short-term investment and is not appropriate for an investor who needs ready access to cash. Statement that withdrawals could result in, among other things, surrender charges and negative contract adjustments, including a prominent disclosure stating, as a percentage, the maximum potential loss resulting from a negative contract adjustment, if applicable.	Front	No.
Item 1(a)(8)	Statement that the insurance company's obligations under the contract are subject to its financial strength and claims-paying ability.	Front	No.
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	No.
Item 1(a)(11)	Statement that additional information about the contract is available on <i>Investor.gov</i> .	Front	No.
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 without paying fees or penalties with some details about the operation of this process including whether a contract adjustment will be applied to the returned amount.	Front	No.
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	No.
Item 1(b)(2)	Statement about whether and from where information is incorporated by reference.	Back	No.
Item 1(b)(3)	Statement that reports and other information about the registered separate accounts and, if applicable, the insurance company, are available on the Commission's website and that copies of this information may be obtained.	Back	Yes. Applied this requirement to insurance companies in addition to separate accounts.

We proposed to make several changes to the front cover page, including four additional disclosures in Item 1(a).⁸⁹ Certain proposed changes received no comments and we are adopting them as proposed:

(1) Changes to Item 1(a)(1) to require disclosure of “the registered separate account’s name” whereas this item previously asked for “the registrant’s name.”

(2) Changes to Item 1(a)(2) to require disclosure of “the insurance company’s name” instead of the current requirement for “the depositor’s name.”

(3) Changes to Item 1(a)(3) to require disclosure of the types of *contracts* offered by the prospectus (e.g., group, individual, single premium immediate, flexible premium deferred), as opposed to the current form, which requires disclosure of the types of *variable*

annuity contracts offered by the prospectus.

(4) New Item 1(a)(5), which requires disclosure of the types of investment options under the contract and a cross reference to the prospectus appendix providing additional information about each option.

(5) We also are moving certain items to different locations on the front cover page without changing the content of the required disclosure.⁹⁰

⁸⁹ Specifically, on Form N-4, current Item 1(a)(5), which requires disclosure of the date of the prospectus, is moving to final Item 1(a)(9); current Item 1(a)(6), which requires a statement required by rule 481(b)(1) under the Securities Act, is moving to final Item 1(a)(10); current Item 1(a)(7), which requires a statement that additional information about certain investment products, including variable and non-variable annuities, has been prepared by Commission staff and is available at investor.gov, is moving to final Item 1(a)(11); and current Item 1(a)(8), which requires a legend stating that new investors to the contract may be able to

We are adding new Items 1(a)(6) and (7) to the front cover page of final Form N-4, which we are adopting with modifications from the proposal, as discussed below. The four items on the back cover page—Item 1(b)—are largely unchanged with the exception of extending the disclosure requirements (suggested by a commenter) of Item 1(b)(3) to include the insurance company, if applicable.⁹¹

In addition, and as proposed, the additional disclosures on the front cover page also will be required for

cancel the contract within 10 days without paying fees or penalties, is moving to final Item 1(a)(12).

⁹¹ See CAI Comment Letter. The modification to Item 1(b)(3) is discussed in further detail below. Current Item 1(b)(3) indicates that reports and information about the registered separate account are available on the Commission’s website. That language has been retained in final Form N-4. The statement would address available reports about the insurance company only if applicable.

⁸⁹ See Proposing Release at Section II.B.1.

registration statements relating to offerings of variable annuities filed on that form to the extent relevant.⁹² Specifically, these are disclosures relating to the complexity of the investment and potential loss of principal, that the contract is not a short-term investment and the appropriateness of that investment, and that an insurance company's obligations under the contract are subject to its financial strength and claims paying abilities.⁹³ While these disclosures are important for investors in non-variable annuities, they also are relevant in many cases to investors in variable annuities.

The comments that we received on the proposed cover page requirements were mixed. One commenter generally supported these disclosures, stating that the proposal ensured that the most important disclosures about RILAs appear on the cover page.⁹⁴ Another commenter suggested that, other than the disclosures related to maximum loss, the proposed cover page disclosures were, for the most part, designed to result in short, concise, and sensible cover page disclosures.⁹⁵ Other commenters, however, raised concerns.⁹⁶

First, some commenters raised concerns about the volume of disclosures proposed to be included on the cover pages, particularly those related to the maximum losses.⁹⁷ One such commenter suggested that the inclusion of all of these disclosures could cut against the form's layered disclosure approach.⁹⁸ These cover page disclosures are generalized statements designed to put an investor on notice of key considerations to help an investor make informed decisions. In particular, they are designed to highlight the complexities and certain associated risks of non-variable annuities for investors, and including this key information on the cover page helps ensure that an investor has information about these key aspects of a non-variable annuity at the outset. The number of specific features and risks

highlighted on the cover page is driven by the complex nature of the non-variable annuity being registered. Further, because these points are generalized on the cover page but discussed in more detail later in the prospectus, they are consistent with the concept of layered disclosure. These disclosures also should help investors better understand the nature of the various investment options available under the contract.

Second, commenters addressed certain specific items the Commission proposed to include on the front cover page. Commenters raised particular concerns with the proposed requirement to 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.⁹⁹ Commenters objected to this disclosure because, in their view: (1) requiring RILA issuers to disclose this percentage was unnecessary because the chance of investors experiencing this maximum loss was extremely remote,¹⁰⁰ (2) the cover page lacks appropriate context for this percentage and instead RILA issuers should include a narrative (not numeric) disclosure stating that an investor could lose a significant amount of money by investing in an index-linked option,¹⁰¹ and (3) such maximum potential loss disclosure was unwarranted because other issuers of securities are not required to include this information on the cover pages of their prospectuses.¹⁰² Separately, some commenters similarly opposed the proposed requirement to disclose, as a percentage, the maximum potential loss resulting from a negative contract adjustment as such a maximum loss would also be unlikely.¹⁰³

In response to comments opposing the proposed requirement to disclose as a percentage the maximum amount of loss

from negative index performance or from a contract adjustment that an investor could experience, the final disclosure requirements are designed to reflect that the risk that an investor could lose a substantial amount of money due to negative index performance is a key risk of a RILA.¹⁰⁴ Similarly, loss related to negative contract adjustments is a key risk of all non-variable annuities. Providing the maximum possible loss in these circumstances on the front cover page will alert investors to these risks in concrete terms. Moreover, disclosure of a maximum "potential" loss is not intended to suggest the maximum loss is likely to occur. The form does not prevent the insurance company from providing additional appropriate context.

Although issuers of other securities like mutual funds and ETFs do not disclose the maximum potential loss associated with those securities, such products also are not generally structured to provide loss protection. For RILAs, in contrast, loss protection is a central feature of the product and an emphasis in RILA marketing.¹⁰⁵ Numeric disclosure of the potential maximum loss helps an investor understand the extent to which a given RILA provides loss protection in simple terms. This is particularly important because investor testing has shown that investors struggled with the mechanics of loss protection and the consequences of withdrawals.¹⁰⁶ Placing this disclosure on the front cover page is designed to put investors on notice that those loss protections can, in the context of RILAs, have limitations and highlight, in the context of all non-variable annuities, a potential consequence of withdrawals. A numeric example is well suited for the cover page because it communicates the extent of loss protection briefly and

⁹² See Proposing Release at Section II.B.1. Commenters did not specifically address the inclusion of these disclosures for variable annuity offerings.

⁹³ See final Form N-4, Item 1(a)(6), (7), and (8).

⁹⁴ See Better Markets Comment Letter.

⁹⁵ See CAI Comment Letter.

⁹⁶ Commenters suggested that, should the Commission extend the use of Form N-4 to registered MVA annuities, their comments would also apply to disclosures related to those securities. See, e.g., CAI Comment Letter (supporting some aspects of the proposal but criticizing the maximum loss disclosure on the cover page); VIP Working Group Comment Letter.

⁹⁷ See CAI Comment Letter; VIP Working Group Comment Letter.

⁹⁸ See CAI Comment Letter.

⁹⁹ Proposed Form N-4, Item 1(a)(6).

¹⁰⁰ VIP Working Group Comment Letter (stating that the analysis done by OIAD in the OIAD Investor Testing Report suggested that losses on these products over the long term have historically been remote); Comment Letter of Benji Johnson (Oct. 31, 2023) ("Johnson Comment Letter"); CAI Comment Letter; Datop Comment Letter; see also ACLI Comment Letter.

¹⁰¹ CAI Comment Letter.

¹⁰² VIP Working Group Comment Letter; Johnson Comment Letter; Datop Comment Letter.

¹⁰³ Proposed Form N-4, Item 1(a)(7). See CAI Comment Letter; VIP Working Group Comment Letter. Several commenters also suggested that these two maximum potential loss disclosures, one from index performance and the other from contract adjustments, could cause investors to mistakenly believe that such losses are likely. CAI Comment Letter; VIP Working Group Comment Letter; Johnson Comment Letter.

¹⁰⁴ VIP Working Group Comment Letter; Johnson Comment Letter; CAI Comment Letter; Datop Comment Letter; see also ACLI Comment Letter.

¹⁰⁵ One commenter raising concern with this disclosure's placement in the cover page "acknowledge[d] that the risk of loss associated with RILAs is an important concept to convey [and that] [u]nlike most other investments, RILAs provide a level of downside protection, and an investor should therefore understand the limits of that protection." CAI Comment Letter.

¹⁰⁶ OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1. See Proposing Release at n.75 and accompanying text (investor testing participants struggled to understand loss limiting features, such as buffers), and at n.33 and accompanying text (investor testing participants often did not understand that there are multiple aspects of a typical RILA contract that could negatively affect an investor's contract value or the amount that the investor could withdraw from the contract (e.g., surrender charges, interim value adjustments, and tax penalties)).

concretely, and additional context will be available elsewhere in the prospectus.

Commenters also raised concerns with various proposed disclosure requirements' reference to "minimum guaranteed" limits on index loss (or gain), including raising this concern with respect to the cover page.¹⁰⁷ Another commenter sought clarification regarding whether a similar disclosure requirement referring to guaranteed minimums for the life of the contract was intended to require insurance companies to establish such minimums.¹⁰⁸

We understand that not all RILAs provide minimum guaranteed limits on index loss for the life of the contract that could be used to calculate the proposed maximum possible loss due to negative index performance. After considering comments, we are modifying the language of this disclosure requirement to reflect this fact. Under the final amendments, the insurance company must prominently state as a percentage the maximum amount of loss from negative index performance that an investor could experience after taking into account the current limits on index loss provided by the index-linked options under the contract.¹⁰⁹ The insurance company may provide a range of the maximum amount of loss if the contract offers different limits on index loss. Basing this disclosure on the contract's actual current limits on index losses is designed to address commenters' concerns about RILAs without guaranteed limits, and permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered under the contract.

We are modifying the proposed language of this disclosure requirement to specify that an insurance company that does not disclose a minimum limit on index loss that will always be available under the contract must prominently state that it does not guarantee that the contract will always offer index-linked options that limit index loss, which would mean risk of loss of the entire amount invested. We are requiring this disclosure because

RILAs are long-term investments, with an investor's returns determined by the economic terms available both at the time of investment and during future crediting periods. The guaranteed minimum limits on index losses that always will be available—or the fact that the insurance company makes no guarantee at all—are key considerations for an investor considering a RILA that should be disclosed on the cover page. The final amendments' approach therefore incorporates the proposed requirement to disclose on the front cover page the maximum loss from negative index performance taking into account guaranteed minimum limits on index losses but, in response to comments, provides information on any guaranteed minimum limits without assuming that each RILA offers them.¹¹⁰

One commenter stated that it found confusing the proposed requirement to state that the potential for investment loss could be significantly greater than the potential for investment gain.¹¹¹ After considering comments we have determined not to require the proposed disclosure because an investor's potential inability to recoup prior losses due to limits on gains is a nuanced concept that is challenging to articulate in concise cover page disclosure. We are instead requiring the insurance company to disclose information about the contract's limits on participation in positive index performance, not only because these limits are central features of a RILA, but also because they can limit an investor's ability to recoup losses (which the proposed disclosure item was designed to convey). We therefore are requiring the insurance company to prominently state, for each type of limit offered (e.g., cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.¹¹² This information is particularly important for an investor considering a RILA because RILAs are long-term investments and the investor's returns are driven not just by the economic terms available at the time of investment, but also in future crediting periods. In another change from the proposal, we are not adopting the proposed Item 1(a)(6) requirement to state that an investor could lose a significant amount of money if the index declines in value. We are doing so because the required disclosure in this item, and elsewhere on the form, of the

maximum possible loss due to declines in index performance make clear that investors face the potential for losses in these circumstances.¹¹³

Finally, one commenter suggested that we amend a current back cover page disclosure requirement regarding the availability of additional information to apply to RILAs.¹¹⁴ This sub-item currently requires variable annuity prospectuses to state that reports and other information about a registered separate account may be found on the Commission's website.¹¹⁵ The commenter suggested applying this requirement to insurance companies that issue RILAs to the extent that they provide reports and other information to the Commission through their regular reporting under the Exchange Act. We agree that some investors might find the information and reports about the insurance companies useful when making investment decisions and have adjusted this requirement in the final form accordingly.¹¹⁶

2. Overview of the Contract (Item 2)

We are, largely as proposed, amending the requirements for the Overview of the Contract ("Overview") to include RILAs generally, require disclosure about certain key elements of any index-linked option offered under the contract, and highlight any contract adjustments. Consistent with the inclusion of registered MVA annuities on Form N-4, the Overview also will discuss these annuities, as applicable. As discussed below, this section will precede the KIT.¹¹⁷

Under the final amendments, insurance companies that are registering non-variable annuities must provide the same Overview disclosures that are currently required for variable annuities, modified to include certain RILA-specific disclosures. All contracts registered on the form must provide an Overview with a concise description of the contract, including information about: (1) the contract's purpose; (2) the phases of the contract, including a discussion of the available investment options; (3) the primary features of the contract; and (4) contract

¹⁰⁷ See VIP Working Group Comment Letter (stating that contracts do not include a minimum guaranteed limit on losses); CAI Comment Letter.

¹⁰⁸ CAI Comment Letter. See Proposing Release at Section II.B.1. for a discussion of the proposed disclosure requirement.

¹⁰⁹ We understand that, unlike the current limits on index *gain*, current limits on index *loss* do not change often, if at all, during the life of the contract. See *infra* Sections II.C.2 and II.C.3.a (discussing concerns raised by commenters relating to the disclosure of current limits on index gain).

¹¹⁰ These changes, which are contained in Item 1(a)(6)(a), are mirrored in Instruction 3(a) to Item 3 and Item 5(a). See, e.g., *infra* at footnote 386.

¹¹¹ See Johnson Comment Letter; see also proposed Form N-4, Item 1(a)(6).

¹¹² See final Form N-4, Item 1(a)(6)(b).

¹¹³ See also, e.g., final Form N-4, Instruction 3(a) to Item 3.

¹¹⁴ CAI Comment Letter.

¹¹⁵ Current Form N-4, Item 1(b)(3).

¹¹⁶ See final Form N-4, Item 1(b)(3). Because registered MVA annuities are also issued by an insurance company, not a registered separate account, this change will also apply to registration statements relating to offerings of those securities.

¹¹⁷ Because we are requiring the Overview to appear before the KIT, current Item 3 (Overview of the Contract) will be renumbered as Item 2. See *infra* Section II.C.3.

adjustments.¹¹⁸ We are adopting these amendments as proposed. Because offerings of registered MVA annuities will be registered on Form N-4, these requirements also will apply to offerings of registered MVA annuities, as applicable. No substantive changes from the proposed approach, however, were necessary to address registered MVA annuities.

In addition to information about the purpose of the contract, under the final amendments, a prospectus that offers index-linked options must include in the Overview (as part of the discussion of the phases of the contract): (1) 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; (2) a statement that an investor could lose a significant amount of money if the index declines in value; (3) 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 and an example of the manner in which such returns may be limited; and (4) disclosure of guaranteed minimum limits on index losses or gains.¹¹⁹ We are adopting the amendments described in (1)–(3) generally as proposed. We are adopting changes to the language of the proposed disclosure requirements addressing minimum limits on index losses and gains, which will be parallel to changes we are adopting to this language throughout Form N-4, as discussed in more detail below.¹²⁰ Specifically, we are changing the language of the proposed disclosure requirement addressing minimum limits on index losses to specify that an insurer that does not offer a minimum guaranteed limit on index losses must disclose that fact. We are adopting changes to the proposed language of the requirement for disclosing minimum limits on index gains to specify that insurers must prominently state, for each type of limit offered (e.g., cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.¹²¹

As proposed, the Overview also will provide, if applicable, a discussion of contract adjustments that must include a statement that an investor could lose a significant amount of money due to

the contract adjustment if amounts are removed from an investment option or from the contract prior to the end of a specified period, accompanied by a brief description of the transactions subject to a contract adjustment.¹²² In a change from the proposal, we are not adopting the proposed requirement to include in the Overview numeric risk of loss disclosures associated with negative index performance or contract adjustments, as discussed further below.

As proposed, the Overview will precede the KIT. We are reordering these sections based on investor testing results indicating that investors reviewing sample KIT disclosure had difficulty understanding the basic features and concepts of RILA contracts, for example, “index,” “investment term,” “interim value adjustment,” and “buffer.”¹²³ The Overview provides general information about the contract and important context about the information summarized in the KIT. In particular, the Overview will, as discussed below, require descriptions and examples to help investors understand these RILA features, including contract adjustments, which we anticipate will provide a basis for better understanding the issues that the KIT disclosures address. Based on our observations of investor testing, investors may generally benefit from having more context in order to understand the KIT disclosures. Placing the Overview first may similarly provide context for the issues flagged in variable annuity KITs.

We received one comment on this proposed reordering in Form N-4. The commenter stated that the repetition of certain information in both the Overview and the KIT undermines our rationale for proposing to reorder the two sections.¹²⁴ We disagree that covering some of the same topics in the Overview and the KIT is inconsistent with changing the order of these disclosures. The KIT is designed to identify, in a consolidated location, key risks and features of the contract it

describes.¹²⁵ Certain of this information is also included in the high-level contract summary provided in the Overview. The disclosure is included in both locations to allow the reader to understand the contract at a high level (in the Overview of the Contract), as well as key features and risks of the annuity whose offering is being registered (in the KIT). Further, KIT requirements that address the same topic in different contexts may aid investor understanding of complex disclosure, and this approach is consistent with a layered disclosure approach.

In terms of the proposed content requirements for the Overview section, one commenter generally supported the proposed amendments.¹²⁶ This commenter not only stated that the proposed amendments to the Overview were generally appropriate (including requirements applicable to RILAs and variable annuities), but also that the proposed disclosure requirements regarding the index-linked options “cover most of the key aspects that investors should be aware of to understand the cyclical nature of the index-linked options,” and “strike the right balance by providing investors with the proper level of summary disclosure, with additional information appearing later in the prospectus.” While no commenter generally opposed our proposed changes, several requested modifications to some of the specific proposed disclosures.

As discussed above, some commenters raised general concerns about disclosure that appears in both the Overview and the KIT and suggested that we reduce or eliminate perceived duplicative disclosure in those two sections to simplify and streamline the prospectus.¹²⁷ Such comments largely concerned the proposed narrative and numeric risk of loss disclosures for index-linked options and contract adjustments. One commenter stated it did not oppose the inclusion of narrative and numeric risk of loss disclosure in the Overview for end-of-term index declines and negative contract adjustments because “the generally free-writing nature of the Overview allows the registrant to provide appropriate context for the reader.”¹²⁸ Conversely, two commenters generally opposed the proposed risk of loss disclosures for negative index performance and

¹²² Final Form N-4, Item 2(d). Although one commenter suggested that we relocate the proposed disclosure item for contract adjustments under the sub-item for index-linked option disclosures, we are not making this change because contract adjustments are not specific to index-linked options; they apply to MVA annuity options as well. In a change from the proposal, we are replacing “index-linked option” with “investment option” to convey contract adjustments are associated with other types of investment options in addition to index-linked options.

¹²³ See, e.g., OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1, Summary of Qualitative Testing, Section 6, Quantitative Testing, Summary of Quantitative Testing.

¹²⁴ See CAI Comment Letter.

¹²⁵ See VASP Adopting Release at paragraph following n.106.

¹²⁶ CAI Comment Letter.

¹²⁷ CAI Comment Letter; ACLI Comment Letter.

¹²⁸ CAI Comment Letter.

¹¹⁸ Final Form N-4, Item 2(a)–(d).

¹¹⁹ Final Form N-4, Items 2(b)(2)(i)–(iv).

¹²⁰ Final Form N-4, Item 2(b)(2)(iii).

¹²¹ Final Form N-4, Items 2(b)(2)(iii) and (iv).

contract adjustments on the grounds that RILA issuers should not be required to make disclosures that are not required of variable annuities, and cited concerns that such disclosures incorrectly portray such products as high-risk investments.¹²⁹

One of these commenters stated that the proposal to require RILA issuers to disclose that an investor could lose a “significant amount of money” is inconsistent with existing disclosure for variable annuity products, which requires a statement that “an investor can lose money by investing in the Contract.”¹³⁰ This commenter stated that a RILA investor is at no greater risk of losing a more substantial amount of money than a variable annuity investor, and that if all performance variables were equal, a RILA investor has reduced risk of loss compared to a variable annuity investor because RILAs have the added benefit of downside protection. This commenter also objected to the proposed requirement to disclose in the Overview that an investor could lose a “significant” amount of money due to an index decline or a contract adjustment, viewing that term as subjective. Another commenter asked that we modify the proposed narrative risk of loss disclosure for negative contract adjustments to state that losses could be significant under “extreme market conditions.”¹³¹ This commenter also opposed requiring numeric risk of loss disclosure associated with a negative contract adjustment on the grounds that the narrative disclosure “is sufficient without including a numeric figure.” One commenter asked that we clarify that the proposed numeric risk of loss disclosure for contract adjustments could be modified to avoid any implication that the risk of loss is greater than 100%.¹³²

We are adopting the Overview’s narrative risk of loss disclosures largely as proposed.¹³³ These disclosures, each of which is a single sentence, are appropriate in light of the fact that RILAs, unlike variable annuities and other investment companies, are structured products that have unique features and risks despite contract similarities to variable annuities. Unlike

variable annuities, index-linked options offer downside protection from market declines—and are marketed on that basis. The disclosures we are adopting will alert RILA investors that there are limits to those protections. Moreover, we are retaining the proposed requirement to state that an investor could lose money, with the “significant” descriptor designed to put investors on notice of losses they might not anticipate, given that investor testing revealed that investors tend to overestimate loss protection.¹³⁴ Significant losses associated with index-linked options may be infrequent, but they can and do happen, and investors should be aware of the possibility. We also are not modifying the proposed disclosure requirement to state that significant losses associated with contract adjustments may only occur under “extreme market conditions” because an investor who withdraws from a contract before the end of the crediting period may suffer significant losses relative to the value of the initial investment, regardless of market conditions. Nevertheless, the form does not prohibit an insurer from accompanying the required statement with contextual disclosure that explains when significant losses associated with contract adjustments might occur.

While we are adopting the narrative risk of loss disclosures as proposed, in a change from the proposal and in response to comments raising concerns about duplicative disclosure, we are not adopting the proposed numeric risk of loss disclosures associated with index declines or contract adjustments in the Overview. This change recognizes that the proposed numeric disclosures appear on the cover page, as well as the KIT, and, as one commenter observed, the Overview and the KIT are designed to be read together.¹³⁵ Requiring narrative-only risk of loss disclosure in the Overview is sufficient to flag this potential risk for investors because it will be immediately followed by the KIT, which will require the numeric risk of loss disclosure.¹³⁶ Although one commenter suggested we require numeric disclosure in the Overview rather than the KIT, as discussed further

below, the brevity of the numeric disclosure is well suited to the KIT.¹³⁷

Some commenters sought clarification regarding whether our proposal to require insurers to disclose guaranteed minimum limits on index losses or gains effectively seeks to impose a substantive requirement for insurance companies to offer minimum limits.¹³⁸ One commenter asked whether a prospectus for a contract that does not offer minimum limits may omit the proposed disclosure.¹³⁹ The proposal—and the final amendments we are adopting—are designed to result in clear disclosure of minimum limits that are an inherent feature of the contract, not to dictate contract terms or prescribe specific minimum limits.

For downside protection, we understand some RILA issuers may not offer index-linked options with minimum limits on index losses that will always be available under the contract. Because downside protection is one of the chief selling points for index-linked options, a particular RILA not offering minimums on index losses that will always be available under the contract is material information that must be prominently disclosed in the prospectus. Without downside protection, investors are at risk of losing their entire investment due to poor index performance. And without a minimum rate of downside protection that will always be available under the contract, an investor is considering making a long-term investment without certainty as to the amount of downside protection that will apply to future crediting periods. Likewise, without disclosing a minimum limit on index gains that will always be available under the contract, an investor would not know the extent to which investments in future index-linked options would result in credited interest when there is positive index return. To help ensure that investors have this information while also responding to comments requesting clarification, we are modifying the proposed requirement to disclose guaranteed minimums on index losses. Instead, the final amendments require the insurer to prominently disclose any minimum limits on index losses that will always be available under the contract, or, alternatively, prominently state that the insurer does not guarantee that the contract will always offer index-linked

¹²⁹ ACLI Comment Letter; Gainbridge Comment Letter.

¹³⁰ ACLI Comment Letter.

¹³¹ VIP Working Group Comment Letter.

¹³² CAI Comment Letter.

¹³³ Final Form N-4, Items 2(b)(2)(ii) and 2(d). The only change we are adopting to the narrative risk of loss disclosure requirements is a revision to Item 2(d), replacing “Index-Linked Option” with “Investment Option,” to clarify that contract adjustments may apply to options other than index-linked options.

¹³⁴ See OIAD Investor Testing Report at Section 5, Qualitative Testing (qualitative interviews suggested confusion with RILA terms and concepts relating to, for example, loss limiting features such as buffers).

¹³⁵ CAI Comment Letter.

¹³⁶ Final Form N-4, Instructions 2(a) and 3(a) to Item 3.

¹³⁷ CAI Comment Letter. See also *infra* footnote 174 and accompanying paragraph for related discussion.

¹³⁸ CAI Comment Letter; VIP Working Group Comment Letter; Gainbridge Comment Letter.

¹³⁹ VIP Working Group Comment Letter; Gainbridge Comment Letter.

options that limit index losses.¹⁴⁰ In addition, largely as proposed, we are adopting a requirement for insurers to disclose the minimum limits on index gains guaranteed for the life of the contract, with some changes to the proposed language to address commenters' requests for clarification.¹⁴¹

These changes from the proposal are intended to clarify that this requirement is designed to seek disclosure on the minimum limit on index gains that will always be available under the contract for each type of limit offered. The final amendments also conform this disclosure requirement with our understanding of current practices and the nature of RILA investments—that is, while an insurance company may not offer loss protection, a RILA inherently involves some degree of participation in index gains. The insurance company therefore must disclose the minimum extent to which investors can participate in index gains under the contract. Specifically, the final rule will require the insurer to prominently state, for each type of upside limit being offered (e.g., cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.¹⁴²

3. Key Information Table (Item 3)

The KIT requirements in Form N–4 currently require a brief description of key facts about a variable annuity to appear in the prospectus, in a specific sequence and in a standardized presentation.¹⁴³ The KIT functions as an integral part of the layered disclosure in Form N–4 by identifying key considerations upfront, with more detail to follow later in the prospectus. We are adopting the final amendments generally as proposed with modifications to address comments we received. As proposed, we are requiring that insurance companies provide a KIT in registration statements relating to RILA offerings, as is currently done with variable annuities, and in a modification from the proposal are extending this requirement to offerings of registered MVA annuities.¹⁴⁴ We are adopting amendments to the current KIT requirements to highlight key features of non-variable annuities, with some modifications from the proposal in response to comments. These amendments are informed by investor testing and are designed to build on the existing KIT disclosure framework and highlight important considerations related to non-variable annuities, 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.¹⁴⁵ In addition, as proposed, we are adopting amendments to the KIT that will apply to both non-variable and variable annuities that are designed to provide investors with a better understanding of these products.

Commenters generally supported the proposed requirement that insurance companies provide a KIT in RILA registration statements.¹⁴⁶ Comments on the proposed amendments affecting the KIT's specific format and disclosure requirements, however, were mixed.¹⁴⁷ One commenter supported the proposed amendments to the KIT.¹⁴⁸ This commenter stated that the disclosure required to appear in the KIT provides investors with a complete picture of RILA risks in a prominent place. In contrast, other commenters supported a portion of the proposed amendments to the KIT but also opposed certain of the proposed amendments, as discussed further below.¹⁴⁹ Commenters suggested that, should the Commission extend the use of Form N–4 to registered MVA annuities, their comments would also apply to disclosures related to those securities, to the extent applicable.¹⁵⁰

The overall format of the final KIT is depicted below:

TABLE 4—KEY INFORMATION TABLE AS ADOPTED

Fees, Expenses, and Adjustments:

Are There Charges or Adjustments 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?
What are the Risks Related to the Insurance Company?

Restrictions:

Are There Restrictions on the Investment Options?

¹⁴⁰ Final Form N–4, Item 2(b)(2)(iii).

¹⁴¹ Proposed Form N–4, Item 2(b)(2)(iv) would have required insurers to “[d]isclose the minimum limit on Index gains guaranteed for the life of the Contract for any Index-Linked Option,” whereas final Form N–4, Item 2(b)(2)(iv) will require insurers to “[p]rominently state, for each type of limit offered (e.g., cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.”

¹⁴² Final Form N–4, Item 2(B)(2)(iv). We are requiring parallel disclosure in other Items of final Form N–4 relating to disclosure of minimum limits on index losses and/or gains that will always be available under the contract. See also final Form N–4, Item 1(a)(6); Item 5(a); Item 6(d)(2)(i)(B); and Item 17(b).

¹⁴³ For variable annuity issuers who rely on rule 498A to provide summary prospectuses to investors, the KIT currently appears as a disclosure item in the summary prospectus.

¹⁴⁴ See final Form N–4, General Instruction B.1 and Instruction 1(a)–1(c) to Item 3.

¹⁴⁵ See, e.g., OIAD Investor Testing 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 Investor Testing 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).

¹⁴⁶ See, e.g., Gainbridge Comment Letter (stating that the KIT requirement for RILA issuers will allow investors to readily compare RILAs to each other and to variable annuities); Better Markets Comment Letter (stating that a RILA-tailored KIT is key to helping investors understand the RILA-specific risks presented to them).

¹⁴⁷ See, e.g., Better Markets Comment Letter; CAI Comment Letter.

¹⁴⁸ See Better Markets Comment Letter.

¹⁴⁹ See CAI Comment Letter (stating that the SEC has generally struck the correct balance in the KIT, with some exceptions); ACLI Comment Letter (stating that it supports CAI's comments and opposing the KIT amendments requiring a Q&A format and repetition of Overview disclosure).

¹⁵⁰ See, e.g., CAI Comment Letter.

TABLE 4—KEY INFORMATION TABLE AS ADOPTED—Continued

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. Formatting of the KIT

Form N-4 currently prescribes format requirements for the KIT to enhance the readability and comparability of the disclosure.¹⁵¹ As proposed, we are adopting amendments to Form N-4 to require these current format requirements to apply to all offerings registered on Form N-4, including non-variable annuity offerings.¹⁵² Specifically, the final amendments will require insurance companies to disclose required KIT 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 the instructions otherwise provide. Insurance companies will 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. Insurance companies also will be required to provide cross-references to the location in the statutory prospectus where the subject matter is described in greater detail, and in the case of electronic versions of the prospectus, to make those references accessible either by direct electronic link or through equivalent methods or technologies, as required for variable annuity KIT disclosure. Insurance companies will include these cross-references adjacent to the relevant disclosure, either within the table row, or presented in an additional table column. All disclosures in the KIT should be short and succinct, consistent with the limitations of a tabular presentation.

Commenters generally supported the application of the current KIT format requirements to RILA offerings.¹⁵³ In

response to one of the Proposing Release's requests for comment, one commenter stated that the KIT should continue to permit insurance companies to cross-reference relevant sections of the prospectus either within the applicable row of the KIT or as an additional column rather than requiring issuers to add a new column in the KIT labeled "Location in the Prospectus."¹⁵⁴ We agree and are maintaining the current requirements for cross-reference location because staff, investors, and RILA issuers are familiar with these requirements, and investor testing did not identify any concerns with this aspect of the KIT.¹⁵⁵

We are adopting, as proposed, three amendments to the KIT formatting and presentation requirements in Form N-4 that will apply to registration statements both for non-variable and 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 adopting, generally as proposed, a requirement that issuers present information in the KIT in a question-and-answer ("Q&A") format.¹⁵⁶ As a result of this change, the various line items of the KIT will be rephrased as questions (*e.g.*, "Are There Charges or Adjustments for Early Withdrawals?" instead of "Charges for Early Withdrawals or Adjustments"). The instructions will further require that, unless the context otherwise requires, issuers must begin the response with a "Yes" or "No" in bold text when answering a question presented in a given row of the KIT.

present RILA risks in a format that investors will easily understand); CAI Comment Letter (stating that the proposed KIT presentation is similar to the presentation currently used by insurance companies for combination RILA/variable annuity offerings and that this presentation will work equally well for combination and standalone RILAs registered on Form N-4).

¹⁵⁴ See CAI Comment Letter.

¹⁵⁵ See generally Proposing Release at Section 1.C.

¹⁵⁶ See final Form N-4, Instruction 1(d) to Item 3.

Comments on the Q&A format were mixed.¹⁵⁷ One commenter expressed that the Q&A format may be helpful and more accessible to some investors but may also result in a less concise and simple KIT.¹⁵⁸ Another commenter opposed the Q&A format on the grounds that it would result in more narrative responses, which would make comparisons between products more difficult for investors.¹⁵⁹ This commenter favored retaining the current wording.

After considering comments received, we are adopting the Q&A format generally as proposed, except for the Charges or Adjustments for Early Withdrawals and the Risks Related to the Insurance Company line items, each of which we discuss in further detail below. Rephrasing the current line items in a Q&A format should more effectively convey the KIT information to investors and will therefore help non-variable and variable annuity investors make informed investment decisions. As stated in the Proposing Release, the Q&A format should improve investor comprehension of non-variable annuity-specific topics based on the results of our quantitative investor testing.¹⁶⁰ Because our investor testing showed that the Q&A format impacted overall comprehension more for non-investors than independent investors, the Q&A format should particularly improve comprehension for less-experienced investors.¹⁶¹ Because the KIT disclosures as amended continue to be brief by their nature, we anticipate that any negative impact the Q&A format

¹⁵⁷ See ACLI Comment Letter; CAI Comment Letter.

¹⁵⁸ See CAI Comment Letter.

¹⁵⁹ See ACLI Comment Letter.

¹⁶⁰ See Proposing Release at Section II.B.2.

¹⁶¹ See Proposing Release at n.78 and accompanying text. 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 Investor Testing Report at Section 6, Quantitative Testing, Subgroup Analysis, Investor Status.

¹⁵¹ See current Form N-4, Instruction 1 to Item 2.

¹⁵² See final Form N-4, Instruction 1(a)–(c) to Item 3.

¹⁵³ See Better Markets Comment Letter (expressing that the proposed KIT requirements

may have on comparability or conciseness will be justified by the benefit that investors will gain from understanding complex non-variable annuity-specific information.

Second, we are adopting, as proposed, amendments changing the order in which the KIT (Item 2 of current Form N-4) appears relative to the Overview of the Contract (Item 3 of current Form N-4), as discussed above.¹⁶²

Third, as proposed, we are deleting Form N-4's general instruction stating that where the discussion of information required by the Overview of the Contract or KIT 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.¹⁶³ Comments on the deletion were mixed.¹⁶⁴ One commenter stated that there is value in "strategically locating certain disclosures in multiple places to help investors."¹⁶⁵ Another commenter opposed this deletion because it would lead to certain information appearing more than once in the prospectus.¹⁶⁶

In administering Form N-4, we have observed that this instruction has led to confusion on the part of registrants. Moreover, as discussed above, the layered disclosure framework requires certain disclosure topics to be discussed in multiple locations.¹⁶⁷ This framework is designed to help ensure both that the KIT contains key disclosures and that the more-detailed sections to which investors are directed contain all of the key information about the given topic.¹⁶⁸ This approach is

particularly important for RILAs in light of the challenges our investor testing showed investors have in understanding these products, in that investors will see key disclosures in one place—the KIT—regardless of whether they review targeted sections of the prospectus.

b. Fees, Expenses, and Adjustments

Non-variable annuities typically have implicit fees, expenses, charges, and adjustments for early or mid-term withdrawals that can be confusing or surprising to investors. This was observed in our investor testing regarding RILAs.¹⁶⁹ We anticipate that investors will benefit from tailored disclosure about certain unique features of a non-variable annuity's fee and expense structure as described below to help them make informed decisions.

Early Withdrawal Charges and Adjustments. The first line item in the "Fees, Expenses, and Adjustments" section of the amended KIT, "Are There Charges or Adjustments for Early Withdrawals?," addresses surrender charges and contract adjustments. Because non-variable annuities may have surrender charges, we are adopting, as proposed, a requirement that insurance companies provide the existing KIT surrender charge disclosure in this first line item so that 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).¹⁷⁰ 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 requiring, as proposed, that insurance companies 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 requiring specific disclosure on contract adjustments, which can result in investor losses if the

investor withdraws money from an investment option, or withdraws money from the non-variable annuity entirely, before the end of a specified period.¹⁷¹ We are adopting these requirements as proposed except that they will apply to contract adjustments applicable to registered MVA annuities as well as RILAs. Specifically, if the contract includes contract adjustments, the insurance company will be required to include a statement that if all or a portion of contract value is removed from an investment option or from the contract before the expiration of a specified period, the insurance company will apply a contract adjustment, which may be negative. This statement will include the maximum potential loss (as a percentage of the investment) resulting from a negative adjustment. The insurance company also will be required to provide an example of the maximum negative adjustment that could be applied (in dollars) assuming a \$100,000 investment. We are also adopting, as proposed, a requirement that the insurance company 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.

Commenters generally opposed one or more of the amendments to the early withdrawal charges line. One commenter specifically opposed the inclusion in the KIT of numeric maximum potential loss disclosure (as a percentage of an investment) due to a negative contract adjustment on the grounds that the KIT's design would not provide adequate context for the disclosure and could therefore lead investors to believe that such losses are likely, even when the risk of loss is remote.¹⁷² This commenter suggested instead that the KIT should contain only narrative statements regarding the risk of loss. The commenter also opposed the inclusion in the KIT of this numeric loss disclosure because it is included in other parts of the prospectus. While we

¹⁶² See *supra* Section II.C.2. The current instructions to Form N-4 require that, notwithstanding 17 CFR 230.421(a), the KIT, Overview of the Contract, and Fee Table must be disclosed in the numerical order in which they appear in Form N-4. The final form changes this instruction to reflect the change in order. See final Form N-4, General Instruction C.3(a). The change in order will also apply to summary prospectus disclosure location under the final amendments to rule 498A.

¹⁶³ See final Form N-4, General Instruction C.3(a).

¹⁶⁴ See ACLI Comment Letter; CAI Comment Letter.

¹⁶⁵ See CAI Comment Letter.

¹⁶⁶ See ACLI Comment Letter.

¹⁶⁷ See *supra* Section I.D.2.

¹⁶⁸ For example, while both the KIT and Item 5 require disclosures about principal risks, the KIT currently 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. See current Form N-4, Instruction 1(b) to Item 2. This instruction remains unchanged in the KIT of the final Form N-4. See final Form N-4, Instruction 1(b) to Item 3. 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. See Proposing Release at n.86 and accompanying text ("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.").

¹⁶⁹ See *supra* Section I.D.1.

¹⁷⁰ Final Form N-4, Instruction 2(a) to Item 3.

¹⁷¹ 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.

¹⁷² See CAI Comment Letter.

are adopting changes to this proposed disclosure elsewhere in the prospectus, we are adopting amendments to this first line item of the KIT as proposed.¹⁷³ While we appreciate that this disclosure appears elsewhere in the prospectus, including the numeric maximum potential loss disclosure in the KIT in particular is appropriate because the brevity of numeric disclosure and its effectiveness in communicating this key risk of loss is well suited for the KIT. In this regard, the KIT was designed to “provide a brief description of key facts” and be “easy to read and navigate.”¹⁷⁴ Further, additional context for the numeric disclosure will be provided by cross-references to other parts of the prospectus.¹⁷⁵ As discussed above,¹⁷⁶ the inclusion of numeric loss disclosure in both the KIT and elsewhere in the prospectus is consistent with a layered disclosure approach and is designed to help investors make more informed investment decisions. Also, as discussed above, the form does not prevent the insurance company from providing additional appropriate context.¹⁷⁷

One commenter suggested that the example of the maximum negative adjustment that could be applied (in dollars) assuming a \$100,000 investment should not be required if the maximum potential loss (as a percentage of an investment) due to a negative adjustment is retained.¹⁷⁸ This commenter expressed that, where the percentage maximum potential loss is 100% under a RILA, a typical investor would understand the dollar amount associated with that loss and would not need the example. We are retaining this example because it illustrates how an investment can be impacted by a negative contract adjustment in dollar

figures, which may be more salient to some investors than a percentage.

One commenter stated that requiring disclosure relating to interim value adjustments under the “Fees and Expenses” heading is inappropriate because interim value adjustments are not fees but are instead the approximate fair market value of the investments underpinning the RILA.¹⁷⁹ We are retaining negative contract adjustment disclosure under the heading of the KIT that addresses fees and expenses. Interim value adjustments operate like an implicit fee in that they have a similar impact on an investor as an explicit fee or expense by decreasing the amount of an investor’s investment. Further, including information about interim value adjustments under this heading may aid investors’ understanding of their potential effects since investor testing showed that investors struggled to understand the concept of interim value adjustments in general.¹⁸⁰ To address the commenter’s concern that the disclosure could imply that a contract adjustment is a conventional fee or expense, we have renamed this section of the KIT “Fees, Expenses, and Adjustments” and changed the question in the left-hand column of the early withdrawal charges and adjustments line item to read “Are There Charges or Adjustments for Early Withdrawals?” (italics indicating text in final Form N–4 that has been added to the proposed text).¹⁸¹

Transaction Charges. The second line item in the “Fees, Expenses, and Adjustments” section of the amended KIT, “Are There Transaction Charges?,” will 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-end loads, charges for transferring cash value between investment options, etc.).¹⁸² This line item is designed to provide a simple narrative description to alert investors that surrender charges and contract adjustments are not the only charges they could pay when they engage in certain contract transactions. We did not receive comments on this line item, and we are adopting these requirements as proposed.

Ongoing Fees and Expenses. The third line item in the “Fees, Expenses, and

Adjustments” section, “Are There Ongoing Fees and Expenses?,” is designed to alert investors that they 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.¹⁸³ We are adopting amendments requiring insurance companies to provide this disclosure with respect to RILAs, as proposed, and registered MVA annuities, in a change from the proposal.¹⁸⁴

We also are adopting, largely as proposed, amendments requiring that, where a contract imposes limits on gains on the amount an investor can earn on an index-linked option, insurance companies must disclose that they impose these limits on gains and that they can act as an implicit ongoing fee.¹⁸⁵

Specifically, insurance companies must disclose that: (1) there is an implicit ongoing fee on index-linked options to the extent that an investor’s participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor’s returns may be lower than the index’s returns; (3) in return for accepting this limit on index gains, an investor will receive some protection from index losses; and (4) this implicit ongoing fee is not reflected in the tables below. In a change from the proposal, we are modifying the first statement to provide that there is an implicit ongoing fee on index-linked options *to the extent* that an investor’s participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure.¹⁸⁶ In another change from the proposal, insurance companies will be required to provide both a statement to the effect that this implicit fee means that the investor’s returns may be lower

¹⁷³ See *supra* Section II.C.2.

¹⁷⁴ See VASP Adopting Release at paragraph following n.106.

¹⁷⁵ See final Form N–4, Instruction 1(b) to Item 3.

¹⁷⁶ See *supra* Sections III.A.2, II.C.1, and II.C.2 (discussing numeric loss disclosure in the context of the prospectus’s layered disclosure approach, cover page, and Overview, respectively).

¹⁷⁷ See *supra* Sections II.C.1, and II.C.2.

¹⁷⁸ See CAI Comment Letter. The instructions to this line item provide an example of this disclosure that includes the statement that the loss “will be greater if you also have to pay a surrender charge, taxes, and penalties.” One commenter recommended that, if the Commission does require an example of maximum negative adjustments, the Commission should ensure that the form instructions do not require insurance companies to state or imply that the loss could be greater than 100% due to other factors, such as surrender charges. See CAI Comment Letter. The language in the form relating to greater losses due to these other factors is an example provided in a specific context, and insurance companies will not be required to make this disclosure where it is not correct.

¹⁷⁹ See VIP Working Group Comment Letter.

¹⁸⁰ See OIAD Investor Testing Report at Section 5, Qualitative Testing.

¹⁸¹ See also *infra* Section II.C.6.a (regarding similar changes relating to the transaction expense table).

¹⁸² Final Form N–4, Instruction 2(b) to Item 3.

¹⁸³ See current Form N–4, Instruction 2(c) to Item 2. 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).

¹⁸⁴ See final Form N–4, Instruction 2(c) to Item 3.

¹⁸⁵ See final Form N–4, Instruction 2(c)(i)(G) to Item 3.

¹⁸⁶ See final Form N–4, Instruction 2(c)(i)(G) to Item 3 (emphasis added); see proposed Form N–4, Instruction 2(c)(i)(G) to Item 3.

than the index's returns and also a statement that the implicit fee is not reflected in the fee and cost tables. This disclosure replaces the proposed statement that the limit on index gains helps the insurance company generate a profit on the index-linked option, as we discuss in more detail later in this section of the release. As proposed, the disclosure will be required to precede the minimum and maximum fee table if the contract offers index-linked options and imposes ongoing fees and expenses.

Also as proposed, in the case of a contract that offers an index-linked option subject to limits on gains but does not impose any explicit ongoing fees or expenses under the contract, the insurance company will include the disclosure *in lieu* of such tables.¹⁸⁷ That is, the disclosure will take the place of the fee and cost tables rather than precede them. Where there are no explicit ongoing fees, minimum and maximum annual fee and cost tables showing zero fees would tend to mislead investors because an index-linked option imposing limits on gains has implicit fees inherent in limiting upside index participation. The substance of the required disclosure will be largely the same as the disclosure discussed above but will not include the statement that the "implicit ongoing fee is not reflected in the tables below" since no tables will follow this disclosure.¹⁸⁸

Lastly in this line item, we are adopting, as proposed, amendments revising the last sentence in the required legend in the lowest and highest annual cost table to include the italicized 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."¹⁸⁹ This will further alert investors to the cost impact of a contract adjustment if they withdraw money early.

Commenters generally opposed one or more of the amendments to the Ongoing Fees and Expenses line item. One commenter expressed concerns that excluding disclosures of any ongoing fees that may be implicit to index-linked options in the KIT, but requiring

variable options to disclose ongoing fees, could result in disparate treatment of these two types of annuities. Specifically, the commenter stated that this will produce unequal disclosure between the two products, which would not be appropriate in light of the similar profit margins to insurance companies generated by the fees.¹⁹⁰ The commenter did not suggest a specific alternative approach to quantify and disclose these implicit costs. We requested comment on whether it would be appropriate to develop a standardized methodology or calculation for accurately determining these costs.¹⁹¹ Two commenters raised challenges with accurately determining these types of costs.¹⁹² After considering comments regarding the challenges, we are not requiring numeric disclosure of implicit ongoing index-linked fees, but continue to welcome feedback from market participants and others on the feasibility of establishing a standardized approach to disclose these implicit fees.

One commenter assumed the Commission intended that the lowest and highest annual cost table would only be disclosed in registration statements relating to variable options because the table's instructions reference "portfolio company fees and expenses," which are relevant only to variable options.¹⁹³ The commenter therefore suggested that we amend the instructions to clarify that the table should be omitted if a prospectus is not offering variable options, and suggested that we not include references to "negative Contract Adjustments" in the legend preceding the table because variable options are not subject to contract adjustments. This table is not intended to be limited to variable options but rather applies to all investment options where ongoing fees are charged. While non-variable options sometimes do not have explicit ongoing fees, where ongoing fees are charged in connection with a non-variable option, they must be disclosed in this table. In addition, if the contract does not have a contract adjustment, insurance companies should revise the legend accordingly. Similarly, insurance companies would not include references to portfolio company fees and expenses in the minimum and maximum annual fee table and the assumptions in the lowest and highest annual cost table if the contract does not offer variable options.

Some commenters opposed one or more of the required statements describing implicit fees.¹⁹⁴ Some of these commenters believed describing insurance company limits on the amount an investor can earn in a RILA as an "implicit ongoing fee" is inaccurate.¹⁹⁵ One commenter viewed such limits as factors that contribute to the pricing of RILA contracts.¹⁹⁶ Other commenters stated that these limits may not be triggered to actually limit an investor's credited interest.¹⁹⁷ These commenters expressed that, for index-linked options with caps, if index returns are positive and less than the cap, there is no limitation on an investor's credited interest, and for index-linked options with participation rates, there is often no upper limit on the credited interest even though the investor may receive only a percentage of the index return as credited interest.

We also received comments that characterizing limits on credited interest as fees could confuse investors about how RILAs operate because investors understand fees as money collected from them, but a limit on credited interest is not money collected from investors.¹⁹⁸ One commenter stated that these limits are not like fees as they are not applied in all circumstances, such as when an index's returns are below these limits, and thus act more like an opportunity cost rather than like a fee.¹⁹⁹

While contractual limits placed on an investor's gains, such as a cap rate or participation rate, are not fees or charges in a conventional sense, these limits can have the effect of reducing investment returns (e.g., where the index outperforms a cap or a participation rate is less than 100%).²⁰⁰ As a result, it is appropriate to characterize these contractual limits as ongoing implicit fees given they have the same impact on investors. We recognize, however, that these contractual limits may not act to reduce an investor's credited interest in any given case. Accordingly, after considering comments, we are modifying the proposed statement that the imposition of limits on gains will act as an implicit ongoing fee. Instead, we

¹⁸⁷ See final Form N-4, Instruction 2(c)(iii) to Item 3; see proposed Form N-4, Instruction 2(c)(iii) to Item 3.

¹⁸⁸ See final Form N-4, Instruction 2(c)(iii) to Item 3. The proposed disclosure in lieu of the tables was identical to the proposed disclosure preceding the tables. See proposed Form N-4, Instruction 2(c)(iii) to Item 3.

¹⁸⁹ See final Form N-4, Instruction 2(c)(ii)(A) to Item 3. Currently, this legend only refers to surrender charges, not negative contract adjustments.

¹⁹⁰ See VIP Working Group Comment Letter.

¹⁹¹ See, e.g., Proposing Release at request for comment number 48.

¹⁹² See ACLI Comment Letter; CAI Comment Letter.

¹⁹³ See CAI Comment Letter.

¹⁹⁴ See ACLI Comment Letter; CAI Comment Letter; Gainbridge Comment Letter.

¹⁹⁵ See ACLI Comment Letter; CAI Comment Letter.

¹⁹⁶ See Gainbridge Comment Letter.

¹⁹⁷ See ACLI Comment Letter; CAI Comment Letter.

¹⁹⁸ See ACLI Comment Letter; Gainbridge Comment Letter.

¹⁹⁹ See CAI Comment Letter.

²⁰⁰ Dodie C. Kent and Ronal Coenen, Jr., *Variable Annuities and Other Insurance Investment Products* (Third Edition), Registered Index-Linked Annuity Contracts ("Kent and Coenen") at sec. 29:2.2.

are requiring disclosure that there is an implicit ongoing fee on index-linked options to the extent that an investor's participation in index gains is limited by the insurance company through the use of a cap, participation rate, or some other rate or measure. The addition of the qualifying language "to the extent" is designed to communicate to investors that a contractual limit acts as an implicit fee once it is triggered, but not before. After considering comments, we have determined that describing these limits as involving an implicit "fee" communicates the concept of reducing an investor's credited interest more effectively than "potential opportunity cost," as suggested by a commenter, which is a less concrete concept and therefore potentially more confusing for investors. Moreover, the modification discussed above regarding when these limits on gains will reduce an investor's credited interest, together with the characterization of the effect of these limits on gains as acting as an "implicit" ongoing fee, also will make clear these limits can have an effect akin to that of a fee.

Some commenters opposed requiring insurance companies to disclose that limiting the amount an investor can earn on an index-linked option helps the insurance company make a profit on the option.²⁰¹ These commenters stated that they believe the statement is misleading because insurance companies generate profit in other ways (or in other ways in addition to the limits), including through the use of derivative instruments. One commenter indicated that, even though other registered securities products generate revenue, not every form requires information about how revenue and profit is generated.²⁰² After further consideration, we are not adopting the profit statement because the two replacement statements discussed above in this section more clearly explain to investors how limits on index gains may decrease the amount earned on a contract. Specifically, the final disclosure alerts investors to opportunity costs associated with a contract by illustrating that limits can result in lower returns for investors as compared to the contract's underlying index. Further, alerting investors that the implicit fee is not reflected in the cost and fee tables is designed to help investors understand that the explicit ongoing fees that are reflected in these tables do not fully capture the complete

costs that investors may incur under the contract.

One commenter opposed the amendments requiring insurance companies to disclose that in return for accepting a limit on index gains, an investor will receive some protection from index losses.²⁰³ This commenter expressed that limits on gains sometimes do not actually limit an investor's credited interest, but an investor nevertheless receives protection from losses and, in such scenarios, characterizing the protection from index loss as received in exchange for accepting a limit on gains is inaccurate. We are including the "in return for" statement in the disclosure as proposed. An investor that accepts a limit on index gains in the form of a crediting rate (e.g., a cap) and also receives some downside protection from index losses (e.g., a buffer) is receiving the protection *in exchange for* accepting the limit, even if the limit is never triggered and therefore does not decrease the investor's credited interest. RILA industry experts have made similar statements.²⁰⁴

c. Risks

Risk of Loss. We are adopting amendments to the instructions to the line item entitled "Is There a Risk of Loss from Poor Performance?" with some modifications from the proposal. Form N-4 currently requires disclosure on risk of loss in connection with variable options, and we proposed to extend this risk of loss requirement to index-linked options. As proposed, insurance companies will be required to state, in the context of both index-linked or variable options, that an investor can lose money by investing in the contract. Index-linked options, like variable options, are subject to the risk of investment loss from poor performance.²⁰⁵ In a change from the proposal, we are adopting amendments 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 *current limits* on index

loss provided under the contract.²⁰⁶ The proposal required disclosure of maximum loss from negative index performance after taking into account the *minimum guaranteed limit* on index loss. In another change from the proposal, the instructions will specify that an insurance company may give a range of the maximum amount of loss if the contract offers different limits on index loss. Also in a change from the proposal, an insurance company will be required to either prominently disclose the minimum limit on index loss that will always be available under the contract or, alternatively, prominently state that the insurance company does not guarantee that the contract will always offer index-linked options that limit index loss, which would mean risk of loss of the entire amount invested. These amendments are designed to make clear to investors that they can still lose money even though index-linked options typically include features designed to limit investment loss, and that the level of downside protections currently offered may change in the future.

One commenter raised concerns about the inclusion of the numeric maximum amount of loss an investor could experience from negative index performance as part of this line item.²⁰⁷ Our views on the utility and efficacy of including numeric risk of loss disclosure in the prospectus generally are discussed above.²⁰⁸ We continue to believe that this disclosure is appropriate for the KIT and are specifically retaining the numeric maximum amount of loss an investor could experience from negative index performance under the Risks heading because the maximum loss that an investor may experience due to negative index performance is a key risk associated with index-linked options. Flagging this risk in the KIT under this heading is consistent with the KIT's mandate to "provide a brief description of key facts" to investors in a way that is "easy to read and navigate."²⁰⁹

We are adopting amendments to the instruction to this line item to specify that an insurance company may provide a range of the maximum amount of loss.²¹⁰ Permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered

²⁰³ See *id.*

²⁰⁴ See Dodie C. Kent and Ronald Coenen Jr., The Design and Regulatory Framework of Registered Index-Linked Annuities, ALI CLE Conference on Life Insurance Products 2022 (stating that the potential limit on upside performance is the trade-off that investors make for potential downside protection).

²⁰⁵ MVA options, which provide a fixed rate of interest (subject to an MVA), are not subject to the risk of loss from poor performance, and therefore would not be required to provide this disclosure.

²⁰⁶ See final Form N-4, Instruction 3(a) to Item 3.

²⁰⁷ See CAI Comment Letter.

²⁰⁸ See *supra* footnotes 105–106 and accompanying paragraph.

²⁰⁹ See VASP Adopting Release at paragraph following n.106.

²¹⁰ See final Form N-4, Instruction 3(a) to Item 3.

²⁰¹ See ACLI Comment Letter; CAI Comment Letter; Gainbridge Comment Letter.

²⁰² See ACLI Comment Letter.

under the contract.²¹¹ We also are adopting amendments requiring that an insurance company either disclose the minimum limit on index loss that will always be available under the contract or state that the insurance company does not guarantee that the contract will always offer index-linked options that limit index loss. As discussed above, this disclosure is designed to inform investors as to how the downside protections that are currently offered may change in the future, including disclosure of any minimum guaranteed limits that will always be available under the contract. Permitting the insurance company to provide a range of losses allows the insurance company to reflect the range of loss protection offered under the contract, and basing the disclosure on current limits address commenter concerns that not all RILAs guarantee a particular level of downside protection that will always be available under the contract, as discussed above.²¹²

Short-Term Investment. The second line item under the Risks heading, which under the final amendments to Form N-4 will be titled “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 non-variable annuities. We therefore are requiring insurance companies to provide this disclosure as proposed for RILAs and, in a change from the proposal, for registered MVA annuities.²¹³ We also are amending this item, as proposed, to require insurance companies 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 investment option or the contract before a specified period may also result in a negative contract adjustment and loss of positive index performance.²¹⁴ These disclosures are designed to make clear to investors some of the key reasons why these investments are not short-term investments. They are particularly

important for an investor considering an annuity in light of the potential negative consequences if the investor withdraws money early from a particular investment option or the contract. We are not limiting these disclosures to contracts with index-linked options, because these disclosures may be equally material for other investment options. We also are adopting, as proposed, new risk disclosure for investment options that mature at the end of a specific period that will require issuers offering such 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.²¹⁵

We received one comment on this portion of the proposal. The commenter opposed the amendments requiring issuers to state that the 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.²¹⁶ This commenter expressed that the required disclosure is not related to the risks of short-term investing. The commenter suggested that this disclosure be moved to the Overview of the Contract and that any restrictions on transfers not covered by the Overview of the Contract be moved to the KIT line item “Are There Restrictions on the Investment Options?”. After considering comments on this amendment, we are adopting this amendment as proposed. This disclosure illustrates that even though investment options under the contract may mature at the expiration of a specified period, the annuity contract itself is not a short-term investment and amounts invested in such short-term options will be automatically reallocated to new investment options under the contract. The disclosure also illustrates liquidity risk by making the investor aware that the contract value in an index-linked option (or fixed investment option that matures at the expiration of a specified period) is not automatically disbursed to the investor or “liquid” at the end of a crediting period. This disclosure is particularly important in illustrating that RILAs are not short-term investments in light of

the difficulty investors participating in investor testing had in understanding crediting periods.²¹⁷

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. Currently, the KIT 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 adopting, as proposed, conforming changes to the required statement to refer to index-linked options now that RILAs are included on Form N-4.²¹⁸

Largely as proposed, but with some modifications in response to comments, we are adopting amendments requiring insurance companies 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.²¹⁹ For the risk of limited upside, as proposed, the insurance company will 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%, we will credit 4% in interest at the end of the Crediting Period”), and (3) prominently state that this may result in the investor earning less than the index’s return. For the risk of limited protection in the case of market decline, largely as proposed, the insurance company will 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); and (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”). In a change from the proposal, and in response to comments as discussed below, we are not requiring

²¹¹ See *supra* Section II.C.1.

²¹² See *supra* Section II.C.1; see also CAI Comment Letter; VIP Comment Letter (discussing proposed minimum guaranteed rate disclosure in Items 6 and 1, respectively).

²¹³ See final Form N-4, Instruction 3(b) to Item 3.

²¹⁴ In a change from the proposal, we are replacing “index-linked option” with “investment option” to convey contract adjustments are associated with other types of investment options in addition to index-linked options.

²¹⁵ In a change from the proposal, the form now states that the risk disclosure is required for “investment options that mature at the end of a specified period. We proposed risk disclosure for “index-linked” options. We made this change to ensure that this requirement is applicable to MVA options in addition to index-linked options, in light of the addition of offerings of registered MVA annuities to the form.

²¹⁶ See CAI Comment Letter.

²¹⁷ See OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1.

²¹⁸ See proposed Form N-4, Instruction 3(c) to Item 3.

²¹⁹ See generally final Form N-4, Instruction 3(c) to Item 3.

the inclusion of a statement that, even after limiting a negative index return, investors could still lose up to XX% of their investment. However, in a change from the proposal and in response to comments as discussed below, we are adding a requirement that insurance companies disclose, if applicable, that an index is a “price index,” not a “total return index,” and therefore does not reflect dividends paid on the securities composing the index, or the index deducts fees and costs when calculating index performance, either of which will reduce the index return and will cause the index to underperform direct investment in the securities composing the index.

Comments on the proposed amendments to this line item were mixed. One commenter opposed the requirement that insurance companies disclose examples of each type of limit imposed on an investor’s participation in gains and losses of the index.²²⁰ This commenter stated that this information unnecessarily repeated similar disclosure required in the Overview of the Contract. We are retaining these numeric examples because, regardless of this disclosure’s appearance elsewhere in the prospectus, the KIT is designed to flag key considerations for the investor in one location in a concise and succinct manner. In this regard, numeric disclosure is particularly effective at conveying risks in a concise and succinct manner and thus is particularly effective in the KIT. The numeric examples are designed to highlight that each index-linked option will have unique risks. The examples highlight one of the central economic tradeoffs of index-linked options: 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. Illustrating economic consequences of limits in a numeric example is a concrete and thus effective way of communicating certain key considerations about index-linked options that investor testing specifically showed were difficult for investors to understand.²²¹ However, in consideration of comments received, we are adopting a change from the proposal to reduce the discussion of the same or similar topics in multiple locations, where this reduction could be made appropriately while continuing to promote the goal of highlighting key information about RILAs and enhancing understanding of RILA features and

risks. Specifically, we are not including the proposed requirement that a RILA issuer would have to prominently state that “even after limiting a negative index return, the investor could still lose up to XX% of their investment,” as this disclosure is already required under the Risks heading in the context of the “Is There a Risk of Loss from Poor Performance?” line item.²²²

We received comments suggesting that the difference between a “price return index” and a “total return index” is not currently adequately disclosed to RILA investors.²²³ The performance of a RILA is based on the performance of an index (such as the S&P 500) or another benchmark. The performance of a “price return index” is typically lower than that of a “total return” index because a price return index does not reflect dividends.²²⁴ Two commenters expressed that RILA investors may be misled by index-linked options that use a “price return index” instead of a “total return index.” Specifically, one commenter stated that the “biggest drag” on the performance of RILAs and all indexed annuities is the use of a price return index rather than a total return index and that current disclosures do not adequately explain the differences between the index types.²²⁵ This commenter expressed that disclosure explaining the differences between the two types of indexes is particularly important for index-linked options without upside or downside limits since investors may believe their upside potential is unlimited when, in fact, there is a limit in the form of a lower price return. The commenter also noted that with no apparent fees, index-linked options may appear to be a better

choice than an index fund, which has fees, without the investor understanding that an index fund will provide better upside potential in the form of a total return rather than a price return. Another commenter indicated that disclosure indicating that there are no ongoing fees associated with an index-linked option that uses a price return index inaccurately suggests that the option is free except for surrender charges.²²⁶

After considering these comments, we agree that this disclosure is appropriate. Investors should be alerted to the fact that a price return index does not assume the reinvestment of dividends and thus will underperform a total return index and direct investment in securities underlying the index. Accordingly, in a change from the proposal, we are adding a requirement in the KIT that insurance companies disclose, if applicable, that an index is a “price return index,” not a “total return index,” and therefore does not reflect dividends paid on the securities composing the index, or the index deducts fees and costs when calculating index performance, either of which will reduce the index return and will cause the index to underperform direct investment in the securities composing the index.²²⁷

Insurance Company Risks. We are adopting the fourth line item under the Risk heading largely as proposed, with modifications to allow insurance companies to provide a narrative description of insurance-company related risks. Under the proposal, this line item would have been required to be preceded by the question, “Is There any Chance the Insurance Company Won’t Pay Amounts Due to Me Under the Contract?” The proposal would have required the insurance company to answer this question with a “yes” or “no” answer. As under current Form N-4, the proposed disclosure also would have required a statement to the effect 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. In a change from the proposal, we are modifying the line item to state “What Are the Risks Related to the Insurance Company?” so that insurance companies may provide a narrative description of insurance-company related risks. As proposed, and under current Form N-4, insurance companies will be required to include a

²²² See proposed Form N-4, Instruction 3(a) to Item 3 and final Form N-4, Instruction 3(c)(B) to Item 3.

²²³ See Comment Letter of Jason Lee (Oct. 30, 2023) (“Lee Comment Letter”); Johnson Comment Letter.

²²⁴ An index-linked option’s index is used to measure the amount the insurance company increases or decreases the value of the investment, but contract value allocated to an index-linked option is not invested directly in the index components. The indices associated with index-linked options are often “price return” indices, and their performance is the difference in index value from the beginning of the term and the end of the term. For example, if the index had a price of \$1,200 on the first day of the term and a price of \$1,260 on the last day of the term, the price return would be 5% $((1,260 - 1,200) / 1,200)$. Price return indices do not reflect dividends. This contrasts with an investor investing in an index through an index fund (or investing directly in the components of an index), where such an investment’s return would include dividends. Thus, the “price return” of an index is typically lower than the “total return” of an index and the performance of a “price return index” is typically lower than that of a “total return index.”

²²⁵ See Johnson Comment Letter.

²²⁶ See Lee Comment Letter.

²²⁷ See final Form N-4, Instruction 3(c)(C) to Item 3.

²²⁰ See CAI Comment Letter.

²²¹ Investors had difficulty understanding buffers, among other things. See *supra* paragraph accompanying footnote 38.

statement to the effect 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.²²⁸ Further, as proposed and under current Form N-4, the insurance company will also be required either to provide its financial strength ratings or state, if applicable, that they are available upon request, and indicate how such requests can be made.

We received one comment on this portion of the proposal.²²⁹ The commenter opposed the wording, “Is There any Chance the Insurance Company Won’t Pay Amounts Due to Me Under the Contract?,” expressing concerns that it will inflate the risks related to insolvency when paired with the required bolded “yes” response as compared to the actual risk of insolvency. This commenter expressed that it is rare for an insurer to fail to fulfill its contractual guarantees due to financial insolvency. Instead, the commenter suggested that the row question be changed to “What are the Risks Related to the Insurance Company?” to avoid the implication of high credit or counterparty risk.

After considering this comment, we are retitling this line item in the KIT as described above and permitting a narrative response. Specifically, insurance companies will be directed, consistent with the current form and the proposal,²³⁰ to state in response to this line item 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 and that more information about the insurance company, including if applicable its financial strength ratings, is available upon request with an indication of how such requests can be made.²³¹ In a modification from the proposal, we are changing the title of this line item so that the disclosure is not required to begin with a “yes” or “no” to avoid investors misunderstanding the possibility that amounts due will not be paid to investors due to insurance company

insolvency. A narrative response that need not begin with a simple “yes” addresses the actual risk of insolvency of a given insurance company, while avoiding investors misunderstanding the likelihood of an insurer becoming insolvent.

d. Restrictions

Investments. We are adopting, substantially as proposed, amendments requiring insurance companies to include the disclosure required by the first line item under the heading “Restrictions,” “Are There Limits on the Investment Options?” We are modifying the current item 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.²³² As these limitations can exist for non-variable annuities as well as variable annuities, we are adopting this requirement as proposed. The disclosure requirement, which addresses restrictions relating to investment options generally, will apply to variable annuities, RILAs and registered MVA annuities (each of which will provide disclosure relevant to applicable investment options).

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 adopting, as proposed, amendments 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 any contractual minimum guarantees); and (3) substitute the index of an index-linked option

during its crediting period. We are also adopting, as proposed, amendments 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. We did not receive comments on any of these amendments.

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. As proposed, we are broadening this item 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 (*i.e.*, not “optional”), 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.²³³ We are requiring insurance companies to include this disclosure for RILAs, as proposed, and also registered MVA annuities in a modification from the proposal, because the disclosure is equally applicable to those annuities as it is to variable annuities. We did not receive comments on proposed amendments to this line item.

e. Taxes

We also are adopting, as proposed, amendments requiring insurance companies to include the line item under the heading “Taxes,” “What are the Contract’s Tax Implications?”²³⁴ This line item is designed to alert investors to the tax implications of variable contracts and as amended, of non-variable annuities. This line item currently requires a statement that an

²²⁸ This disclosure requirement included conforming changes to current Form N-4 to address RILAs. See Proposing Release at n.105 and accompanying text.

²²⁹ See CAI Comment Letter.

²³⁰ While the current form refers to depositor, the substance of the required disclosure is the same as what is being adopted.

²³¹ See Final Form N-4, Instruction 3(d) to Item 3.

²³² See final Form N-4, Instruction 4(a) to Item 3. 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 are also specifying 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.8.b.

²³³ See final Form N-4, Instruction 4(b) to Item 3. Similarly, we are adopting, as proposed, a change to the discussion in the Overview about contract features that will broaden that discussion to cover both optional and standard contract benefits. See final Form N-4, Item 2(c).

²³⁴ See final Form N-4, Instruction 5 to Item 3.

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 are applying this requirement to non-variable annuities because the same tax considerations apply. We did not receive comments on the proposed amendments to this line item.

f. Conflicts of Interest

Investment Professional Compensation. We are requiring, as proposed, insurance companies to include the first line item under the heading "Conflicts of Interest," "How are Investment Professionals Compensated?"²³⁵ 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. 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 also must state that investment professionals may have a financial incentive to offer or recommend the contract over another investment. The same compensation arrangements and potential conflicts are relevant for non-variable annuities, and we therefore are requiring an insurance company registering a non-variable annuity to provide the same disclosure. We did not receive comments on these amendments.

Exchanges. We are requiring, as proposed, insurance companies to include the second line item under the heading "Conflicts of Interest," "Should I Exchange My Contract?"²³⁶ 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. 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 non-variable annuity. In a change that will apply to variable and non-variable annuities, and to put investors on notice that there may also be costs or charges associated with terminating an existing contract, we are also requiring, as proposed, 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. We did not receive comments on these amendments.

4. Principal Disclosure Regarding Index-Linked Options and MVA Options (Items 6 and 17)

We are adopting amendments to Form N-4 to provide investors with the principal disclosures regarding index-linked options, largely as proposed, and MVA options, in a modification from the proposal, available under the contract, as required in two items of the form. First, investors will be provided with detailed information about the index-linked options and MVA options available under the contract in Item 6 (Description of the Insurance Company, Registered Separate Account, and Investment Options). In addition, investors will be provided with a summary information table, with legends highlighting risks, that outlines the available index-linked options and MVA options in Item 17 (Investment Options Available Under the Contract). These amendments build on the existing disclosure requirements in each form 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, a registered MVA annuity, or combination contract offering a variety of these options.

a. Description of Insurance Company, Registered Separate Account, and Investment Options (Item 6)

We are adopting amendments to Item 6 of Form N-4 that will, largely as proposed, modify certain existing disclosure requirements concerning the insurance company, registered separate account, and variable options, and expand the item to include new disclosures for any index-linked and fixed options offered under the contract.

To address the inclusion of registered MVA annuities on Form N-4, we are adopting changes to the proposed requirements to address fixed options subject to a contract adjustment. Items 6(a)–(c) will continue to require a concise discussion about the insurance company, registered separate account, and variable options. The amendments in Item 6(d) will require new disclosures about key aspects of any index-linked option offered under the contract, while Item 6(e) will add disclosures for fixed options generally, including MVA options.

Insurance Company, Registered Separate Account, and Variable Options

We are adopting the amendments to Items 6(a)–(c) as proposed. As discussed in the Proposing Release, these provisions largely retain the current requirement to provide a concise discussion about the insurance company, registered separate account, and variable options, slightly modified to implement certain definitional changes and minor restructuring to accommodate the addition of RILAs to the form.²³⁷

One commenter addressed proposed Item 6(a), which would, if applicable, require a filer to indicate that the insurance company is relying on the exemption provided by rule 12h-7 under the Exchange Act.²³⁸ This commenter asked that these rule 12h-7 representation requirements be revised to make clear that they only apply to an insurance company registrant (not a separate account) and only to an insurance company as an issuer of a RILA (not an insurance company in its role as depositor of a registered separate account).²³⁹ The instruction to Item 6(a), however, serves as a reminder to registrants that rely on a rule 12h-7 exemption to include the prospectus disclosure that the rule requires.²⁴⁰ If a registrant is relying on rule 12h-7, it must provide the disclosure required by

²³⁷ See final Form N-4, Item 6(a)–(c). For example, because the insurance company is obligated to pay all amounts promised to investors under the contracts subject to its financial strength and claims-paying ability, disclosure about this topic must be framed in terms of the insurance company, not the registered separate account, as the requirement is currently worded.

²³⁸ CAI Comment Letter.

²³⁹ CAI Comment Letter.

²⁴⁰ See rule 12h-7(f) under the Exchange Act (requiring that the prospectus for the securities contain a statement indicating that the issuer is relying on the exemption provided by the rule). Pursuant to section 30(d) of the Investment Company Act, a separate account must comply with the Investment Company Act's reporting requirements in lieu of the Exchange Act's reporting requirements that apply to other kinds of issuers and therefore does not need to rely on rule 12h-7.

²³⁵ See final Form N-4, Instruction 6(a) to Item 3.

²³⁶ See final Form N-4, Instruction 6(b) to Item 3.

that rule—independent of any form requirement—and in providing the disclosure can provide the additional details the commenter identified in its comment letter. We therefore are not making the suggested change.²⁴¹ This commenter similarly asked that we revise the proposed instruction to allow insurers to add clarifying disclosure that identifies generally the types of securities that support an insurer's reliance on rule 12h-7 (for example, a general statement that the insurer relies on rule 12h-7 with respect to registered stand-alone RILA contracts, registered index-linked options, or other registered non-variable insurance contracts the insurer issues).²⁴² The proposed instruction does not preclude a registrant from disclosing this information.

We received no comments on the proposed amendments to Item 6(b) (Registered Separate Account) or 6(c) (Variable Options), and we are adopting those sub-items as proposed.

Index-Linked Options

We are adopting amendments to Item 6(d) that will require an insurance company to disclose information about the key features of the index-linked options currently offered under the contract.²⁴³ These amendments are substantially as proposed, but with some modifications in response to comments. Under the final amendments, the prospectus must include a description of each index-linked option currently offered under the contract, including information about: (1) limits on index losses; (2) limits on index gains; (3) crediting period; (4) crediting methodology and examples; (5) relevant indexes; (6) maturity; and (7) other material features of the index-linked option. As discussed in the Proposing Release, these disclosures are designed to complement more general disclosures about index-linked options located elsewhere in the prospectus by providing investors specific information about each index-linked option's features and risks.²⁴⁴ In particular, the new disclosures are designed to address points that investor testing participants suggested might be confusing and/or for which they

indicated that they would prefer more information.²⁴⁵

One commenter expressly supported our proposal to require detailed disclosure about index-linked options in the prospectus, stating that “the disclosure items and instructions under proposed new Item 6(d) are helpful and appropriate,” and “would generally provide investors with the information they need to understand how the index-linked options operate, while also providing enough flexibility in the instructions to describe RILAs in the market today and to allow for future innovation.”²⁴⁶ No commenters opposed the proposed inclusion of disclosure about index-linked options in the prospectus as a general topic. Accordingly, we are requiring detailed disclosure about index-linked options in the prospectus, subject to modifications to certain of the proposed aspects of this disclosure, as discussed below.

Description of the Index-Linked Options Currently Offered

Under the final amendments, the prospectus must describe the index-linked options currently offered under the contract. As proposed, the description must 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 and—to dispel potential investor confusion relating to the reference to an index—that an investment in an index-linked option is not an investment in the index or in any index fund.²⁴⁷

We are adopting, as proposed, the requirement to state that an investor could lose a significant amount of money if the index declines in value.²⁴⁸ In a change from the proposal, we are not requiring the prospectus to state that the potential for investment loss could be significantly greater over time than the potential for investment gain.²⁴⁹ As discussed above, we are not adopting a parallel cover page disclosure because a separate requirement that addresses limits on index losses covers this risk in a more direct way than the proposed statements.²⁵⁰ We are not adopting this

aspect of the proposed Item 6 requirement for the same reasons.

As proposed, to emphasize the risks associated with an early withdrawal from an index-linked option, the prospectus must 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.²⁵¹ In a change from the proposal, and as discussed below, we are not adopting the proposed requirement to accompany either this risk of loss statement or the risk of loss statement regarding negative index performance with numeric disclosure of the maximum amount of loss an investor could experience from contract adjustments or negative index performance.²⁵²

Substantially as proposed, to inform investors of the possibility that their investment options could be unilaterally changed without action on their part, the insurance company will be required to state, if applicable, that it 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 current limits on gains and limits on index losses, subject to any contractual minimum guarantees.²⁵³

Lastly, similar to the current requirement for variable options, and substantially as proposed, a prospectus that offers index-linked options must state that certain information regarding the features of each currently offered index-linked option is available in an appendix to the prospectus, with a cross-reference to that appendix.²⁵⁴

One commenter addressed the proposed description of index-linked options currently offered under the contract with concerns regarding the narrative and numeric risk of loss disclosures.²⁵⁵ This commenter opposed including any disclosures addressing the maximum loss an investor could experience—narrative or numerical—in the description of index-linked options. This commenter asserted that disclosure on index-linked options in this section of the prospectus should focus on describing the mechanics of the index-linked options and contract

²⁴¹ In addition to requiring rule 12h-7 prospectus disclosure in Item 6, we are adding a related check box on the facing page. See *infra* Section II.C.8.a.

²⁴² CAI Comment Letter.

²⁴³ Final Form N-4, Item 6(d).

²⁴⁴ In the context of variable annuities, this type of detail about variable options is not required by Item 6 because each portfolio company issues its own prospectus that contains more detailed information about the portfolio company. See current and final Form N-4, Item 6(c); see also *infra* footnote 245.

²⁴⁵ Proposing Release at nn.125–126 and accompanying text.

²⁴⁶ CAI Comment Letter.

²⁴⁷ Final Form N-4, Item 6(d)(1)(i).

²⁴⁸ Final Form N-4, Item 6(d)(1)(ii). This disclosure mirrors a parallel requirement in Item 2(b)(2)(ii). See *supra* section II.C.2.

²⁴⁹ Proposed Form N-4, Item 6(d)(1)(ii).

²⁵⁰ Proposed Form N-4, Item 1(a)(6); see *supra* Section II.C.1.

²⁵¹ Final Form N-4, Item 6(d)(1)(iii).

²⁵² See proposed Form N-4, Instructions to Item 6(d)(1)(ii) and (iii); see also *supra* Section II.C.2.

²⁵³ Final Form N-4, Item 6(d)(1)(iv).

²⁵⁴ Final Form N-4, Item 6(d)(1)(v); see also final Form N-4, Item 17(b) (Appendix). In a change from the proposal, we are adding “current” before “limit on index loss” and removing “guaranteed” before “minimum limit on index gain” to conform to the revised headings in the Item 17(b) table for index-linked options. See *infra* Section II.C.4.b.

²⁵⁵ CAI Comment Letter.

adjustments, not investment risks, and suggested that investors likely will have already read the maximum risk of loss disclosures in earlier sections of the prospectus, so including similar disclosure along with descriptions of index-linked options would not be helpful.

Including risk of loss statements along with descriptions of the index-linked options that are offered under the contract (in the location in the prospectus that requires the greatest amount of detail about index-linked options) will result in a more complete understanding of the options the contract offers. The potential risk of loss associated with an index option is a key piece of information for investors to consider alongside other index-option-specific details disclosed in response to this item of Form N-4. Accordingly, the final amendments will require statements regarding the risk of loss associated with index declines, subject to conforming modifications as discussed above in the context of similar cover page disclosure. We are also adopting the requirement to include a statement about risk of loss associated with negative contract adjustments, as proposed, for the same reasons.²⁵⁶ In a change from the proposal, however, we are not adopting the proposed instructions that would have required numeric disclosure of the potential scope of loss due to negative index performance or a negative contract adjustment in Item 6. After considering comments, we agree that numeric examples are appropriately located in other parts of the prospectus, namely the KIT and the Item 5 principal risk disclosure (for the reasons discussed in the release sections describing those disclosures), and need not be repeated here.²⁵⁷ For this reason, we are adopting an approach that does not require numeric disclosure showing risk of loss in the discussion of index-linked options, but that retains related narrative statements about risk of loss, to ensure that all material aspects of each index-linked option are disclosed in one place.²⁵⁸

Limits on Index Losses and Gains

Description of limits on index losses and gains: Under the final amendments, the insurance company must describe the limits on index losses and gains for each index-linked option.²⁵⁹ In each case, and as applicable, the insurance

company will 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).²⁶⁰ We are also requiring 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 must 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%).²⁶¹ The prospectus similarly must 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% at the end of the term, meaning the investor's contract value will increase by 4%).²⁶² We received no comments on this aspect of the release, and are adopting as proposed.

Current limits on index losses and gains: The final amendments to Item 6 also will require insurers to disclose, for each index-linked option, current limits on index losses and gains (along with a statement that the current limit will not change during an index-linked option's crediting period).²⁶³ In a change from the proposal and in response to comments, insurers will be permitted to comply with the requirement to provide current limits on index gains by posting the information to a website that is publicly accessible, free of charge, and specifically incorporating this information by reference into the prospectus.²⁶⁴ An insurer relying on this incorporation by reference approach must: (1) state in the prospectus at the place where current upside rates would normally appear that the information about current limits on index gains is incorporated by reference; and (2) provide the website address where such rates can be found, with an active hyperlink to the website for

electronic versions of the prospectus.²⁶⁵ In addition, the website must: (1) be specific enough to lead investors directly to the current limits on index gains, rather than to the home page or other section of the website on which the limits are posted; (2) reflect current limits that are available for all contract investors, including variations in limits (e.g., due to distribution channel, State requirements, optional benefits, date of contract purchase, etc.); and (3) only include limits on index gains that are currently available for the index-linked options offered under the contract.²⁶⁶ These requirements are meant to provide the same information the investor would have received through the proposed approach where current upside rates would appear directly in the prospectus.

We received mixed comments about the proposed requirement to disclose current limits on index gains (or "current [upside] rates") in the prospectus.²⁶⁷ One commenter supported disclosing current rates, observing that the current rate is one of the most important terms of the offering.²⁶⁸ Conversely, several commenters opposed our proposal to require current upside rates in the prospectus.²⁶⁹ These commenters asserted that because current upside rates for new crediting periods change so frequently—daily, or in most cases, weekly or monthly—a prospectus that includes these current rates would quickly become stale, necessitating frequent updates to the prospectus. One of the commenters stated that RILA issuers routinely change current upside rates for new crediting periods in response to market conditions to help them manage their risks and provide competitive upside exposure to investors on an ongoing basis.²⁷⁰ The other commenter observed that not only do current upside rates for RILAs change frequently, but rates can also differ depending on when the contract was purchased, the distribution channel

²⁶⁵ Final Form N-4, Instruction 1 to Item 6(d)(2)(ii)(B); Final Form N-4, General Instruction C.3.(i).

²⁶⁶ Final Form N-4, Instruction 2 to Item 6(d)(2)(ii)(B).

²⁶⁷ See, e.g., CAI Comment Letter; VIP Working Group Comment Letter. We did not receive comments opposing the proposed requirement to disclose current limits on index losses in the prospectus. We understand that current limits on index losses do not change as frequently as current limits on index gains. See *infra* footnote 754 and accompanying text.

²⁶⁸ Johnson Comment Letter.

²⁶⁹ CAI Comment Letter; VIP Working Group Comment Letter; Comment Letter of Ronald Coenen, Jr. (Apr. 5, 2024) ("Coenen Comment Letter").

²⁷⁰ CAI Comment Letter.

²⁵⁶ Final Form N-4, Item 6(d)(1)(ii).

²⁵⁷ See *supra* Section II.C.3 and *infra* Section II.C.5.

²⁵⁸ See proposed Form N-4, Instructions to Item 6(d)(1)(ii) and (iii).

²⁵⁹ Final Form N-4, Items 6(d)(2)(i) and (ii).

²⁶⁰ Final Form N-4, Items 6(d)(2)(i)(A) and 6(d)(2)(ii)(A).

²⁶¹ Final Form N-4, Item 6(d)(2)(i)(A).

²⁶² Final Form N-4, Item 6(d)(2)(ii)(A).

²⁶³ Final Form N-4, Items 6(d)(2)(i)(B) and 6(d)(2)(ii)(B).

²⁶⁴ Final Form N-4, Instruction 1 to Item 6(d)(2)(ii)(B); see also final Form N-4, General Instruction D and Item 17(b). The website address required by Item 6 is the same website that is required to be included in the Item 17(b) legend, and must conform to Item 17(b)'s website posting requirements.

through which the contract was sold, the contract class, and the optional benefits available.²⁷¹ This commenter also raised questions regarding the timing of when current upside rates must be provided.²⁷²

The proposal was designed to address concerns about frequently changing upside rates by contemplating that insurance companies could update upside rate information using a prospectus supplement filed pursuant to rule 497 under the Securities Act, rather than being required to update the registration statement to reflect each change.²⁷³ The two commenters opposing the proposed requirement to disclose current upside rates in the prospectus raised concerns about this approach, however, stating that it would be a significant change to current practice, and would require RILA issuers to file rule 497 prospectus supplements frequently to update current rate information.²⁷⁴ They also stated that disclosing new rates by filing a rule 497 prospectus supplement frequently (e.g., every few days) would be confusing to investors. One of the commenters observed that insurance companies could change current rates less frequently to avoid the need for frequent prospectus supplements, but this would mean that to offset the risks associated with more constant rates, insurance companies would offer less favorable rates to investors.²⁷⁵

Commenters urged the Commission to permit insurance companies to follow their current practice of disclosing current upside rates on a dedicated web page on the insurer's website.²⁷⁶ One of these commenters asserted that the current approach provides the investor with the same information in the same timeframe as the proposed rule 497 process "without any of the significant costs, human resource burdens, and investor confusion" that would arise

from an "overwhelming" number of rule 497 filings.²⁷⁷ The commenter stated that RILAs have been offered for more than a decade absent the inclusion of current rates in the prospectus, and the RILA rate-setting and communication process is well-established and functions without any apparent investor confusion or complaint. This commenter also noted that we proposed to require a website address with current upside rates in the index-linked option appendix and asked that rather than having to file numerous rule 497 prospectus supplements and post those supplements online pursuant to rule 498A, RILA issuers be allowed to incorporate by reference the web page that would already include the same information.²⁷⁸

Commenters who suggested that current upside rates should be posted online instead of included directly in the prospectus recommended additional measures to effectuate the suggested approach. One commenter suggested that as a condition to allowing insurers to post current upside rates to the insurer's website, we could impose a recordkeeping requirement and require the issuer to consent to subjecting the posted rate information to prospectus or registration statement liability.²⁷⁹ Another commenter similarly asked that we permit RILA issuers to include the current upside rates in the prospectus by expressly incorporating by reference into the prospectus the website page where current rates would be posted, asserting this would have the same legal significance as a rule 497 prospectus supplement with respect to disclosure liability.²⁸⁰ This commenter further stated that allowing information to be incorporated by reference into the prospectus would be consistent with the Commission's prior approach to the treatment of websites that are identified or incorporated by reference into the registration statement.²⁸¹ The commenter also suggested that if we were to adopt the website approach for posting current upside rates as an alternative to the rule 497 approach, it would be willing either to support a requirement to include historical upside rates as part of the website that is incorporated by reference into the prospectus, or to file an annual report

disclosing the upside rates offered during the previous one-year period.²⁸²

After considering comments, we have determined to permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information directly in the prospectus, as proposed, or by including a website address where the current rates can be found and incorporating by reference the information on the website into the prospectus.²⁸³ Investors likely will find it more efficient to obtain current upside rates on the insurer's website identified in the prospectus than to review a potentially high number of prospectus supplements. It also will be familiar to many investors because this is the approach that many RILA investors currently use to obtain information about current upside rates. Moreover, allowing insurance companies to disclose current upside rates on a website and to incorporate this information by reference into the prospectus also will retain prospectus and registration statement liability, and ready accessibility of information that is a core aspect of the RILA offering. It will also accommodate RILA issuers' practice of changing current upside rates in response to market conditions. Because the approach we are adopting is consistent with current practice, we anticipate that the vast majority of RILA issuers will choose to use the website posting approach to disclose current upside rates instead of disclosing them directly in the prospectus.

In addition, in response to comments and to provide a longer and lasting historical record of recent upside rate information, which investors may wish to consider, and which Commission staff, third-party market participants, and others could use to analyze RILA offerings individually and the RILA market as a whole, all upside rate information for the prior calendar year

²⁷¹ VIP Working Group Comment Letter.

²⁷² *Id.* (asking how far in advance must the rates be filed, whether investors get the rates at the time the application is signed or the date the insurance company received the money or transfer request; also noting that today, some products do not disclose current rates in advance and instead use thresholds or bail-out features, and asking if this approach would no longer be permissible, and can existing products continue to operate with these features).

²⁷³ Proposing Release at nn.134.

²⁷⁴ CAI Comment Letter (stating that "one member estimated that if they change each upside rate at the start of each crediting period for each share class of each RILA contract they offer . . . it would need to file 432 supplements each year, covering 25,680 rates"); VIP Working Group Comment Letter.

²⁷⁵ VIP Working Group Comment Letter.

²⁷⁶ CAI Comment Letter; VIP Working Group Comment Letter.

²⁷⁷ CAI Comment Letter.

²⁷⁸ *Id.* (citing to proposed Form N-4, Item 17(b)).

²⁷⁹ VIP Working Group Comment Letter.

²⁸⁰ CAI Comment Letter.

²⁸¹ *Id.* (citing to proposed Form N-4, Item 17(b); also stating that by expressly incorporating by reference the web page with the current upside rates, the information on that web page would be legally part of the prospectus, and prospectus disclosure liability would attach).

²⁸² Coenen Comment Letter.

²⁸³ Final Form N-4, Instruction 1 to Item 6(d)(2)(ii)(B). With respect to the timing questions raised by one commenter, *see supra* footnote 272, we understand that it is common practice for insurance companies to disclose current rates in advance of the start of the crediting period of an index-linked option (with the specific timing for disclosing these current rates ahead of the start of the crediting period varying by product), although in limited historical cases insurance companies have not disclosed current rates in advance and instead used thresholds or bail-out features. The amended form requirements do not prescribe how far in advance of the start of the crediting period of an index-linked options current rates must be set. We understand that there are variations in practice within the industry on when rates are set before the start of the crediting period, based on market conditions and other factors, and our disclosure approach does not necessitate standardizing these practices.

must be filed annually with the Commission in a structured data format in response to Item 31A of Form N-4, as described below in Section II.C.7.²⁸⁴ Including this information together with the other census-type information RILAs will be required to provide in response to Item 31A is preferable to the recordkeeping requirement one commenter suggested because it avoids the need for the Commission to access insurance company records in order to obtain the historical information while also relieving insurers of an additional recordkeeping obligation. Moreover, requiring an annual filing on EDGAR not only creates a historical record of the information, as would have been the case if insurers filed a rule 497 prospectus supplement to disclose each upside rate change, but also has the benefit of being a single filing, instead of the potentially overwhelming number of rule 497 filings to which commenters objected. This requirement also supports commenters' recommendation to allow insurance companies to incorporate by reference current upside rates from a website because, absent some filing with the Commission, it would be difficult to determine what information had been incorporated. We are adopting the annual filing approach instead of the alternative approach of requiring historical rate information to be posted on insurers' websites, as one commenter suggested, because a single annual filing (1) would create a permanent historical record of past rates, unlike website disclosure that is continually updated, and (2) would be more efficient for interested parties to review and analyze than continually-updated website information.

Minimum limits on index losses and gains: In addition, insurers will have to include prominent statements regarding minimum limits on index losses and gains that will always be available under the contract, subject to certain modifications from the proposal.²⁸⁵ As discussed above, we have modified the wording of the requirement on minimum limits on losses to require an insurer to prominently disclose any minimum limits on index losses that will always be available under the contract, or alternatively, to prominently state that it does not guarantee that the contract will always offer index-linked options that limit index losses.²⁸⁶ Similarly, we have

modified the wording of the proposal, as discussed above, to require an insurer to prominently state, for each type of upside limit offered (e.g., cap, participation rate, etc.), the lowest limit on index gains that may be established under the contract.²⁸⁷ We are requiring similar disclosure on the cover page, in the Overview, and in the KIT, and we discuss the comments received concerning the proposed requirement to disclose information about guaranteed minimums, and our corresponding modifications, above.²⁸⁸ We are also retaining this disclosure requirement in Item 6, in the context of other disclosure regarding index-linked options, because it should be included in the section of the prospectus that provides the greatest amount of detail about such options. An investor reviewing the detailed disclosure about each index-linked option required by Item 6 will therefore have information about the key terms of each index-linked option and information about limits on gains and losses that may be available in future crediting periods.

Factors considered in determining current limits on index losses and gains: Substantially as proposed, we are requiring the insurance company to describe the factors it considers in determining the current limits on losses and gains for an index-linked option and how that choice may impact other features of the option set by the insurance company, along with an explanation of the factors an investor should consider regarding limits on index losses or gains before selecting an index-linked option for investment.²⁸⁹

As discussed in the Proposing Release, we are requiring the insurance company to 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. Giving investors information about the factors the insurance company considers in determining current limits—which are key features of an index-linked option—may help manage their expectations

regarding how the product operates.²⁹⁰ The disclosure about how the current limits on index gains or losses may impact other aspects of the index-linked option is designed to explain the inverse relationship between various features of the index-linked option.²⁹¹ The requirement to provide an explanation of the factors an investor should consider regarding limits on index losses or gains before selecting an index-linked option is designed to 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. We received no comments on this aspect of the proposal and are adopting as proposed.

Crediting Period

As proposed, we are requiring insurers 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.²⁹² The final amendments, substantially as proposed, will require the insurance company to prominently state that amounts must remain in an index-linked option until the end of its crediting period to be credited with all

²⁹⁰ 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. 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.

²⁹¹ 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.

²⁹² See final Form N-4, Item 6(d)(2)(iii)(A). An example of one such factor could 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. See OIAD Investor Testing 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.").

²⁸⁴ Final Form N-4, Item 31A; see also Coenen Comment Letter.

²⁸⁵ Final Form N-4, Items 6(d)(2)(i)(B) and 6(d)(2)(ii)(B).

²⁸⁶ Final Form N-4, Item 6(d)(2)(i)(B); see *supra* Section II.C.1.

²⁸⁷ Final Form N-4, Item 6(d)(2)(ii)(B).

²⁸⁸ See *supra* Sections II.C.1, 2, and 3.

²⁸⁹ Final Form N-4, Items 6(d)(2)(i)(C) and 6(d)(2)(ii)(C). Such factors could include, for example, long-term interest rates, market volatility, or the cost of option contracts supporting the index-linked option guarantees. Similar disclosure is required in other contexts. See, e.g., final Form N-4, Item 9(a) (requiring disclosure of material factors that determine the level of annuity benefits); see also Form N-6, Instruction 2 to Item 7(a) (requiring the identification of factors that determine the applicable cost of insurance rate).

or partial interest, as applicable, and to avoid a possible contract adjustment in addition to potential surrender charges and tax consequences.²⁹³ This discussion must also include a description of the transactions subject to a contract adjustment (e.g., partial withdrawals), with appropriate cross-references to related disclosures in the prospectus.²⁹⁴ 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. We received no comments on this aspect of the proposal and are adopting it as proposed.

Methodology and Examples

Each index-linked option has an “index crediting methodology” that explains how interest is calculated and credited to the contract. The final amendments will, as proposed, require insurance companies to explain the index crediting methodologies used for index-linked options and provide numeric examples reflecting how these methodologies work.²⁹⁵ The final amendments also will require insurance companies to provide a bar chart that illustrates the annual return of each index along with hypothetical examples of index return after applying standardized limitations on index gains and losses, subject to minor modifications from the proposal, discussed below.²⁹⁶

Specifically, we are requiring insurance companies to describe, for each index crediting methodology, 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, and enhanced performance).²⁹⁷ We received

no comments on this aspect of the proposal and are adopting it as proposed.

We are also requiring, as proposed, the prospectus for contracts that offer index-linked options to include a bar chart for each index showing the index’s annual return for each of the last 10 calendar years (or for the life of the index, if less than 10 years), with the corresponding numeric performance adjacent to each bar.²⁹⁸ Specifically, insurance companies must 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 may reflect a rate or measure used to limit index gains or losses under the contract that is comparable.²⁹⁹ Insurance companies will not be permitted to include additional index performance presentations, or historical index performance that precedes the inception of the index.³⁰⁰ Further, similar to the proposal but with modifications to address comments as discussed below, insurance companies will be required to provide two footnotes to this table, if applicable, that disclose (1) that the index is a price return index, not a total return index, and therefore does not reflect dividends paid on the assets in the index, which will reduce the index return and cause the index to underperform a direct investment in the securities composing the index, and (2) that the index provider deducts fees and costs when calculating index return, which will reduce the index return and will cause the index to underperform a direct investment in the securities composing the index.³⁰¹

As proposed, these bar charts must 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

performance, subject to certain conditions. “Enhanced performance” increases a positive index return, such as by offering a participation rate of more than 100%.

²⁹⁸ Final Form N–4, Item 6(d)(2)(iv)(B).

²⁹⁹ Final Form N–4, Instruction 3 to Item 6(d)(2)(iv)(B).

³⁰⁰ Final Form N–4, Instruction 6 to Item 6(d)(2)(iv)(B).

³⁰¹ Final Form N–4, Instructions 4–5 to Item 6(d)(2)(iv)(B). We are making conforming changes in final Form N–4, Instruction 1(d) to Item 17(b).

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 requirement is designed to provide context for the index-linked options that the RILA contract offers to help inform an investor deciding whether to invest in a RILA.³⁰² As discussed in the Proposing Release, presenting historical index information alone, without the addition of hypothetical caps and buffers, could mislead investors into thinking that these historical rates of index performance are what they would have received under the contract had they invested in a particular index-linked option.³⁰³ Providing historical index information with an overlay of hypothetical caps and buffers will help investors understand better how those limits can cause RILA performance to differ from that of the index, while the legends will put investors on notice that the presented performance is not the RILA’s performance.

Commenters generally supported, or did not oppose, the proposed inclusion of bar charts showing annual index returns. One commenter stated that the proposed bar chart “is a helpful disclosure that will provide information about historical index performance, while also providing another tool to help investors understand bounded return structures.”³⁰⁴ Several other commenters, though not opposed to the inclusion of a bar chart showing index returns, objected to the proposed 5% cap rate on the grounds that “caps have never been that low,” with one commenter suggesting that using these

³⁰² 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.

³⁰³ See Proposing Release at n.144 and accompanying paragraph.

³⁰⁴ CAI Comment Letter.

²⁹³ Final Form N–4, Item 6(d)(2)(iii)(B).

²⁹⁴ Final Form N–4, Item 6(d)(2)(iii)(B).

²⁹⁵ Final Form N–4, Item 6(d)(2)(iv)(A) and (C).

²⁹⁶ Final Form N–4, Item 6(d)(2)(iv)(B).

²⁹⁷ Final Form N–4, Item 6(d)(2)(iv)(A). 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 will 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. 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 positive, regardless of the index’s actual

rates would be “misleading.”³⁰⁵ One of these commenters suggested that instead of using the proposed standardized cap and buffer rates, we should require bar charts with an overlay of actual rates.³⁰⁶ Another commenter suggested that Commission staff be authorized to consider requests on a case-by-case basis to use a different overlay than would be generally prescribed, offering as an example a case where an insurance company only offers – 20% buffers and suggesting the company should be permitted to use a – 20% buffer overlay.³⁰⁷

We are not modifying the standardized rates as commenters suggest. As discussed in the Proposing Release, we proposed the hypothetical 5% cap rate and – 10% buffer rate, which are higher than typical minimum levels of caps and floors that will always be available under a contract, but lower than typical currently-offered levels, to help investors understand how caps and buffers affect the index return. The bar chart with the overlay of standardized rates is merely an example designed to convey to investors that by selecting a product with caps and buffers, their returns will differ from that of the index. As emphasized in the accompanying legend, the performance reflected in the bar chart is not the performance of any index-linked option, and an investor’s returns will differ from that of the index, perhaps significantly. Its purpose is to help investors understand how the product’s limit features operate; it is not designed to convey an index-linked option’s actual returns.

In addition, while a standardized 5% cap may be lower than many current caps, on balance it is better to select a standardized cap that is too low than too high, as an illustration with a standardized cap that is higher than the cap that the index-linked option actually offers (or may offer in the future) could suggest that the index-linked option may credit more interest than the option actually does. Based on staff experience, the standardized 5% cap also is higher than most guaranteed minimum caps insurance companies currently disclosed in RILA prospectuses. Moreover, using current upside rates, which change frequently, or considering requests on a case-by-case basis to use a different overlay,

would undermine comparability across products and require insurers to frequently update the prospectus. The same concerns about frequent updates to the registration statements that commenters identified in connection with the proposal to include current upside rates in the prospectus also would apply to the bar chart presentation if it were based on current upside rates. Accordingly, we are adopting, as proposed, the hypothetical 5% cap rate and – 10% buffer rate to provide for a consistent presentation across products designed to help investors understand a RILA’s bounded return structure.³⁰⁸ For the same reason, the amendments we are adopting do not permit the inclusion of additional bar charts in addition to the required examples, as one commenter suggested.

Two commenters suggested that the proposed bar chart disclosures should more clearly convey to investors that a RILA tracks a price return index and not a total return index, and the resulting effects on performance.³⁰⁹ We agree, for the reasons described in conjunction with a parallel disclosure requirement in the KIT, that disclosure should alert investors to the fact that a price return index does not assume the reinvestment of dividends and thus will underperform a total return index and direct investment in securities underlying the index.³¹⁰ Accordingly, and in a conforming change, we are modifying the footnotes to provide, if applicable, that the index in the bar chart is a “price return index,” not a “total return index” and therefore does not reflect the dividends paid on the assets composing the index, which will reduce the index return and cause the index to underperform a direct investment in the securities composing the index.³¹¹

To help investors understand how these crediting methods work, we are also requiring, as proposed, an

insurance company to include a numeric example to illustrate the mechanics of each index crediting methodology.³¹² The examples will be required to show, in a clear, concise, and understandable manner, how each crediting method functions when the index has positive as well as negative returns. Specifically, we will require for each index methodology numeric examples that reflect a positive return above the limit on index gains, and a negative return below the limit on index losses.³¹³ The examples also will 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.³¹⁴ Additional examples, charts, graphs, or other presentations will be permitted if they are clear, concise, and understandable.³¹⁵ We are also requiring insurance companies to include a legend stating 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 received one comment on this aspect of the proposal that sought clarification regarding what assumptions, such as fees, product features elected, the age of the contract, and/or interim value adjustments should be made when calculating the examples.³¹⁶ The instructions state that any charges that are subtracted from interest credited or that are deducted from contract value in an index option should be reflected in the example.³¹⁷ Because the legend states that the example assumes no withdrawals, insurers need not take into account the age of the contract, surrender charges, or any interim value adjustments. The instructions provide flexibility in terms of other assumptions that form the basis

³⁰⁵ VIP Working Group Comment Letter (suggesting that, based upon OIAD’s analysis in the OIAD Investor Testing Report, an 18% cap rate with a one-year crediting period and 10% buffer was more common); Datop Comment Letter; Johnson Comment Letter.

³⁰⁶ VIP Working Group Comment Letter.

³⁰⁷ CAI Comment Letter.

³⁰⁸ In contrast to the bar chart, which requires fixed hypothetical cap and buffer rates, the index methodology examples required by Item 6(d)(2)(iv)(C) allow insurers to use rates that are based on current and anticipated market conditions. See *infra* footnote 315 and accompanying text.

³⁰⁹ Johnson Comment Letter; Lee Comment Letter; see *supra* discussion at Section II.C.5.(b) (stating that the performance of a RILA is based on the performance of an index (such as the S&P 500) or another benchmark, in contrast to the performance of a “price return index,” which is typically lower than that of a “total return” index because a price return index does not reflect dividends).

³¹⁰ See *supra* footnote 227 and accompanying paragraph; see final Form N–4, Instruction 3(c)(C) to Item 3.

³¹¹ Final Form N–4, Instruction 4 to Item 6(d)(2)(iv)(B). For consistency, we are making a similar change in final Form N–4, Instruction 5 to Item 6(d)(2)(iv)(B) and Instruction 1(d) to Item 17(b).

³¹² Final Form N–4, Item 6(d)(2)(iv)(C).

³¹³ Final Form N–4, Instruction 2 to Item 6(d)(2)(iv)(C).

³¹⁴ Final Form N–4, Instructions 1 and 3 to Item 6(d)(2)(iv)(C).

³¹⁵ Final Form N–4, Instruction 4 to Item 6(d)(2)(iv)(C). As with the required numeric examples, 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.

³¹⁶ VIP Working Group Comment Letter.

³¹⁷ Final Form N–4, Instruction 3 to Item 6(d)(2)(iv)(C).

of the examples. Like all other registration statement disclosure, the examples may not be inaccurate or misleading, and we anticipate that insurers offering index-linked options (and that also offer variable options) will draw on prior experience developing performance examples for variable options in developing appropriate examples for index-linked options. We received no comments on our proposal to require a numeric example for each index crediting methodology and are adopting it as proposed.

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 requiring 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 additional information about the index.³¹⁸ We received no comments on these aspects of the proposal and are adopting them as proposed, subject to a conforming change to one of the proposed instructions related to differences between a price return index and a total return index.³¹⁹

The form includes three instructions to this general requirement under the final amendments.³²⁰ First, where there is more than one version of an index (for example a total return version and a price return version), the disclosure must clearly state which version of the index relates to the index-linked option.

Second, if the index is an exchange-traded fund ("ETF"), the disclosure must 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 value or closing value. If the performance is based on the ETF's share price, the disclosure must clarify the impact of using the share price as opposed to total return.

Third, the disclosure must also state, if applicable, that the index is a price return index, not a total return index, and therefore does not reflect dividends paid on the index's underlying securities. The disclosure also must state, if applicable, that the index

deducts fees and costs when calculating index performance. In these cases, the disclosure must explain that this will reduce index return and cause the index to underperform a direct investment in the securities composing the index. 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.

The insurance company also must state that it reserves the right to substitute an index prior to the end of the crediting period.³²¹ This will 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. In addition, the insurance company will 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 any such 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 will allow an investor to better understand the likelihood of the insurance company making a substitution and its potential effects.

Maturity and Other Material Features

To help investors anticipate what may happen at the end of an index-linked option's crediting period, the final amendments will require the insurance company to state whether an investor will receive advanced notice of a maturing index-linked option, how an investor may provide instructions on reallocating contract value at the end of the crediting period, and any automatic default allocation in the absence of such instructions.³²² 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.³²³ We received no comments on this aspect of the proposal and are adopting it as proposed.

Finally, we are requiring 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 inform an investment decision is disclosed.³²⁴ This will include disclosure related to limitations on transfers to or from index-linked options, rate holds, "bail-out" provisions, start dates, and holding accounts.³²⁵ We are also requiring a brief description of how charges may impact the index-linked option's value, if applicable, as part of this discussion. We received no comments regarding the proposed disclosures regarding other material features and are adopting it as proposed.

Fixed Options, Including MVA Options

In addition to variable options and index-linked options, annuity contracts commonly include fixed investment options, such as traditional, unregistered fixed options, unregistered index options, and MVA options.³²⁶ 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. As discussed above, annuity contracts also may offer fixed options standing alone (without also including variable options or index-

³²³ Final Form N-4, Instruction 3 to Item 6(d)(2)(vi).

³²⁴ Final Form N-4, Item 6(d)(2)(vii).

³²⁵ 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. See additional discussion of bail-out provisions at *supra* footnote 283. 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 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).

³²⁶ See Final Form N-4, Item 6(e). Interests in fixed account options that are not subject to a contract adjustment are generally exempt securities under section 3(a)(8) of the Securities Act and rule 151 under the Securities Act.

³¹⁸ Final Form N-4, Item 6(d)(2)(v)(A).

³¹⁹ Final Form N-4, Instruction 3 to Item 6(d)(2)(v)(A) (modified to clarify differences between a price return index and a total return index, similar to clarifying changes to Instruction 5 to Item 6(d)(2)(iv)(B), discussed above).

³²⁰ Final Form N-4, Instructions 1-3 to Item 6(d)(v)(A).

³²¹ Final Form N-4, Item 6(d)(2)(v)(B). 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.

³²² Final Form N-4, Item 6(d)(2)(vi).

linked options), including MVA options.

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.³²⁷ The current form also requires specific disclosure about fixed options in the KIT and the Overview.³²⁸ Because we are requiring insurers to include disclosures relating to index-linked options in Item 6, we are also, as proposed, requiring disclosures about fixed options so annuity contract investors have a complete understanding of all the investment options in which they may invest through that contract, either actively, or by default. This approach is designed to increase investor comprehension by ensuring that substantive information about all available investment options is presented in the same location in the prospectus and reflects the inclusion of registered MVA annuities on Form N-4.

The final amendments will, with modifications from the proposal, require insurance companies to disclose basic information about fixed options, generally covering the same areas as for index-linked options but tailored for the specifics of a fixed option. Specifically, as proposed, registrants will 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 minimum guaranteed interest rate is available in an appendix with cross-references.³²⁹ Further, as proposed, registrants will 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).

In a change from the proposal and to address the inclusion of registered MVA annuities on Form N-4, under the final amendments the prospectus must state, if applicable, that an investor could lose a significant amount of money due to a contract adjustment if amounts are removed from a fixed option prior to the

end of its term, describe the transactions subject to a contract adjustment, and provide cross references to related disclosure in the prospectus.³³⁰ The investment risk created by an MVA is a material consideration for an investor considering a registered MVA annuity. As with index-linked options and as proposed, the registrant also will be required to state whether an investor will receive advance notice of a maturing fixed option, including what steps an investor may 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, as proposed, 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.³³¹ In a modification from the proposal, this disclosure must also include an explanation of how current fixed rates may be obtained. This could include, for example, a phone number, website address, and/or instruction to contact the investor's financial professional to obtain current fixed rates. This aspect of the required explanation represents an addition to the proposed requirements to explain how investors will be informed of available fixed options and disclose changes to currently offered fixed options to provide additional context so that investors can better understand those disclosures.³³² Also as with index-linked options, we are requiring 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.

One commenter opposed requiring insurers to provide specific disclosures about fixed options in the prospectus on the grounds that the Commission lacks the authority pursuant to section 10(a) of the Securities Act to prescribe the specific content, format, and location of any prospectus disclosures about unregistered fixed options.³³³ Although the commenter acknowledged that most issuers choose to provide information about fixed options in the prospectus—and that any statements made in a prospectus about unregistered fixed options are subject to the Securities

Act's provisions concerning liability for the accuracy and completeness of statements made in a prospectus—it asserted that such disclosures should not be required by the Commission. Instead, the commenter stated that a variable annuity or RILA issuer should be able to choose whether to provide information about fixed options in the prospectus or instead in a separate document used with the prospectus and/or in marketing material or on its website. The commenter also stated that, to the extent it does include such information in the prospectus, the issuer should have the flexibility to determine the location, format, and specific content of any fixed option disclosures in the prospectus, so long as the disclosures are accurate in all material respects and do not obscure or impede the disclosures about the security being registered. Accordingly, the commenter recommended that the Commission make optional the proposed disclosures about fixed options and clarify that issuers can instead make disclosures about unregistered fixed options or accounts in any location and manner that does not obscure the disclosures about the registered options. No other commenter addressed the proposed disclosures for fixed options.

All material aspects of the contract should be described in the prospectus, and a fixed option is a material aspect of a RILA or variable contract. Therefore including this information in a registration statement for the offering of these contract securities is necessary and appropriate in the public interest or for the protection of investors.³³⁴ Consistent with this view, Form N-4 currently requires insurance companies to disclose certain basic information about fixed options when they are investment options in a variable contract.³³⁵ We are therefore adopting the disclosure requirements for fixed options, to be provided in the broader context of detailed disclosure regarding the investment options available under the contract, largely as proposed with modifications to reflect the inclusion of registered MVA annuities on Form N-4.³³⁶ The required disclosure about fixed options includes substantively the same information that insurers currently disclose about other investment options, such as variable annuities, and encompasses core information about fixed options. This basic information

³²⁷ Current Form N-4, General Instruction C.1.(a) (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.").

³²⁸ Current Form N-4, Items 2 and 3.

³²⁹ As discussed below, we are also requiring disclosure relating to any fixed options currently offered under the contract in the Item 17 (Appendix).

³³⁰ Final Form N-4, Item 6(e)(2)(i); *see also* Proposing Release at Section II.H (discussing changes to Form N-4 that would be necessary to accommodate MVAs).

³³¹ Final Form N-4, Instruction to Item 6(e)(2)(ii).

³³² *Id.*

³³³ CAI Comment Letter.

³³⁴ *See, e.g.*, Investment Company Act section 8; Securities Act section 10(c).

³³⁵ *See* current Form N-4, Item 3(b)(1) and Instruction 3(c)-(d) to Item 2.

³³⁶ We are likewise requiring fixed option disclosures in the appendix. *See infra* footnote 374 and accompanying text.

about fixed options available under a RILA or variable annuity is necessary to provide investors material information about the securities offering registered on Form N-4.

We therefore do not agree, as a commenter suggests, that the provision of such information should be voluntary. This approach would deprive investors of material information regarding an investment decision in an annuity contract. In addition, requiring this basic information about fixed options will provide increased efficiencies now that we also are requiring registered MVA annuities to register on Form N-4 (since this information is a necessary component of registered MVA annuity disclosure).³³⁷ Under Form N-4 as amended, an insurance company will provide the same information about all fixed options in this part of the prospectus, with additional disclosure about contract adjustments in connection with registered MVA annuities.

We received one comment regarding the proposed instruction that would require insurers to disclose the minimum guaranteed interest rate as a numeric rate, rather than referring to any minimums permitted under State law.³³⁸ This commenter objected, stating that minimum rates for contracts are determined by the standard nonforfeiture laws of each State in which the contract is offered, which are not uniform across all jurisdictions, and can change, sometimes frequently, due to changes in prevailing interest rates. This commenter suggested that instead of requiring insurers to provide numeric rates, they should be allowed to state, if applicable, that the minimum guaranteed rate is a rate required to comply with standard nonforfeiture law in the State in which the contract is issued, with a reference in the prospectus directing investors to the policy form, website, or other material where the specific minimum guaranteed rate applicable at the time the contract is issued may be found.

After considering this comment, we are adopting the proposed approach—requiring disclosure of the minimum guaranteed interest rate as a numeric rate—in the final amendments.³³⁹ We are not departing from the proposed approach given that the standard

nonforfeiture laws of most states follow the National Association of Insurance (“NAIC”)’s model Nonforfeiture Law for Individual Deferred Annuities, which specifies the range of numeric minimum interest rates from which insurers may choose for inclusion in the contract.³⁴⁰ As a result, insurers have the flexibility to select a numeric minimum interest rate that will comply with minimum requirements in most states. Further, it is our understanding that while current interest rates may frequently change, that is not the case with minimum interest rates, which must be within NAIC’s specified range of numeric interest rates. Accordingly, including the guaranteed minimum interest rate in the prospectus should not necessitate frequent updates to the prospectus. In addition, based on staff experience, we understand that some insurers already disclose the minimum guaranteed interest rate as a numeric rate in their prospectuses. Because providing such information in the prospectus is consistent with industry practice (at least for some insurers) and avoids the need for the investor to refer to another source for information about a material term of the offering, we are requiring minimum guaranteed interest rates to be stated as numeric rates, as proposed.

b. Appendix: Investment Options Available Under the Contract (Item 17)

We are amending the requirements for the required appendix of investment options available under the contract, largely as proposed, 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.³⁴¹ Similarly, we anticipate that an overview of available index-linked options, as well as available fixed options, will help investors in all

annuities whose offerings will be registered on Form N-4 to 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 will 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, and as proposed, we are amending the current heading to “Investment Options Available Under the Contract.”³⁴² We are adopting 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.

The current appendix requires a separate table indicating what portfolio companies are available or restricted under the benefits offered under a variable contract. Because fixed options and index-linked options—like variable options—can vary by benefit offered under the contract, we are adopting amendments, as proposed, that would require this table for all investment options (not only variable options), with no other changes.³⁴³ We received no comments regarding these aspects of the proposal and are adopting as proposed.

We received one comment regarding the disclosures for variable options in the required appendix.³⁴⁴ This commenter stated that the instructions to the table for variable options should permit variable annuity issuers to include additional rows that visually separate and group underlying funds belonging to the same fund complex, provided that the presentation does not obscure or impede understanding of the information that is required to be included, or substantially otherwise alter the required format of the table. The commenter asserted this approach would improve the organization and readability of the appendix, while also maintaining standardization and comparability. We agree. In a change from the proposal, we are therefore adding a new instruction that will provide flexibility to permit the

³³⁷ The commenter that opposed requiring insurers to provide specific disclosures about fixed options in the prospectus supported the inclusion of registered MVA annuities on Form N-4. See CAI Comment Letter.

³³⁸ CAI Comment Letter; see also proposed Form N-4, Instruction to Item 6(e)(2).

³³⁹ Final Form N-4, Instruction to Item 6(e)(2); Instruction 3 to Item 17(c).

³⁴⁰ See NAIC Standard Nonforfeiture Law for Individual Deferred Annuities (Model 805-4) at Sec. 4.B (describing requirement to disclose minimum rate under nonforfeiture law), available at <https://content.naic.org/sites/default/files/model-law-805.pdf>.

³⁴¹ VASP Adopting Release at n.267 and accompanying text.

³⁴² “Investment options” are defined as any variable option, index-linked option, or fixed option available under the contract. See *infra* Section II.C.8.b.

³⁴³ Final Form N-4, Item 17(d).

³⁴⁴ CAI Comment Letter.

presentation of information the commenter suggested, subject to existing requirements (by virtue of the table template in the form) to provide a standardized tabular presentation.³⁴⁵ The current tabular presentation was designed to promote ease of comparison between products, and we do not anticipate that the new instruction we are adopting will detract from this goal.³⁴⁶

Index-Linked Options

To accommodate the inclusion of index-linked options in the appendix, we are adding a new table titled “Index-Linked Options,” as proposed.³⁴⁷ As part of our layered disclosure approach, the information to be supplied in the table for index-linked options will summarize certain prospectus disclosures required elsewhere in the prospectus.³⁴⁸ The one commenter to address this aspect of the proposal broadly supported the proposed expansion of the required appendix to include a table for index-linked options, as well as the table’s general design, stating that the proposed Index-Linked Options Table “will aggregate all index-linked options currently available under the contract in one location to facilitate investor understanding and comparison of investment options and contracts.”³⁴⁹ We are adopting the table for index-linked options largely as proposed, with certain additions and modifications as discussed below.

Legends

Similar to the requirements for variable annuities, the table for index-linked options will be prefaced with a legend, largely as proposed. Specifically, the legend will 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, the legend will specify that the insurance company may change the features of the index-linked options listed in the table, 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 changes, other than changes to current limits on index gains.³⁵⁰ We received no comments on the legend, and are adopting it largely as proposed, with conforming changes corresponding

to other changes we are adopting to the index-linked options table and other modifications designed to clarify the legend language.³⁵¹

In addition, to help ensure that investors have convenient access to current upside rates, the legend will require insurance companies to state that information about current limits on index gains are available at a specified website address, if such information is incorporated by reference into the prospectus from a website, as described above.³⁵² We are adopting this requirement substantially as proposed, with a change to the related instructions to specify that the website address must be provided only if the current upside rates do not appear directly in the prospectus.³⁵³ This is a conforming change to address the final amendments’ permissible incorporation by reference of current rates on index gains into the prospectus, under Item 6 of final Form N–4.³⁵⁴

We are also adopting, in a modification from the proposal, instructions to specify that the website included in the legend must be the same website that includes information about current rates on index gains that an insurance company may choose to incorporate by reference into the prospectus under Item 6.³⁵⁵ This ensures that where an insurance company provides this information via a website, investors receive the same information and in the same format, whether they are directed to a website in disclosure required by Item 6 or this legend. As proposed, this website address must be specific enough to lead investors directly to current upside rates, rather than to the home page or other section of the website on which such rates are posted.³⁵⁶ Requiring RILA

issuers to include information about current limits on index gains on their websites will benefit investors by making this information easier to find and understand. Furthermore, because websites may be updated quickly, website disclosure will be efficient for compiling index-linked options’ current limits on gains, given our understanding that current upside rates can change often and that insurance companies currently disclose this information on their websites.

We anticipate that insurance companies generally will rely on the incorporation by reference approach because insurers generally disclose current limits on index gains on their websites today and based on commenter feedback about the challenges in providing this information directly in the prospectus. We therefore assume that all insurance companies will include a website address with current limits on index gains in this legend. However, to accommodate the possibility that an insurance company may not choose to incorporate by reference current upside rate information from a website, we are, in a change from the proposal, adding an instruction directing such an insurer to provide in (in lieu of the website address) a cross-reference to the current limits on index gains disclosed elsewhere in the prospectus.³⁵⁷

Lastly, set off from the rest of the legend and with emphasis, we are, largely as proposed, adopting the requirement to include a statement that if amounts are removed from an index-linked option before the end of its crediting period, the insurance company may apply a contract adjustment (or will apply a contract adjustment, as appropriate).³⁵⁸ The required legend also includes a statement 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. This statement is designed to highlight the potential impact on an investor’s returns if amounts are removed prior to the end of a crediting period. The one comment we received concerning the proposed statement addressed the use of the term

³⁵¹ In a change from the proposal, we are revising the legend to clarify that written notice will not be provided before changes to current limits on index gains.

³⁵² See final Form N–4, Item 17(b)(1), and final Form N–4, Instruction 1(e) to Item 17(b). 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 will be required to include an active hyperlink or other means of facilitating access that leads directly to the relevant website address. However, this requirement will not apply to an electronic summary prospectus that is filed on EDGAR. See final Form N–4, General Instruction C.3.i.

³⁵³ Final Form N–4, Instruction 1(e) to Item 17(b).

³⁵⁴ See *supra* Section II.C.4.a.

³⁵⁵ See final Form N–4, Instruction 1(e) to Item 17(b).

³⁵⁶ Final Form N–4, Instruction 2 to Item 6(d)(2)(ii)(B). We originally proposed this requirement as proposed Form N–4, Instruction 1(e) to Item 17(b), but in final Form N–4 this requirement will be included with the other requirements for current rates that are incorporated by reference from a website, collectively set forth in Item 6.

³⁵⁷ Final Form N–4, Instruction 1(f) to Item 17(b).

³⁵⁸ The proposed legend required a statement that included the phrase “we may apply a Contract Adjustment.” The final amendments instead include the phrase “we [may/will] apply a Contract Adjustment” in the legend. This provides flexibility to make a definitive statement to the extent that removing amounts from the index-linked option before the end of the crediting period will always result in the application of a contract adjustment.

³⁴⁵ Final Form N–4, Instruction 1(f) to Item 17(a).

³⁴⁶ See Proposing Release at n.156 and accompanying text.

³⁴⁷ Final Form N–4, Item 17(b).

³⁴⁸ See, e.g., final Form N–4, Item 6(d).

³⁴⁹ CAI Comment Letter.

³⁵⁰ Final Form N–4, Item 17(b)(1).

“withdrawn” and suggested adding the phrase “or deducted” to reflect that deductions other than withdrawals may result in a contract adjustment.³⁵⁹ We agree that referring solely to amounts being “withdrawn” from an index-linked option may not be understood to cover all of the circumstances in which a contract adjustment may apply. Accordingly, and consistent with wording used elsewhere in the form, we are modifying the first sentence of the required statement to state that “if amounts are *removed* from an Index-Linked Option before the end of its Crediting Period, we [may/will] apply a Contract Adjustment.”³⁶⁰ As proposed, we are also requiring the statement to include appropriate cross-references to the section(s) of the prospectus that describe the features of the index-linked options as well as contract adjustments.³⁶¹ 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.

Table

As proposed, the legend will be followed by a table that lists and highlights key elements of each index-linked option available under the contract. Specifically, the table will, largely as proposed, 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) current limits on index loss if held to the end of the crediting period; and (6) minimum limit on index gain for each index-linked option.³⁶² In a change from the proposal, we are modifying the last two column headings in the table to more clearly specify the information required. Specifically, we are adding to the fifth column heading the word “Current” so it now reads “Current Limits on Index Loss (if held until end of Crediting Period),” and removing from the sixth column heading the word “Guaranteed” and adding the parenthetical “(for the life of the Index-Linked Option)” to clarify that the minimum limits to be disclosed are for the life of the index option (not for the life of the contract).³⁶³ These

column heading changes are not intended to change the substance of the information that will be provided under each of these headings.

As proposed, the description of the type of index will be a brief statement of the type of index (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).³⁶⁴ The column indicating the type of index crediting methodology used for each index-linked option will only be required if the RILA utilizes multiple index crediting methodologies under the contract (e.g., point-to-point, step-up, enhanced upside, etc.), as proposed.³⁶⁵ The disclosures regarding current limits on index loss will require an issuer to: (1) state the current percentage used in the insurance company’s interest crediting methodology to limit the amount of negative index return credited to the index-linked option; and (2) identify in the table whether this limit is a buffer, floor, or some other rate or measure.³⁶⁶ In the last column, issuers will be required to state the minimum percentage that may be used to limit the amount of positive index return credited to an index-linked option (for the life of the index-linked option) and to identify in the table whether this limit is a cap, participation rate, or some other rate or measure.³⁶⁷ The additional parenthetical is designed to distinguish the disclosure that will be provided in this column (minimum limits guaranteed for the life of the index-linked option) from the new disclosure item that we are adding in a change from the proposal discussed in more detail below, providing information about guaranteed minimum limits that will always be available under the contract.³⁶⁸ We understand that it is common for a RILA to offer guaranteed minimums on index gains associated with specific index-linked options, as well as guaranteed minimums for the life of the contract. The proposed

guaranteed minimum limits for the life of the contract).

³⁶⁴ Final Form N-4, Instruction 3 to Item 17(b)(1).

³⁶⁵ Final Form N-4, Instruction 5 to Item 17(b)(1). If all index-linked options offered by a RILA contract use the same crediting methodology, the table will not include the column. *See, e.g., supra* footnote 297.

³⁶⁶ Final Form N-4, Instruction 6 to Item 17(b)(1).

In contrast to current limits on index gain, we understand that the current limits on index loss typically do not change frequently. In a change from the proposal, we added “Current” to the column heading “Current Limits on Index Loss (if held until end of Crediting Period)” to clarify the limits to be disclosed in that column.

³⁶⁷ Final Form N-4, Instruction 7 to Item 17(b)(1).

³⁶⁸ *See infra* paragraph accompanying footnotes 372–373.

approach, which only included a column heading for “guaranteed minimum limit on index gain,” therefore could be confusing, and the final amendments’ approach will specify separate disclosure for each type of guaranteed minimum limit.

As proposed, to ensure investors only receive disclosure relevant to them, RILAs will only be permitted to include in the table those index-linked options that are available under the contract, and must indicate if any of the options are restricted (e.g., because of a “hard” or “soft” close), consistent with the current disclosure requirements for variable options.³⁶⁹ Further, to promote disclosure in a consistent format to facilitate comparisons, issuers will be allowed to add, modify, or exclude table headings only as necessary to describe the material features of an index-linked option.³⁷⁰

We are also adopting instructions, largely as proposed, stating that if the index’s return does not reflect the full investment performance of the assets tracked by the index, the table must include a footnote that states the index is a price return index, not a total return index, and does not reflect dividends paid on the securities composing the index, and/or that the index deducts fees and costs when calculating index performance, as applicable. In these cases, the footnote must state that this will reduce the index’s return and cause the index to underperform a direct investment in the securities composing the index.³⁷¹ Investors 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 will alert investors that the index associated with a particular index-linked option will have relatively lower returns.

In a change from the proposal, we are requiring a new disclosure item immediately below the index-linked options table to provide investors information about minimum limits on index losses and gains that will always be available under the contract.³⁷² Although we did not propose to require this disclosure in the appendix, this requirement reflects the approach taken elsewhere in Form N-4, where information about current rates for

³⁶⁹ Final Form N-4, Instruction 1(b) to Item 17(b)(1).

³⁷⁰ Final Form N-4, Instruction 1(c) to Item 17(b)(1).

³⁷¹ Final Form N-4, Instruction 1(d) to Item 17(b). We are making conforming changes to the proposed instruction to mirror parallel instructions in other sections of Form N-4. *See, e.g., supra* footnote 311.

³⁷² Final Form N-4, Item 17(b)(2).

³⁵⁹ CAI Comment Letter (discussing the proposed statement “If amounts are withdrawn from an Index-Linked Option before the end of its Crediting Period, we may apply a Contract Adjustment.”).

³⁶⁰ Final Form N-4, Item 17(b)(1).

³⁶¹ Final Form N-4, Instruction 1(a) to Item 17(b).

³⁶² Final Form N-4, Item 17(b)(1).

³⁶³ *See also infra* footnote 372 and accompanying text (discussing separate disclosure describing

index-linked options is accompanied by information about minimum guaranteed limits on downside protection and current upside rates, so an investor evaluating information about the terms of an index-linked option can consider both the terms currently being offered as well as information about terms that may be available in future crediting periods.³⁷³

Fixed Options

Consistent with the approach we are adopting with respect to the Item 6 disclosure requirements (Description of the Insurance Company, Registered Separate Account, and Investment Options), we are requiring in the appendix summary information about fixed options currently available under the contract.³⁷⁴ These disclosure requirements are similar to the legend and table we are adopting for index-linked options, adjusted to reflect fixed option details. Under the final amendments, the fixed option legend, in addition to identifying that what follows is a list of fixed options currently available under the contract, will 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.

In a change from the proposal to accommodate the inclusion of registered MVA annuities on Form N-4, we are requiring a legend stating that if amounts are withdrawn from a fixed option before the end of its term, the insurer may (or, as appropriate, will) apply a contract adjustment, which may result in a significant reduction in contract value.³⁷⁵ The other requirements for the fixed option table, which will apply to registered MVA annuities as applicable without the need for any further changes, are being adopted as proposed. As proposed, the fixed option table will include columns identifying (1) the name of the fixed option, (2) the term, and (3) the minimum guaranteed interest rate.³⁷⁶ Insurance companies will be instructed to include appropriate cross-references in the legend to the sections of the prospectus that describe the features of fixed options as well as the contract

adjustment.³⁷⁷ As with index-linked options, insurance companies may add, modify, or exclude table headings only as necessary to describe material features of a fixed option.

One commenter opposed our proposal to include specific information about fixed options in the appendix altogether, consistent with its objections regarding our proposal to include fixed option disclosures in Item 6, and instead suggested that any disclosure regarding fixed options be voluntary and not subject to a specified disclosure format.³⁷⁸ For the reasons discussed above in connection with fixed option disclosure requirements in Item 6, we are requiring insurers to provide summary information about fixed options in the appendix, as proposed and with conforming modifications to reflect the inclusion of registered MVA annuities.

5. 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 are amending Item 5 to address certain principal risks that are particularly relevant to investors in RILAs. We are adopting these requirements largely as proposed, with conforming changes to ensure consistency with other prospectus disclosure requirements as discussed below. It is not necessary to include any changes from the proposal to address the inclusion of registered MVA annuities on Form N-4, because the proposed risk disclosure requirements addressed risks associated with negative contract adjustments.

In addition to restructuring the current item to incorporate the proposed risk disclosure requirements addressing index-linked options, we are adopting 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 changes also will consolidate certain risk disclosures insurance companies currently provide for variable annuities in other sections of the prospectus. We are requiring these risk disclosures in a single location to communicate risks

more consistently and effectively to investors. As the Commission has previously explained, the requirements for principal risk disclosure in the prospectus are designed to provide a consolidated presentation of principal risks.³⁷⁹

One commenter addressed the proposed amendments to Item 5. This commenter stated that it did not oppose our proposal to require registrants to provide index-linked option risk of loss disclosures in Item 5, stating that this section of the prospectus is intended for readers who want more detailed information about risks, and the Item 5 disclosure requirements provide registrants with the ability to give appropriate context that an investor may need to better understand those risks.³⁸⁰ No commenter specifically addressed risk disclosure for registered MVA annuities, although as discussed above commenters generally supported registering offerings of registered MVA annuities on Form N-4 and did not distinguish whether these offerings should be subject to different risk disclosure requirements than those that were proposed.³⁸¹ We received no other comments on this aspect of the proposal.

As proposed, the principal risk disclosure item of Form N-4 will be restructured into separate sub-items while also making certain changes from the current version designed to clarify existing disclosure obligations.³⁸² The new 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 will also include new risk disclosures specific to index-linked options, as applicable. We are adopting parallel changes to the risk disclosures most applicable to variable annuities to avoid any implication that risk disclosure addressing variable annuities should be provided at a different level of detail than the disclosures for RILAs.

The approach we are adopting will retain the current requirement for registrants to explain the principal risks of purchasing a contract but will also require, largely as proposed, an explanation of the principal risks associated with market risk, including the risks of negative investment performance.³⁸³ Additionally, for index-

³⁷³ See, e.g., final Form N-4, Item 6(d)(2)(i)(B) and (ii)(B).

³⁷⁴ Final Form N-4, Item 17(c).

³⁷⁵ Final Form N-4, Item 17(c); see also, e.g., Proposing Release at n.362 (describing potential changes to the appendix to accommodate registered MVA annuities).

³⁷⁶ Consistent with the approach in Item 6, the minimum guaranteed interest rate will be required to be stated as a numeric rate rather than referring to any minimums permitted under State law.

³⁷⁷ The requirement to cross-reference the sections of the prospectus that describe the contract adjustment is a conforming change to the proposed requirements to reflect the inclusion of registered MVA annuities on Form N-4.

³⁷⁸ CAI Comment Letter.

³⁷⁹ See VASP Adopting Release at n.690 and accompanying text.

³⁸⁰ CAI Comment Letter.

³⁸¹ See *supra* Section II.B.

³⁸² Final Form N-4, Item 5(a)-(b), (d)-(f).

³⁸³ Final Form N-4, Item 5(a). In a change from the proposal, the heading for this disclosure item in final Form N-4 is "Market Risk" (instead of

linked options, we are requiring prominent disclosure of the maximum amount of loss an investor could experience from negative index performance, as a percentage, after taking into account the current limits on index loss provided under the contract.³⁸⁴ We are adopting this requirement largely as proposed, with conforming changes to reflect parallel disclosure we are requiring in other locations in the form.³⁸⁵ Moreover, in a change from the proposal, the insurer may provide a range of the maximum amount of loss if the contract offers different limits on index loss. In addition, in a change from the proposal, an insurer must prominently disclose any minimum limits on index losses that will always be available under the contract, or, alternatively prominently state that it does not guarantee that the contract will always offer index-linked options that limit index loss (which would mean risk of loss of the entire amount invested). These changes from the proposal mirror parallel disclosure requirements for index-linked options that we are adopting in other parts of the form.³⁸⁶

Although disclosures that address certain risks of index-linked options will be required in other locations in the prospectus, we are requiring that RILA issuers include certain risk factors, such as disclosures related to maximum potential loss from index performance, in the consolidated summary of principal risks associated with the contract. Including this statement and others in Item 5 will help investors assess the particular risks associated with RILAs in the context of the other required principal risk disclosures, a premise to which a commenter agreed.³⁸⁷ This approach also will help ensure that an investor who reviews principal risk disclosure will be able to review all principal risks in one place in the prospectus, as the Commission

“Investment Option Risk,” as proposed) to clarify the focus of this disclosure item and distinguish it from Item 5(c), which specifically addresses Index-Linked Option Risk.

³⁸⁴ *Id.*

³⁸⁵ See, e.g., final Form N-4, Item 1(a)(6) (for example, in the first sentence of Item 5(a), we are replacing “poor” investment performance, as proposed, with “negative” investment performance to conform with similar cover page disclosure requirements).

³⁸⁶ The changes to Item 5(a) parallel changes to risk disclosures in final Form N-4, Item 1(a)(6) and Instruction 3(a) to Item 3. See *supra* discussion at Section II.C.3 and II.C.4.(b).

³⁸⁷ See *supra* footnote 380 and accompanying text. As discussed above, we are changing our calculation method for maximum risk of loss from index performance throughout the form to account for changes being adopted to minimum contract guarantees. See *supra* Section II.C.1.

stated as a goal when redesigning Form N-4 in connection with updating disclosure for variable contracts and implementing a summary prospectus framework.³⁸⁸

Under the final amendments, the next sub-item, which concerns the risks of early withdrawal, will require the prospectus to disclose that contracts are unsuitable as short-term savings vehicles and explain the limitations on access to cash value through withdrawals, including surrender charges, negative contract adjustments, and loss of interest.³⁸⁹ The disclosure must also explain the possibility of adverse tax consequences. We are adopting this sub-item as proposed. These are features of annuity contracts that implicate why they are not short-term saving vehicles. In addition, insurance companies that offer contracts with contract adjustments will be required to state the maximum potential loss resulting from a negative contract adjustment, as a percentage. Although this last statement will be required to be provided in other locations in the prospectus, we are including this risk disclosure in the consolidated summary of principal risks because contract adjustments can significantly affect contract value.

The next sub-item, which concerns the principal risks associated with index-linked options, will, substantially as proposed, include new risk disclosure requirements tailored to address unique risks associated with these investment options.³⁹⁰ Under these requirements, a registrant will (in addition to the risks of potential loss from negative index performance, as discussed above) describe the principal risks of investing in any index-linked options offered under the contract. The sub-item will, as proposed, 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.

³⁸⁸ 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.”).

³⁸⁹ Final Form N-4, Item 5(b).

³⁹⁰ Final Form N-4, Item 5(c). In a change from the proposal, we are relocating “as applicable” from the text of Instructions 1 and 2 to Item 5(c) to the Instruction preamble to streamline.

To help ensure that RILA prospectuses address certain key risks, the instructions to this disclosure requirement will, as proposed, specify that discussion of the principal risks related to index-linked options must include the principal risks relating to: (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.³⁹¹ We are also adopting, as proposed, instructions specifying that this discussion will be required to include 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.³⁹² These instructions 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 crediting period.

An additional new sub-item will require, as proposed, 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.³⁹³ These risks include, for example, investment restrictions associated with a living benefit, which may limit investment performance. Because these risks could impact the expected performance of the annuity, or in some cases could even terminate the annuity, we are requiring issuers to disclose them in the prospectus. These risks could be applicable to variable annuities, RILAs, or registered MVA annuities.

Another new sub-item will require, as proposed, 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.³⁹⁴ We are requiring this disclosure to be included in the consolidated principal risks section of the prospectus for completeness, and to help ensure that a prospectus discloses

³⁹¹ Final Form N-4, Instruction 1 to Item 5(c).

³⁹² Final Form N-4, Instruction 2 to Item 5(c).

³⁹³ Final Form N-4, Item 5(d).

³⁹⁴ Final Form N-4, Item 5(e).

the insurance company's claims-paying ability with regard to its contractual guarantees.

Lastly, we are adopting as proposed a final new sub-item, which will require a description of the principal risks relating to any material reservation of rights under the contract, including if applicable the right to: (1) 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.³⁹⁵ We are requiring 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.

6. Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures (Items 4, 7, and 22)

We are adopting amendments to Form N-4, largely as proposed, to require specific disclosures regarding contract adjustments and other implicit RILA-specific costs that can result in a significant erosion of investment principal. The required disclosures, set forth in Items 4, 7, and 22(d) of Form N-4, are designed to provide investors with a better understanding of the mechanics of these costs and the associated potential for loss. We are also adopting revisions to the existing provisions of these items, applicable to all issuers registering offerings on Form N-4, to clarify certain terminology.

a. Amendments to Fee Table Disclosure Requirements (Item 4)

The fee table of Form N-4 provides detailed information on the fees and expenses investors will pay when buying, owning, and surrendering or making withdrawals from the contract, as well as those paid each year during the time the investor owns the contract. We are amending the fee table to require specific disclosures regarding contract adjustments and other costs to investors specific to RILAs, including a detailed description of contract adjustments in the prospectus that will be proximate and similar to other disclosures regarding fees and expenses. We are adopting amendments to the fee table largely as proposed, with certain

modifications after considering comments discussed below.³⁹⁶

Transaction Expenses and Adjustments Tables

Insurance companies 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. To provide proximate and similar disclosure for non-variable annuity-specific costs, we are adopting, with some changes to the proposal, a requirement 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. The proposal would have required this disclosure to appear in the transaction expenses table that Form N-4 issuers currently include in their prospectuses. In response to comments questioning the disclosure of contract adjustments in the transaction expenses table, and in a change from the proposal, we are adding a separate adjustments table, which will follow the transaction expenses table. Finally, to provide investors notice of the circumstances where they might be subject to this cost, we are also adopting, as proposed, a requirement that insurance companies include a footnote describing all transactions potentially subject to a contract adjustment.³⁹⁷

The commenters who addressed the proposed amendments to the transaction expenses table opposed including the maximum negative contract adjustment, asserting that contract adjustments are a product feature based on market risk rather than a type of fee or expense.³⁹⁸ One commenter further stated that characterizing contract adjustments as fees penalizes insurance companies for allowing investors to make early

withdrawals.³⁹⁹ Another commenter opposed disclosing the maximum negative contract adjustment here because, although contract adjustments may result in losses to investors, the commenter believed this maximum potential loss disclosure ultimately is risk disclosure, and not an explicit fee or charge, and because contract adjustments can result in a gain as well as a loss.⁴⁰⁰ The commenter also asserted that it grossly mischaracterizes the risk of loss because the risk of suffering such a maximum loss is remote.

The transaction expenses table discloses all transaction expenses paid directly by the investor, such as sales loads or surrender charges, including when those transaction expenses are fees or expenses paid due to an investor withdrawal.⁴⁰¹ A negative contract adjustment, although not an explicit fee or expense, could have a similar impact on an investor as an explicit fee or expense because a negative contract adjustment can reduce an investor's investment just like a surrender charge, for example, and has the potential to reduce it significantly. By disclosing the maximum negative contract adjustment, in addition to any transaction expenses, investors are alerted to the potential costs they will bear when amounts are withdrawn prematurely. These costs could result in the loss of a significant amount of money. This is true even if, in the context of a RILA, the index has experienced a positive gain at the time of withdrawal or the RILA includes a loss protection feature.

For these reasons, the maximum negative contract adjustment should be disclosed proximate to the transaction expenses currently disclosed in the transaction expenses table, including sales loads imposed on purchases, deferred sales loads, surrender charges, and transfer fees. Including the maximum negative contract adjustment disclosure proximate to the transaction expense disclosure helps ensure that investors have access, in one place, to full disclosure regarding the economic consequences of withdrawing money from an index option or the contract. Nonetheless, we appreciate that maximum negative contract adjustments may not be as clearly identified by investors as transaction "expenses" per se as other items in this table. To address this concern, we have added a separate adjustments table, which will follow the transaction expenses table. The table will be preceded by an

³⁹⁶ In order to eliminate unnecessary information in the prospectus, we are amending instruction 1 to Item 4 to specify that registrants may omit a narrative explanation that is not applicable under the contract. See final Form N-4, Instruction 1 to Item 4. We are also amending instruction 5 to Item 4 regarding the preparation of the transaction expenses and adjustments and annual contract expenses tables, specifying that the instruction to 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 final Form N-4, Instruction 5 to Item 4. We received no comments on these changes and are adopting them as proposed.

³⁹⁷ See final Form N-4, Instruction 12 to Item 4.

³⁹⁸ VIP Working Group Comment Letter; CAI Comment Letter.

³⁹⁹ VIP Working Group Comment Letter.

⁴⁰⁰ CAI Comment Letter.

⁴⁰¹ See current and final Form N-4, Item 4.

³⁹⁵ Final Form N-4, Item 5(f).

“Adjustments” heading and describe the adjustments, in addition to any transaction expenses, that apply if all or a portion of the contract value is removed from an investment option or from the contract before the expiration of a specified period. This new table is designed to highlight the effect of contract adjustments for investors, consistent with the proposal, while conveying that the contract adjustment is not itself an explicit fee.

The transaction expenses table also currently 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 adopting, as proposed, a terminology change, replacing the term “exchange fee” with “transfer fee,” as this term better reflects that, in the staff’s experience, the vast majority of such fees are imposed on transfers of contract value among investment options under the contract.⁴⁰² We received no comments on this aspect of the proposal.

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 are adopting, as proposed, an amendment that will also allow base contract expenses to be expressed as a percentage of average account value or contract value. Index-linked and fixed MVA options do not generally use the concept of average account values (as variable annuities do), but they do have a concept of contract value. Making this change will therefore facilitate including those investment options on the form as it allows them to accurately express base contract expenses. We do not anticipate that this change will substantively affect variable annuities’

existing disclosure and we received no comments on this aspect of the proposal.⁴⁰³

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 requiring, in part as proposed, insurance companies to include the following statement in the table with respect to index-linked options:

In addition to the fees described above, we limit the amount you can earn on [certain of] the Index-Linked Options. This means your returns may be lower than the Index’s returns. In return for accepting this limit on Index gains, you will receive some protection from Index losses.

As proposed, the disclosure included a sentence stating that “Imposing this limit helps us make a profit on the Index-Linked Option.” Some commenters were opposed to including the statement that an insurance company limits gains on an index-linked option in order to help the insurer make a profit.⁴⁰⁴ These commenters stated that the disclosure is an oversimplification of an insurance company’s business model and that it would provide investors with a false understanding about RILA profitability for the issuers. In particular, commenters stated that the disclosure suggested that an insurance company applies cap rates and participation rates as a means of capturing for itself any increases in index value above the cap rate.⁴⁰⁵ Some commenters explained that cap rates and participation rates are among the investment parameters that a RILA issuer can use to design index linked options and that the effectiveness of the options in hedging the performance of the reference index is only one of the factors that determines

the profitability for a RILA issuer.⁴⁰⁶ One commenter stated that an explanation of an insurance company’s business model or the profitability of issuing RILAs would not be helpful to investors.⁴⁰⁷

In a change from the proposal, after considering the comments discussed above, insurance companies will not be required to state that limits on index earnings help insurance companies make a profit on index-linked options. Instead, insurance companies will be required to include a sentence stating that “This means your returns may be lower than the Index’s returns.”⁴⁰⁸ The purpose of this disclosure is to put investors on notice that although there are typically not explicit fees charged for these products, and in exchange for that lack of a fee, investors generally will accept some limit on their ability to participate in index gains. This disclosure is appropriate to address the results of our investor testing, which demonstrated that participants may not understand that limits on index earnings reduce an investor’s potential gains from the market.⁴⁰⁹ This disclosure is also necessary to alert investors to the implicit fees inherent in limiting upside index participation. Without the disclosure, which will follow the other expenses relevant to investors, including administrative expenses, base contract expenses, and optional benefit expenses in the annual contract expenses table, an annual contract expenses table showing no explicit ongoing fees could itself mislead investors.

In another change from the proposal, the disclosure referring to limits on “an Index-Linked Option” was revised to “[certain of] the Index-Linked Options.” Because the disclosure related to the entire contract whose offering is being registered, this phrasing did not account for variances between index-linked options offered in that contract where, for example, some index-linked options have limits on upside participation but others do not. One commenter stated that cap rates and participation rates do not limit the amount an investor can earn in all scenarios, such as when an issuer does not impose a limit on an

⁴⁰² See final Form N–4, Instruction 10 to Item 4. As defined, “transfer fee” will 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 amended definition and terminology regarding transfer fees will not result in any substantive change for existing Form N–4 issuers.

⁴⁰³ We are adopting, as proposed, two related, non-substantive amendments to the instructions relating to annual contract expenses relevant to all issuers. These changes will broaden terminology given the expanded scope of securities offerings registered on Form N–4 as amended. Currently, the instruction for describing administrative expenses references “any Contract, account, or similar fee on all Investor Accounts;” however, as noted below, we are removing the term “Investor Account,” and amending this instruction to conform to that change. See final Form N–4, Instruction 13 to Item 4. Relatedly, we are amending 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,” and replacing it with an instruction to consider fees and expenses “charged to any Investment Option.” See final Form N–4, Instruction 14 to Item 4. We received no comments on this aspect of the proposal.

⁴⁰⁴ See ACLI Comment Letter; Gainbridge Comment Letter; CAI Comment Letter.

⁴⁰⁵ See OIAD Investor Testing Report at 39 and Letter.

⁴⁰⁶ ACLI Comment Letter; Gainbridge Comment Letter.

⁴⁰⁷ ACLI Comment Letter.

⁴⁰⁸ Final Form N–4, Item 4. Specifically, this disclosure at proposal read: “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.” See Proposing Release at Section II.B.5.a).

⁴⁰⁹ See OIAD Investor Testing Report at 39 and 59.

index-linked option or an investor earns the full index performance because the actual index gain is less than the index limit.⁴¹⁰ We appreciate that a RILA may offer both index-linked options with and without limits on the amounts investors can earn.⁴¹¹ To account for this, we have changed the language of the final disclosure to refer to “[certain of]” the index-linked options in these limited circumstances. We are not amending the form to address cases where there are limits but the actual index performance is below those limits because that cannot be known at the time of the disclosure.

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 investments. In a change that will apply to variable annuity prospectuses, we are adopting, as proposed, a requirement that registrants disclose that expenses shown in this table may change over time and may be higher or lower in the future. This modification will help to ensure that investors understand that these charges may increase over time, notwithstanding that these charges are described as maximum expenses. Additionally, this disclosure is similar to disclosures we are requiring of non-variable annuities that are also subject to change, specifically disclosures related to changing upside and downside limits.⁴¹² We received no comments on this aspect of the proposal.

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 are amending, as proposed, the example requirements to clarify, in relation to variable annuities

and combination contracts that have variable options, 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. The example will 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. The one commenter that spoke to this aspect of the proposal supported it and agreed that it served the intended purpose.⁴¹³

b. Charges and Adjustments (Item 7)

Item 7 currently requires registrants to provide a brief description in their prospectuses of all current charges deducted from purchase payments, investor accounts, assets of the registrant, or any other source.⁴¹⁴ For the reasons described above and given the potentially significant economic consequences contract adjustments can have on investors in non-variable annuities, we are also adopting additional specific requirements to incorporate contract adjustments into the prospectus’s disclosure of charges, which will consist of a description in simple terms of any contract adjustments under the contract. These disclosures are designed to be comparable and proximate to existing disclosures about contract charges applicable to variable annuities.⁴¹⁵

⁴¹³ CAI Comment Letter.

⁴¹⁴ In addition to the changes discussed below, we are adopting as proposed a few clarifying changes to Item 7. Specifically, consistent with the adopted changes to the fee table, we are adopting proposed changes in terminology that will 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, issuers will describe charges deducted from purchase payments, contract value, investment option assets, or any other source. Additionally, we are adopting as proposed two non-substantive terminology changes in Instruction 3 to Item 7(a) regarding how registrants must describe the sources that will be used to cover shortfalls where proceeds from sales loads will not cover expected costs. First, we are 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 currently 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 are striking the italicized language referring to assets of the registered separate account because it is superfluous given the definition of “base contract expenses” in amended Instruction 14 to Item 4, discussed above. We received no comments on these aspects of the proposal.

⁴¹⁵ See final Form N-4, Item 7(a)–(d).

These disclosures are adopted as proposed, except that we are changing the title of Item 7 from “Charges” to “Charges and Adjustments” in response to comments, as discussed in more detail below.⁴¹⁶

Specifically, we are adopting a requirement that insurance companies must: (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.⁴¹⁷ Insurance companies will also be required 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 values under the contract in an amount greater than the value withdrawn.⁴¹⁸ They will 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, fees, or adjustments applied under the contract, including, for example, the sequence in which charges, fees, and adjustments are applied.⁴¹⁹ The required disclosure will

⁴¹⁶ We proposed to amend Instruction 6 to Item 7 to require a description of the relationship between the contract adjustment and any other charges or fees applied under the contract, including, for example, the sequences in which charges and adjustments are applied. In a modification from the proposal, we are amending Instruction 6 to Item 7 to require a description of the relationship between the contract adjustment and any other charges, fees, or adjustments applied under the contract, including, for example, the sequences in which charges, fees, and adjustments are applied. Fees and adjustments were added in respective places in the instruction for clarity and completeness compared to the proposal. See final Form N-4, Instruction 6 to Item 7. These disclosures apply to both RILAs and registered MVA annuities.

⁴¹⁷ See final Form N-4, Instructions 1 through 3 to Item 7(e). In describing the transactions subject to a contract adjustment, the insurance company will need to describe, for example, whether adjustments apply if amounts are transferred or withdrawn from an index-linked or MVA 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.

⁴¹⁸ See final Form N-4, Instruction 5 to Item 7(e). If applicable, the insurance company will 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.

⁴¹⁹ See final Form N-4, Instructions 4 and 6 to Item 7(e). The description of how the contract adjustment is determined will 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

⁴¹⁰ See ACLI Comment Letter.

⁴¹¹ An insurance company would not include this disclosure if none of the index-linked options offered in the prospectus limit the amount of an investor’s gains. See, e.g., final Form N-4, General Instruction C.1(d).

⁴¹² See, e.g., final Form N-4, Item 17(b)(1).

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.⁴²⁰ Finally, issuers will 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.⁴²¹

The detailed disclosure on the method of calculating the contract adjustment will, as proposed, appear in the SAI, as opposed to the prospectus.⁴²² Item 7(e) will include a cross-reference to Item 22(d) of Form N-4, which will 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 will not be, however, a substitute for the Item 7 requirements. Thus, for example, an insurance company will not be permitted to include the formula underlying the contract adjustment calculation in the SAI in lieu of the required discussion of the contract adjustment in the prospectus. Rather, in addition to stating the formula in the SAI, the insurance company will need to include in the prospectus a brief description, in simple terms, of how the contract adjustment is determined.

Some commenters stated that the proposal generally mischaracterizes contract adjustments as charges.⁴²³ One of these commenters stated that, as a result, Item 7 should not include any contract adjustment disclosures.⁴²⁴ The other of these commenters instead recommended that Item 7 be renamed from "Charges" to "Charges and Adjustments."⁴²⁵ This commenter stated that "Charges and Adjustments" would more accurately describe the disclosures in amended Item 7, which would include disclosures related to

contract adjustments.⁴²⁶ This commenter also stated that this disclosure should focus on describing the mechanics of contract adjustments and exclude any maximum potential loss disclosures, which are already included elsewhere in the prospectus.

Given that Item 7, as amended, includes significant disclosure related to contract adjustments, we agree, as one commenter recommended, that changing Item 7 from "Charges" to "Charges and Adjustments" is appropriate and provides a clear and accurate description of the specific disclosure that investors will find in disclosure provided in response to Item 7. However, similar to the inclusion of limits on upside gains as a "fee" or "expense," as discussed above,⁴²⁷ a contract adjustment could potentially affect an investor the same way as other charges currently disclosed in Item 7, such as sales loads, administrative and transaction charges, risk charges, contract loan charges, and optional benefit charges. By including contract adjustment disclosure in the disclosure required by Item 7, including the maximum potential loss that could result from a negative contract adjustment, investors are provided with the necessary scope and level of detail about contract adjustments, together with information about charges that may apply upon a withdrawal, that could negatively affect an investor's contract value or the amounts an investor could withdraw from the contract. These disclosures specifically address areas of confusion identified by investor testing, which 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).⁴²⁸

c. Purchase of Securities Being Offered (Item 22)

We are adopting, as proposed, amendments to Item 22, which addresses the purchase of securities being offered, to require specific,

detailed contract adjustment disclosures to appear in insurance companies' SAIs. As discussed above, insurance companies will be required to provide in simple terms an explanation of the manner in which contract adjustments are determined in their prospectuses, while noting that further detail is available in the SAI and providing a cross reference to that information. To complement the discussion required in the prospectus by Item 7, Item 22(d) will require issuers to explain fully the operation of any contract adjustment that can be applied under the contract. This more detailed explanation will not take the place of the prospectus discussion, but will describe the technical, detailed aspects of the operation of the adjustment, including any formulas and an explanation of such formulas used to calculate the adjustment, and at least one numeric example to illustrate the application of the contract adjustment. This numeric example will be required 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 one commenter who addressed these amendments supported them as an effective use of layered disclosure.⁴²⁹ Specifically, the commenter stated that the detailed disclosure on the method of calculating the contract adjustment, including examples, should be included in the SAI and a cross-reference to the detailed disclosure should be included in Item 7(e).

The mechanics of contract adjustments under a non-variable annuity are typically complex, and often involve factors or formulas that can be difficult for many investors to understand.⁴³⁰ Because the application of a negative contract adjustment can substantially affect an investor's contract value, it is important that information on negative contract adjustments is available in the SAI for investors who want to learn more about the calculation. In addition to promoting transparency generally, the required disclosure will also ensure that liability attaches under section 11 of the Securities Act for any material misrepresentations regarding the application of a contract adjustment.⁴³¹

instruments); (2) the factors that may cause a positive or negative 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).

⁴²⁰ See final Form N-4, Instruction 7 to Item 7(e).

⁴²¹ See final Form N-4, Instruction 8 to Item 7(e).

⁴²² See final Form N-4, Instruction 4 to Item 7(e).

⁴²³ VIP Working Group Comment Letter; CAI Comment Letter.

⁴²⁴ VIP Working Group Comment Letter.

⁴²⁵ CAI Comment Letter.

⁴²⁶ The commenter also suggested that we delete the word "other" from the following proposed instruction: "Describe the relationship between the Contract Adjustment and any other charges or fees applied under the Contract . . ." because it suggests that contract adjustments are charges or fees. See Proposed Form N-4, Instruction 6 to Item 7(e). We decline to make this change for the reasons stated in the next paragraph.

⁴²⁷ See *supra* Section II.C.6.a (discussing a similar change made to the proposed transaction expenses table).

⁴²⁸ See, e.g., OIAD Investor Testing Report at Section 5, Qualitative Testing, Results From Round 2 and Section 7, Conclusions.

⁴²⁹ CAI Comment Letter.

⁴³⁰ Proposing Release at Section II.B.5.c.

⁴³¹ See also VASP Adopting Release at n.700 (stating that summary prospectus disclosure requirements are designed to substantively track parallel disclosure requirements in the statutory prospectuses to ensure that the summary prospectus disclosures are subject to liability under Section 11 of the Securities Act).

We are also, as proposed, applying certain existing SAI disclosure requirements to insurance companies about the purchase of non-variable annuity securities being offered. Specifically, we are requiring insurance companies to describe the manner in which the securities are offered to the public by addressing any exchange privileges between investment options not described in the prospectus.⁴³² Additionally, we are requiring RILA and registered MVA annuity issuers to describe the method used to determine the sales load.⁴³³ We are not applying the existing disclosure requirement dealing with frequent transfer arrangements to non-variable annuity issuers, as its provisions are relevant only to variable options.⁴³⁴ We received no comments on this aspect of the proposal.

7. Information About Contracts With Index-Linked and/or MVA Options (Item 31A)

We are adopting new Item 31A to Form N-4 to require census-type information regarding non-variable annuities offered in connection with the registration statement. Item 31A will require an insurance company to provide the following information regarding any non-variable annuity offered through the registration statement, as of the most recent calendar year-end in a tabular format: (1) the name of each contract; (2) the number of contracts outstanding; (3) the total value of investor allocations attributable to index-linked and/or MVA 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 or MVA options.⁴³⁵ We are adopting Item 31A largely as proposed, with certain changes designed to include registered MVA annuities in this item.⁴³⁶ In a change from the proposal, we also are requiring insurance companies that incorporate current limits on index gains into the prospectus by reference to a website to provide in response to Item 31A all of the then-current limits on index gains that were in effect during the twelve months ending on December 31 of the

prior year for each index-linked option. One commenter supported a similar approach.⁴³⁷ Because this information will be required as of the most recent calendar year-end, insurance companies generally will need to update this information through a post-effective amendment to a registration statement on Form N-4.⁴³⁸ Accordingly, under the final amendments, insurance companies will file with the Commission information on current upside rates either via prospectus supplements (if the insurance company discloses these rates directly in the prospectus) or annually in response to Item 31A (if the insurance company incorporates current upside rates into the prospectus by reference to a website). We anticipate most insurance companies will incorporate this information by reference to a website and therefore file it in response to Item 31A.⁴³⁹ One commenter opposed the proposed census-type disclosures in Item 31A, asserting that they would require insurance companies to publicly reveal private and confidential information that could be used by competitors and that would not be useful to investors in making investment decisions.⁴⁴⁰ The commenter stated that the Commission could obtain the census-type information from insurance companies individually, if needed, upon request.

We are adopting the proposed requirements for census-type information to provide improved transparency to investors and others by supplementing the information available in the marketplace for the non-variable annuity contracts registered on Form N-4. The information will help us carry out regulatory responsibilities, including monitoring risk and trends, formulating policy and guidance, and reviewing registration statements. Moreover, third parties, including data aggregators, academics, and the press, as well as financial professionals who recommend or provide advice on non-variable annuities, are also likely users

of this data which may ultimately help inform investor decisions. Requiring this high-level reporting will permit the Commission to identify trends occurring in this market segment over time and assist with allocating the Commission's resources in administering Form N-4. Also, because providing this information on Form N-4 will result in having information provided to the Commission as of a uniform date for all offerings of non-variable annuities registered on this form, regardless of the date the annual amendment is filed, this information will provide for increased comparability across issuers and contracts and give data points over time with which to compare.⁴⁴¹

We disagree with the comment suggesting that requiring this information to be disclosed will result in private and confidential information being disclosed that will aid competitors. The information that will be reported will complement the parallel census-type information that is currently required to be reported annually on Form N-CEN by registered unit investment trusts offering variable annuities.⁴⁴² Moreover, information that insurance companies will report in response to Item 31A will be aggregated at the contract level, which reduces the possibility that any confidential or private information would be disclosed. Requiring individual insurance companies to produce the census-type information to the Commission upon request, as suggested by the commenter who opposed the proposed approach, would not facilitate the ability of the Commission and staff to observe and study relevant trends in the market for these products in the same manner as an annual filing requirement for all insurance companies. The information also would not be available to investors or analysts and others who analyze data for the benefit of investors.

In addition to the information discussed above, and in a change from the proposal, Item 31A of final Form N-4 also requires that insurance companies provide, for any contract with index-linked options offered through the registration statement, the current limits on index gains in effect for each index-linked option during the

⁴³⁷ Coenen Comment Letter (supporting an approach in which insurance companies would file annual reports disclosing the upside rates offered during the previous one-year period or a range of such rates).

⁴³⁸ See final Form N-4, Item 31A(a). The information required for Item 31A will need to be updated as part of an issuer's annual update to its registration statement for such contracts. See 15 U.S.C. 77(a)(3). An issuer transitioning from an existing registration statement on Form S-1 or S-3 to Form N-4 through a post-effective amendment will be required to report this information as of the most recently completed calendar year in its first post-effective amendment transitioning onto final Form N-4.

⁴³⁹ See *supra* paragraph accompanying footnote 284.

⁴⁴⁰ See CAI Comment Letter.

⁴⁴¹ 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 will result in limited effect on the reporting.

⁴⁴² Issuers registering combination contracts on Form N-4 will be required to exclude amounts allocated to a variable option when providing information in response to Item 31A as these allocations will be separately reported by registered separate accounts on Form N-CEN. See final Form N-4, Instruction 2 to Item 31A(a).

⁴³² See final Form N-4, Item 22(a).

⁴³³ See final Form N-4, Item 22(b).

⁴³⁴ See final Form N-4, Item 22(c).

⁴³⁵ See final Form N-4, Item 31A.

⁴³⁶ See *supra* Section II.B.

twelve months ending on December 31 of the prior year as provided on a website in accordance with the requirements of Item 6. As discussed above, we proposed to require that the current limits on index gains be provided in the statutory prospectus, but after considering comments, are permitting insurance companies to disclose these current upside rates by posting them to a website and incorporating this website disclosure by reference into the prospectus.⁴⁴³

Requiring insurance companies to disclose the current limits on index gains that were in effect over the course of the prior year preserves one of the benefits of the proposal, which would have ensured that all rates used over time remained available on EDGAR, while addressing concerns insurance companies raised by otherwise allowing them to supply the information on a website. This historical record will allow investors and analysts and others analyzing the data on investors' behalf to consider the frequency and magnitude of changes in upside rates. This is an important consideration because RILAs are long-term investments, and an investor's ultimate returns therefore depend on future upside rates set by the insurance company and not just the current rates at the time of investment. Two commenters recognized the value in maintaining historical rates used by an insurance company in suggesting that the Commission permit insurance companies to disclose the rates on a website, subject to a recordkeeping requirement.⁴⁴⁴

Given the potentially large volume of this information, insurance companies will be permitted to file this information as an exhibit to, rather than directly in, the registration statement itself.⁴⁴⁵ As with the other information required by this item, insurance companies must structure this information regardless of whether it is filed as an exhibit to, or provided directly in, the registration statement.

We are adopting a disclosure requirement, rather than a recordkeeping requirement as one commenter suggested, because disclosing this information in the registration statement will integrate this information more seamlessly into the existing methods of data collection required by the form. Furthermore,

requiring filers to submit this information on EDGAR also will make it more accessible to the Commission and the public than a recordkeeping requirement. Under the final rule, historical current rate information filed on EDGAR will also be structured, consistent with the requirement to tag current rate information disclosed directly in the prospectus.⁴⁴⁶ As discussed in more detail below, there is value in having this information available in a structured data format.⁴⁴⁷

8. Other Amendments and Provisions

We are adopting, largely as proposed, amendments to include certain other modifications to Form N-4 and related rules designed to accommodate the inclusion of offerings of non-variable annuities on the 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 registration of non-variable annuities on Form N-4. These amendments are discussed below.

a. Facing Sheet

We are adopting, largely as proposed, amendments to include a new check box section on the facing sheet. Specifically, an issuer will be required to identify in this new section: (1) if it is a new registrant, defined, as applicable, as 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;⁴⁴⁸ (2) if it is an emerging growth company ("EGC"), as defined by Rule 12b-2 under the Exchange Act;⁴⁴⁹ (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; (4) if it is an insurance

company relying on an exemption from Exchange Act reporting requirements in reliance on rule 12h-7 ("12h-7 check box"); and (5) if it is a smaller reporting company as defined by rule 12b-2 under the Exchange Act.⁴⁵⁰ These check boxes will help the Commission better understand the types of registration statements being filed on Form N-4 and, in the case of the EGC information, mirror similar facing sheet requirements found in Form S-1. In addition, we are amending the descriptions of the types of entities that use Form N-4 to include insurance companies that offer index-linked or MVA options, either as stand-alone or combination products.⁴⁵¹

One commenter provided several specific suggestions on the proposed amendments to the facing sheet.⁴⁵² The commenter stated that the rule 12h-7 check box could create confusion without clarification because that check box is directed towards the status of the registrant. In the case of variable options, there are two "registrants," the registered separate account and the insurance company, and it was unclear which entity the check box was intended to apply. The rule 12h-7 check box was intended to refer to an insurance company's reliance on that rule because registered separate accounts satisfy their Exchange Act reporting requirements with the filing of Form N-CEN and therefore do not rely on rule 12h-7.⁴⁵³ Thus, in a change from the proposal, the final form has been updated accordingly to specify that the box should be checked if the insurance company is relying on rule 12h-7.⁴⁵⁴

The commenter also suggested that the new check-the-box section include a box for smaller reporting companies, as is the case with Form S-1 and Form S-

⁴⁵⁰ These five check boxes will be new to final Form N-4 as they are not on the current form.

⁴⁵¹ See *supra* Sections II.A and II.B. The final form updates the language on the facing sheet that explains what Form N-4 is to be used for by, among other things, adding references to RILAs and registered MVA annuities.

⁴⁵² CAI Comment Letter.

⁴⁵³ See, e.g., 12h-7 Adopting Release at n.146.

⁴⁵⁴ The commenter further stated their view that the registration of variable contracts without registered non-variable options generally has not triggered a requirement to file Exchange Act reports for either the registered separate account or the depositor, and thus neither entity needs to rely on rule 12h-7. CAI Comment Letter. As a result, this commenter suggested that the check box be clarified to not be applicable to those entities. The overall application of rule 12h-7 is beyond the scope of this rulemaking. However, this requirement mirrors a similar disclosure requirement in Item 6(a) where, as noted above, insurance companies can add additional details as to which securities they are relying upon rule 12h-7 for if they so choose in response to that item. See *supra* footnotes 238-242 and accompanying text; see also final Form N-4, Item 6(a).

⁴⁴³ See *supra* Section II.C.4.a.

⁴⁴⁴ See VIP Working Group Comment Letter; Coenen Comment Letter.

⁴⁴⁵ In a modification from the proposal, we have added this exhibit to the exhibit list in Item 27 of the final form. This will standardize the location of this exhibit and make it easier to find in EDGAR.

⁴⁴⁶ See final Form N-4, Instruction C.3(h)(i).

⁴⁴⁷ See *infra* Section II.C.10. As discussed below, the final amendments incorporate structured data requirements for certain of the disclosures that insurance companies will include in their Form N-4 registration statements.

⁴⁴⁸ For example, a variable annuity separate account that has not previously filed a Securities Act registration statement will identify itself as a new registrant, regardless of whether the sponsoring insurance company filed a recent Securities Act registration statement or amendment thereto as the amended requirements request information on the registrant. In the same manner, an insurance company filing on Form N-4 will determine whether it is a new registrant solely with respect to its own Securities Act registration statement filings.

⁴⁴⁹ The term "EGC" is defined as an issuer that had total annual gross revenues of less than \$1,235,000,000 during its most recently completed fiscal year. 17 CFR 240.12b-2.

3. The commenter stated that a box for smaller reporting companies would be helpful because there could be RILA registrants that are smaller reporting companies that qualify for scaled financial statement requirements under Article 8 of Regulation S-X.⁴⁵⁵ Insurance companies offering non-variable annuities could, where applicable, qualify for smaller reporting company status, and we agree that a check box would help provide specificity to insurance companies while assisting Commission staff in tracking the extent to which insurance companies offering non-variable annuities are smaller reporting companies. Therefore, in a change from the proposal, we are adding a check box on the facing sheet for smaller reporting company status.

b. Definitions (General Instruction A)

We are adopting, largely as proposed, amendments to General Instruction A to update the existing definitions in Form N-4 and to add new definitions to accommodate the inclusion of non-variable annuities on Form N-4. We are implementing these proposed definitions throughout the form. However, unless otherwise stated, the proposed amendments to the definitions in General Instruction A do not alter the existing obligations under Form N-4 for offerings of variable annuities. These changes 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.⁴⁵⁶

For a number of these definitions, we did not receive any comments and are adopting them as proposed. These are the definitions of the terms contract, crediting period, index, insurance company, investment option, portfolio company, registrant, and registered separate account.⁴⁵⁷ These definitions are designed to help refine which provisions of the form apply to the different types of annuities. We also proposed to eliminate the previously defined term “investor account” from General Instruction A and to make related amendments throughout Form

N-4 to help implement the proposed new definitions.⁴⁵⁸ We did not receive comments on these points either and are adopting them as proposed.⁴⁵⁹ We retained the definition of “fixed option,” but, in a change from the proposal to accommodate the requirement that registered MVA annuities also use Form N-4, added a sentence explaining that the term includes fixed options that are subject to contract adjustments.

We did, however, receive comments on other definitions. Specifically, we proposed a new definition for “index-linked option” to General Instruction A. The definition was proposed to cover 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.⁴⁶⁰ This is a functional definition focused on the key features of a RILA and covers RILAs as defined in the RILA Act. Some commenters asked that we clarify that the definition of “index-linked option” is only intended to address RILAs or otherwise clarify that RILA disclosures are not required in connection with unregistered indexed options.⁴⁶¹ The definition is limited to RILAs as it expressly refers to the potential to earn negative interest which is limited to RILAs. The definition for index-linked option would not include MVA or unregistered indexed options, which, because they earn interest at a rate specified by the insurance company, fall under the definition of “fixed option” under the form.

We proposed definitions of “contract adjustment” and “crediting period” to refer to these non-variable annuity-centric concepts in the form and to help clarify when the relevant disclosures would be required.⁴⁶² One commenter stated that our proposed definition of “contract adjustment” is ambiguous and could be construed as covering types of

transactions that we do not intend, such as a change in investment base for an index-linked option that occurs upon withdrawal, surrender charges deducted from remaining contract value, or reset features under guaranteed living benefits. This commenter suggested that we specify that the term only refers to (1) interim value adjustments applied when withdrawals and other deductions are made from an index-linked option before the end of a crediting period; (2) market value adjustments applied to amounts withdrawn or otherwise deducted from a contract; and (3) similar adjustments that may be imposed under a contract.⁴⁶³

We are adopting these definitions, including that of the term “contract adjustment,” as proposed. The definition is sufficiently specific to adjustments “to the value of the Contract” that are “positive or negative” and applied to withdrawals “before the end of a specified period,” which would not cover the examples that concerned the commenter. For example, while the investment base for an index-linked option reflects a positive or negative contract adjustment resulting from that option’s daily interim valuation, any change in the investment base as a result of a withdrawal is a *reduction* in the investment base, not an adjustment, and would be described separately from, although perhaps in conjunction with, the contract adjustment. Moreover, we do not anticipate there would be any misunderstanding by insurance companies preparing the disclosure that a surrender charge or a living benefit reset feature is a contract adjustment under the form. Although a surrender charge, like a contract adjustment, is imposed if a withdrawal is taken before the end of a specified period, a surrender charge always results in a *decrease* rather than a positive or negative *adjustment*. More importantly, Form N-4 as amended is clear throughout in distinguishing between surrender charges and contract adjustments. For example, the fee table provides for disclosure of deferred sales loads separate from disclosure of the maximum potential loss from a contract adjustment.⁴⁶⁴ Indeed, many of the form items and instructions that require disclosure of contract adjustments separately require disclosure of surrender charges. Lastly, while a contract adjustment is a positive or negative adjustment to the contract’s

⁴⁵⁸ See *id.*

⁴⁵⁹ See, e.g., final Form N-4, Items 3, 7, 8, 11, 24, 32, and 34(a); see also definitions for “class” (clarifying applies to all contracts) and “platform charge” (clarifying only applies if there is a variable option). For example, on the latter point, we refined 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.

⁴⁶⁰ Because RILA returns may not be one for one with the index, we indicate that positive or negative interest is only based “in part” on the index’s performance.

⁴⁶¹ CAI Comment Letter; Comment Letter of Holly J. (Nov. 22, 2023) (“Holly J. Comment Letter”).

⁴⁶² Proposing Release at Section II.B.7.

⁴⁶³ CAI Comment Letter.

⁴⁶⁴ See, e.g., final Form N-4, Item 1(a)(7), Instructions 2(a), 2(b), 2(c)(ii)(A), 3(b) to Item 3, Item 4, Item 5(b), Item 6(d)(2)(ii)(B), Item 6(d)(2)(iii)(B), Items 7(a) and (e), and Instruction to Item 22(d).

⁴⁵⁵ Regardless of whether an issuer’s financial statements are prepared in accordance with GAAP or SAP, the number of periods shown in the financial statements must follow the requirements of Regulation S-X. See Articles 3 and 8 of Regulation S-X, 17 CFR part 210.

⁴⁵⁶ We also are amending Form N-4 throughout to use the gender-neutral reference of “investor” where appropriate. See, e.g., final Form N-4, Instruction 6 to Item 2.

⁴⁵⁷ Proposing Release at Section II.B.7.b.

value if amounts are withdrawn before the end of a specified period, a reset feature under a guaranteed living benefit rider results in an *increase* in the rider's *benefit base* on a recurring basis, such as on each contract anniversary, and without regard to whether a withdrawal is occurring.

One commenter suggested the Commission provide guidance that registrants would generally not be required to use the defined terms in the form so long as the terminology used by the insurance company clearly conveys the meaning of, or provides comparable information to, the terminology included in the form.⁴⁶⁵ Both currently and as amended, Form N-4 permits the use of alternative terminology so long as that alternative conveys the same meaning of, or provides comparable information as, the terminology called for in the form.⁴⁶⁶ Given the results of investor testing, which found that investors were confused by some of the terminology used in RILAs, we encourage insurance companies to consider if their prospectuses are using terminology that investors will be able to understand.⁴⁶⁷

c. Rules 405, 480, 481, 483, and 484

We are amending, as proposed, 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. We did not receive any comments on this part of our proposal. We are also, as discussed above, adding a defined term “registered market value adjustment annuity” to rule 405 in order to apply the appropriate Securities Act rules to registered MVA annuities.⁴⁶⁸ Finally, because the final amendments extend the Form N-4 offering framework to both RILAs and registered MVA annuities, we are adopting the new

defined term in rule 405 “registered non-variable annuity,” which means a “registered index-linked annuity” or “registered market value adjustment annuity.”

The amendments to rule 405 are designed to apply specific Securities Act rules to insurance companies issuing non-variable annuities to ensure consistency across Form N-4 filers. 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 non-variable annuities, 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 these amendments that we are adopting. As such, the new defined term “form available solely to investment companies registered under the Investment Company Act of 1940” specifies that these rules apply to registration statements filed on Form N-4. Specifically, we are amending 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 non-variable annuity for purposes of the Securities Act of 1933. By operation of this amendment, registration statements relating to the offering of non-variable annuities on Form N-4 are subject to rules 480, 481, 483, and 484.⁴⁶⁹

We also are adding 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.⁴⁷⁰ Specifically, as proposed, we are defining “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 contract 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. As discussed in the Proposing Release, this definition is designed to cover all of the offerings addressed by the RILA Act.⁴⁷¹

d. Exhibits and Undertakings (Items 27 and 34)

As discussed in the Proposing Release,⁴⁷² the exhibits required in a registration statement differ between filers using Forms S-1 or S-3 on one hand and Form N-4 on the other. As a function of moving non-variable annuities onto Form N-4, we are requiring insurance companies to continue filing various exhibits as part of registration statements relating to offerings of non-variable annuities.⁴⁷³ These requirements are similar to those to which currently apply to insurance companies offering non-variable annuities on Forms S-1 and S-3. We are also standardizing the location in Form N-4 of exhibits containing any power of attorney included pursuant to rule 483(b) to assist the public in comparing these exhibits.⁴⁷⁴

Further, in addition to the requirements of rule 484, we are amending Form N-4 to include certain

⁴⁶⁵ CAI Comment Letter.

⁴⁶⁶ See final Form N-4, General Instruction C.3.(d)(ii); see also final Form N-4, General Instruction C.1(d) (stating that the requirements for prospectuses filed 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 the form).

⁴⁶⁷ See OIAD Investor Testing Report at Section 5, Qualitative Testing, Results from Round 2. For example, investor testing suggested that the use of the phrase “term” in conjunction with the concept of crediting periods could cause some confusion to the extent it is not clear from the disclosure that “term” refers to the length of the index-linked option rather than to the length of the contract.

⁴⁶⁸ See *supra* footnote 85 and accompanying text; see also Proposing Release at Section II.H. (discussing a similar change).

⁴⁶⁹ These rules 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.

⁴⁷⁰ See also *supra* footnote 85 and accompanying text (discussing other changes to rule 405 to accommodate the addition of offerings of registered MVA annuities to the form).

⁴⁷¹ Proposing Release at Section II.B.7.c.

⁴⁷² See Proposing Release at Section II.B.7.

⁴⁷³ See final Form N-4, Item 27 (adding sub-items (p) Power of Attorney and (q) Letter Regarding Change in Certifying Accountant); see also Form S-1, Item 16; Form S-3, Item 16; Regulation S-K, Item 601.

⁴⁷⁴ Non-variable annuity registration statements on Forms S-1 and S-3 similarly include a power of attorney, when applicable, to be filed as part of the registration statement. See 17 CFR 229.601(b)(24); see also *infra* Section II.E (discussing the addition of a new exhibit relating to changes in accountants).

undertakings that were required of insurance companies as part of their non-variable annuity Form S-1 and S-3 registration statements.⁴⁷⁵ Specifically, we proposed to require insurance companies to furnish, in connection with offerings of RILAs, undertakings (1) to file, during any period in which offers or sales are being made, through a post-effective amendment to their 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 undertakings are the same as two undertakings insurance companies are required to provide in registration statements when they register offerings of non-variable annuities on Forms S-1 or S-3,⁴⁷⁶ 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.⁴⁷⁷ We did not receive any comments on the proposed amendments

and are adopting them as proposed, except that we also are extending them to MVA annuities and including in the exhibit list any exhibit that contains the information called for in Item 31A(b) as discussed above.⁴⁷⁸

9. Remaining Form N-4 Items

We are adopting amendments, largely as proposed, to make the remaining requirements and disclosure items on the existing Form N-4 applicable to non-variable annuities without substantive changes to the current requirements and disclosure items.⁴⁷⁹ These are: (1) general instructions to the final form including both organizational requirements along with substantive requirements for the preparation of the registration statement; (2) information about the annuity contract and how it operates; and (3) items that 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

Largely as proposed, non-variable annuity 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; (B) Filing and Use of Form; (C) Preparation of the Registration Statement; and (D) Incorporation by Reference.⁴⁸⁰ As discussed in more detail in the Proposing Release, these instructions relate to the use of plain English; organization of the registration statement; information not otherwise required; terminology; offering multiple contracts in a prospectus and including multiple prospectuses in a registration statement; timing; websites included in electronic versions of the prospectus; and incorporation by reference (*e.g.*, addressing when information may be incorporated by reference into the prospectus).⁴⁸¹

⁴⁷⁸ See *supra* footnote 445.

⁴⁷⁹ As noted above, some of these items have been amended to account for changes in defined terms and to use gender-neutral terminology. See *supra* Section II.C.8.b. Also as discussed above, in a modification from the proposal these items extend to registered MVA annuities, as applicable.

⁴⁸⁰ See *supra* Section II.C.8.b (discussing amendments to the definitions used in the form).

⁴⁸¹ See Proposing Release at Section II.B.2.b. We are also, as proposed, correcting 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 will now refer to Item 27 (Exhibits),

Collectively, the general instructions, as they existed prior to the amendments to Form N-4, 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 insurance companies to prepare registration statements relating to the offering of non-variable annuities in accordance with these instructions will likewise facilitate the provision of clear disclosure to investors and provide clear direction to these issuers on how to prepare and file their registration statements. Further, applying these requirements to non-variable annuities will 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.

We received one comment on the proposed general instructions.⁴⁸² The commenter requested clarification regarding the ability of insurance companies to file required financial statements using the N-VPFS EDGAR submission type for incorporation by reference into the SAI.⁴⁸³ This commenter stated that this or a similar EDGAR submission type would streamline preparing and filing registration statements on Form N-4 and would be consistent with the manner in which registered separate accounts are permitted to incorporate financial statements of the insurance company and the separate account into the SAI for variable annuity contracts and variable life insurance policies. All Form N-4 filers currently can use N-VPFS instead of refiling their financial statements in every registration statement and many active variable contracts use N-VPFS for their financial statements.⁴⁸⁴ For example, if a separate account funds 20 variable contracts with 20 Securities Act registration statements, instead of filing the identical information 20 times, the separate account can file it just once. Based on staff experience, we understand that doing so may reduce the costs of auditor consents as well because the auditor can focus its review

which does exist, and is in Part C. We received no comments on this aspect of the proposal.

⁴⁸² See CAI Comment Letter.

⁴⁸³ See VASP Adopting Release at n.954 and accompanying text (discussing the submission via EDGAR of financial statements with respect to certain variable annuities).

⁴⁸⁴ See Chapter 3 (Index to Forms) of the EDGAR Filer Manual, Volume II: "EDGAR Filing," (March 2024), available at <https://www.sec.gov/files/edgar/filermanual/efmvol2.pdf>.

⁴⁷⁵ See final Form N-4, Item 34. The disclosure currently required in Item 34, the fee representation mandated of registered separate accounts under the Investment Company Act, will 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 and/or MVA options. See also 15 U.S.C. 80a-26(f)(2)(A). We have renamed this item "Fee Representation and Undertakings."

⁴⁷⁶ See rule 415(a)(3) and 17 CFR 229.512(a). Under the final amendments, non-variable annuities are exempt from the conditions of rule 415, including furnishing the required undertakings pursuant to Item 512(a) of Regulation S-K. See *infra* footnote 625. For example, non-variable annuity registration statements no longer need 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. This requirement is not necessary for non-variable annuity registration statements on Form N-4 in light of the other amendments we are making to the prospectus and registration statement filing process for non-variable annuities. See *infra* Section II.F.2. (discussing amendments to rules 485 and 497 under the Securities Act).

⁴⁷⁷ 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.

on the one N-VPFS instead of the 20 registration statements. Similarly, the availability of N-VPFS may facilitate the registration of RILAs and registered MVA annuities. We confirm that insurance companies can use N-VPFS for all offerings registered on Form N-4, including with respect to non-variable annuities on Form N-4, as amended. However, the insurance company should file its own N-VPFS and not reference the N-VPFS of a separate account, which might also

include lengthy and irrelevant separate account financials.⁴⁸⁵

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. We are amending Form N-4 to apply these requirements to the registration statements of offerings of non-variable annuities with a minor change to the existing form—insurance companies will be required to

indicate in Item 12 whether charges or contract adjustments will apply in the event of a contract surrender or withdrawal.⁴⁸⁶ Currently, Item 12 refers only to charges. We received no comments on this part of the proposal and are adopting these changes largely as proposed. Because offerings of registered MVA annuities will be registered on Form N-4, as amended, these amendments also apply to disclosure regarding registered MVA annuities, as applicable, in a modification from the proposal.

TABLE 5—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 brief 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, and the effect of these on the level of payment; 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 brief 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. Issuers should also identify each principal underwriter (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 brief 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 will apply. ¹ 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 brief 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 to the extent not disclosed in the prospectus.

⁴⁸⁵ Conversely, a separate account can reference the insurance company's financial statements in the insurance company's N-VPFS because the

insurance company's N-VPFS would not contain information that is irrelevant to the separate account.

⁴⁸⁶ See final Form N-4, Item 12(c).

TABLE 5—CONTRACT DISCLOSURES—Continued

Item	Description
<i>Services (Item 21)</i>	Information on certain services provided to the registrant in connection with the contract. If not disclosed elsewhere, this requires a summary of the substantive provisions of certain significant administrative or 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 contract not discussed in Parts A or B, including the parties to the contract, and the total paid and by whom for the registrant's last three year fiscal years.

Note to Table 5

¹ In addition to charges, the final amendments will require issuers to describe any contract adjustments that will apply.

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.⁴⁸⁷ We are applying these requirements to non-variable annuities because this information is equally fundamental to the ability of investors to make informed investment decisions about non-variable annuities. 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.⁴⁸⁸ Insurance companies also offer these benefits in connection with non-variable annuities.

c. Issuer and Offering Disclosures

In addition to disclosures about the contract, we are adopting amendments to Form N-4 that will require that insurance companies 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, will not apply to non-variable annuities. We received no comments on these proposed amendments and are adopting them as proposed. However, in a modification from the proposal, because offerings of registered MVA annuities will be registered on Form N-4, as amended, these amendments also apply to disclosure regarding registered MVA annuities, as applicable.

TABLE 6—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 short 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 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).

⁴⁸⁷ See Forms N-3 and N-4 Adopting Release.

⁴⁸⁸ See VASP Adopting Release at n.26 and accompanying text.

TABLE 6—ISSUER AND OFFERING DISCLOSURES—Continued

Item	Description	Similar Form S-1 disclosure
Other Information (Part C)		
<i>Directors and Officers of the Insurance Company (Item 28).</i>	A statement of the name, principal business address, position, and office held for each director or officer of the insurance company.	Item 11(k) (directors and executive officers).
<i>Persons Controlled by or Under Common Control with the Insurance Company or the Registrant (Item 29).</i>	Disclosure of persons directly or indirectly controlled by or under common control with the registrant or the insurance company.	Item 11(k) (directors and executive officers).
<i>Indemnification (Item 30)</i>	Information about the general 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).
<i>Principal Underwriters (Item 31)</i>	A statement of investment companies, other than any registered separate account related to the filing, for which 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 non-variable annuity.⁴⁸⁹ These items, which largely correspond to items currently required to be disclosed by insurance companies on Forms S-1 and S-3 when registering the offering of non-variable annuities 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 non-variable annuities are dependent on the insurance company's claim-paying ability, purchasers of those securities 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 non-variable annuities, we have not included those disclosures in the final Form N-4.

10. Inline XBRL

Under the final amendments, Form N-4 filers will be required to tag in Inline XBRL certain specified disclosures.⁴⁹⁰ Specifically, these issuers will be required to tag selected information in Inline XBRL in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual.⁴⁹¹

⁴⁸⁹ See Forms N-3 and N-4 Adopting Release.

⁴⁹⁰ See final Form N-4, Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c) and 31A.

⁴⁹¹ We are amending General Instruction C.3(h) of Form N-4 and making conforming changes to rule 405(b) of Regulation S-T to implement the non-variable annuity specific disclosure tagging requirements. Pursuant to rule 301 of Regulation S-

Certain of the final amendments' new structured data requirements will apply, as proposed, to issuers of non-variable annuities that register on Form N-4. Specifically, these include, as applicable, requirements to tag specified portions of the overview and the more in-depth descriptions of index-linked options and contract adjustments that issuers include in their prospectuses, the disclosure of census-type information regarding contracts with index-linked options and MVA options, and information disclosed about changes in and disagreements with accountants.⁴⁹²

Certain of the final amendments' new tagging requirements will apply to all Form N-4 filers as applicable. All Form N-4 filers must tag the descriptions of fixed options available under the contract, including any fixed options subject to contract adjustments.⁴⁹³ All Form N-4 filers also must tag the new disclosures indicating that the insurance company is relying on the exemption provided by rule 12h-7.⁴⁹⁴ This approach is generally as proposed, with conforming changes to reflect the

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.

⁴⁹² See final Form N-4, General Instruction C.3(h); see also final Form N-4, Items 2(b)(2), 2(d), 6(d), 7(e), 26(c), and 31A.

⁴⁹³ See final Form N-4, General Instruction C.3(h); see also final Form N-4, Item 6(e).

⁴⁹⁴ See final Form N-4, General Instruction C.3(h); see also final Form N-4, Instruction to Item 6(a).

registration of the offerings of registered MVA annuities on Form N-4. In response to comments, we are not adopting the proposed requirement to structure the statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option, as discussed below.⁴⁹⁵

Comments regarding our proposal to require RILA registration statements to be tagged using Inline XBRL were mixed. One commenter supported extending Inline XBRL requirements to RILAs, suggesting that all investors would benefit from tagging as it would facilitate access to data about RILAs through a structured, machine-readable format.⁴⁹⁶ Two commenters supported tagging some but not all of the proposed new disclosures, suggesting that only disclosures that would aid the investor in comparing products should be tagged.⁴⁹⁷ One commenter suggested that XBRL has little value as it relates to investment companies and insurance products.⁴⁹⁸ No commenter specifically addressed the tagging of registered MVA annuity specific disclosures, although as discussed above, commenters generally supported registering offerings of registered MVA annuities on Form N-4

⁴⁹⁵ See *infra* footnotes 506–508 and accompanying text.

⁴⁹⁶ Comment Letter of XBRL US (Nov. 28, 2023) (“XBRL US Comment Letter”).

⁴⁹⁷ See XBRL US Comment Letter (suggesting that disclosures that are boilerplate in nature not be tagged as they would not help an investor differentiate between products); see also CAI Comment Letter (generally not objecting to extending Inline XBRL requirements to RILAs, but suggesting a new disclosure regarding the risks of investing in variable options not be tagged as the disclosure would call for generally standardized statements applicable to all variable annuities).

⁴⁹⁸ Johnson Comment Letter.

and did not distinguish whether these annuities should be subject to different tagging requirements than RILAs and variable annuities.⁴⁹⁹

After considering these comments, we are adopting these requirements largely as proposed, with certain conforming and other changes described below. As a result, non-variable annuity issuers must tag those prospectus disclosures that Form N-4 currently requires to be tagged in Inline XBRL.⁵⁰⁰ These include the following disclosure items: the Key Information Table, Fee Table, Principal Risks of Investing in the Contract, Benefits Available Under the Contract, and Investment Options Available Under the Contract in the statutory prospectus. In addition to these existing items, we are requiring Inline XBRL tagging of selected new, non-variable annuity-specific disclosures to 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.⁵⁰¹ We chose these items to be structured—including those that issuers of variable annuities will newly have to structure—because they are well-suited to being tagged in a structured format and are of significant utility for investors and other data users that seek structured data to analyze and compare contracts. For example, this tagging enables automated extraction and analysis of descriptions of index-linked options available under a contract, information regarding the features of each currently offered index-linked option, and information regarding contract adjustments. This allows investors and other market participants more efficiently to perform large-scale analysis and comparison across non-variable annuities (including the index-linked options that different RILAs offer) and time periods. Similarly, the requirement to tag information about fixed options, including fixed options subject to contract adjustments, permits the same type of analysis with respect to these investment options offered under RILA and variable contracts, as well as with respect to registered MVA annuities. This analysis could include comparing fixed options across contracts, as well as index-linked

options, variable options, and fixed options offered under the same contract.

Census-type information about variable annuity contracts, which parallels the SAI disclosure we are adopting to require for contracts with index-linked options and/or MVA options, is currently reported in structured data format.⁵⁰² Requiring census-type information about contracts with index-linked options and/or MVA options to be tagged in Inline XBRL will 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 tagging requirement will also provide other benefits, such as the ability to more easily analyze disclosures about annuity contracts with index-linked options and/or MVA options, and automatically compare these disclosures against prior periods.

The benefits of structured data as a general matter are supported by empirical data of public usage of similar structured data.⁵⁰³ In addition, Inline XBRL tagging requirements within the context of public operating company financial statement disclosures have been observed to improve investor understanding of the disclosed information.⁵⁰⁴ Inline XBRL tagging requirements for Form N-4 non-variable annuity disclosures could similarly provide investors with increased understanding or insight into key features of contracts with index-linked options and/or MVA options. This could provide value to investors by, for example, facilitating the ease with which investors could compare contract features of different products, and thereby helping investors to determine which non-variable annuities may be appropriate for their particular investment goals.⁵⁰⁵

In a change from the proposal and in response to comments, the Inline XBRL

requirements we are adopting will not require insurance companies to tag the new statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option.⁵⁰⁶ Even a commenter that supported the proposed structuring requirements generally suggested that the Commission not require tagging of “boilerplate” disclosures and disclosures that would be the same across entities.⁵⁰⁷ Another commenter suggested that this disclosure item in particular would not differ substantively on a contract-by-contract basis and therefore should not be structured.⁵⁰⁸ In response to those comments, the Commission reviewed each of the proposed new disclosure items to be tagged and determined that only one of those proposed new disclosure items—the new statement regarding the risk of loss of the entire amount invested associated with an investment in a variable option—generally would not differ substantively on a contract-by-contract basis. We are not requiring structuring for this disclosure item.

As proposed, the new Inline XBRL tagging requirements will only apply to contracts being sold to new investors. The result of this approach is that prospectus disclosure for contracts that are no longer being sold to new investors do not need to be tagged, as this disclosure has less utility for current investors and other market participants. This is consistent with the existing approach for Form N-4 issuers.⁵⁰⁹ Commenters supported this aspect of the proposal.⁵¹⁰

We are requiring non-variable annuity 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 must 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;⁵¹¹
- For initial registration statements (and post-effective amendments other than as described in the bullet

⁵⁰² See *supra* Section II.C.7; see also Form N-CEN, Item F.14.

⁵⁰³ There is some empirical evidence of public usage of this data. See Semi-Annual Report to Congress Regarding Public and Internal Use of Machine-Readable Data for Corporate Disclosures, U.S. Securities and Exchange Commission (Dec. 2023), at n.63, available at <https://www.sec.gov/files/fdta-report-12-2023.pdf> (providing that, for example, the Commission's quarterly XBRL datasets for mutual fund summary prospectus risk/return summaries garnered over 13,000 page views from September 2022 to September 2023, according to a Google Analytics query of the Commission's XBRL dataset web page).

⁵⁰⁴ Proposing Release at n.452 and accompanying paragraph.

⁵⁰⁵ See *infra* Section IV.C.1.b. (discussing how improved investor understanding of non-variable annuity disclosures could benefit Form N-4 filers directly or indirectly).

⁵⁰⁶ See final Form N-4, Item 6(c)(1).

⁵⁰⁷ See XBRL US Comment Letter.

⁵⁰⁸ See CAI Comment Letter; see also IRI Comment Letter (expressing agreement with and supporting the CAI Comment Letter).

⁵⁰⁹ See VASP Adopting Release at paragraph accompanying n.904.

⁵¹⁰ See CAI Comment Letter; XBRL US Comment Letter.

⁵¹¹ See final Form N-4, General Instruction C.3(h)(i)(B). This instruction relates to post-effective amendments filed pursuant to paragraph (b)(1)(i), (ii), (v), (vi), or (vii) of rule 485.

⁴⁹⁹ See *supra* Section II.B.

⁵⁰⁰ See final Form N-4, General Instruction C.3(h), and Items 3, 4, 5, 10, and 17; see also final rule 405(b)(2)(iii) of Regulation S-T.

⁵⁰¹ See *infra* footnotes 511–512. These primarily include the new disclosure items that are specific to non-variable annuities, as opposed to extant Form N-4 disclosure items to which we are adopting incremental amendments to address non-variable annuities along with variable annuities.

immediately above), Interactive Data Files must 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;⁵¹² and

- For any form of prospectus filed pursuant to rule 497(c) or (e), Interactive Data Files must be submitted concurrently with the filing.⁵¹³

This approach facilitates 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 allows them to quickly process and share the data and related analysis with investors. Like other issuers, non-variable annuity issuers could request temporary and continuing hardship exemptions for the inability to timely file electronically the Interactive Data File.⁵¹⁴

D. Option To Use a Summary Prospectus

We are adopting, largely as proposed, amendments to 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 their statutory prospectus delivery obligations.⁵¹⁵ In a modification from the proposal, we also are adopting amendments to rule 498A to permit issuers of registered MVA annuities or “combination contracts” offering MVA options with variable options and/or index-linked options to use summary prospectuses under the amendments to rule 498A.⁵¹⁶ As a

result, all annuities both variable annuities and non-variable annuities—registered on Form N-4—are permitted to use summary prospectuses under the final amendments. Likewise, all investors in those annuities may benefit from the layered disclosure approach offered by a summary prospectus: an approach, in the context of financial products other than non-variable annuities that investors have generally indicated that they prefer.⁵¹⁷

Rule 498A 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. Investors will continue to have access to the statutory prospectus of non-variable annuities and other information about these non-variable annuities online, with paper or electronic copies of this information upon request.⁵¹⁸ This approach provides parity between non-variable annuity issuers and issuers of variable annuities registered on Form N-4, which are permitted to use summary prospectuses to satisfy their prospectus delivery obligations, and builds on the Commission’s decades of experience with layered disclosure and rules permitting the use of summary prospectuses.⁵¹⁹ The approach also

requesting comment on whether to require insurance companies to register offerings of registered MVA annuities on Form N-4; and—to the extent registered MVA annuities were required to register on Form N-4—the Commission’s anticipation that it would extend the same functional changes that it was proposing for RILAs to registered MVA annuities, including the ability to use a summary prospectus).

⁵¹⁷ See Investor Advocate Comment Letter.

⁵¹⁸ To further effectuate the changes we are adopting, we are excluding non-variable annuity 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, non-variable offerings are subject to a separate framework governing communications with investors. *See infra* Section II.G; *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”) at Section VI.B.1.b.

⁵¹⁹ *See* VASP Adopting Release at n.21 and accompanying text; *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

recognizes investors’ expressed preferences for concise and engaging disclosure of key information.

Accordingly, the 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. We anticipate that the summary prospectus framework will improve investor understanding of non-variable annuities, as the Commission similarly expressed when it adopted the summary prospectus rule for variable contracts.⁵²⁰

Commenters that spoke to this issue largely supported the extension of rule 498A to RILAs as proposed, stating that a summary prospectus framework for RILAs would be as successful for those products as it has been for variable insurance products and that investors and registrants alike would benefit from the rule’s layered disclosure framework that would align RILAs with the treatment of variable annuities.⁵²¹ Other commenters addressed the inclusion of minimum guaranteed rates in the summary prospectus, and this topic is discussed in detail above.⁵²² No commenter specifically addressed the use of summary prospectuses for registered MVA annuity registration statements, although as discussed above, commenters generally supported including offerings of registered MVA annuities on Form N-4 and did not address whether these offerings should be subject to different summary prospectus requirements than RILAs and variable annuities.⁵²³ Except as discussed below, no commenters discussed the contents of summary prospectuses in a manner that was distinct from their discussion of the Form N-4 content requirements generally, which are discussed above.

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).

⁵²⁰ *See* VASP Adopting Release at n.21 and accompanying text.

⁵²¹ *See, e.g.*, CAI Comment Letter; Investor Advocate Comment Letter (stating that in the context of other financial products, investors have generally indicated that they prefer this type of layered disclosure approach); IRI Comment Letter. One commenter questioned whether there is a need to continue to have a statement of additional information section outside of the statutory prospectus. *See* Johnson Comment Letter. Wholesale changes to the arrangement of registration statements that would be necessary to accommodate this suggestion are outside the scope of this rulemaking.

⁵²² *See* Johnson Comment Letter; Datop Comment Letter; *see supra* Sections II.C.1 and II.C.2.

⁵²³ *See supra* Section II.B.

⁵¹² *See* final Form N-4, General Instruction C.3(h)(i)(A). 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.

⁵¹³ *See* final Form N-4, General Instruction C.3(h)(ii).

⁵¹⁴ *See* rule 201 Regulation S-T (temporary hardship exemption) and rule 202 of Regulation S-T (continuing hardship exemption).

⁵¹⁵ 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 prospectus.” For purposes of this section, we refer to RILA contracts and combination contracts together as “RILA contracts.”

⁵¹⁶ *See* Proposing Release at section II.H (discussing registered MVA annuities and

Further, when discussing the proposed amendments to rule 498A, commenters generally did not differentiate between initial and updating summary prospectuses.

1. Overview—Use of Summary Prospectus for Non-Variable Annuities

The amendments to rule 498A broaden the scope of the rule to address non-variable annuities.⁵²⁴ Under the final amendments, the rule's conditions for non-variable annuities relying on the rule to satisfy prospectus delivery obligations mirror the conditions applicable to variable contracts.⁵²⁵ 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, and on a website in the manner that the rule specifies.

As with variable contracts, final rule 498A involves the use of two distinct types of summary prospectuses for non-variable annuity contracts. An "initial

summary prospectus," covering contracts offered to new investors, includes certain key information about the contract's most salient features, benefits, and risks, presented in plain English in a standardized order. The rule amendments also require "updating summary prospectuses" to be provided to existing investors in non-variable annuity contracts as a condition to relying on the rule. The updating summary prospectus includes 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 investment options that the contract offers (including as applicable index-linked options and fixed options) must be provided in both the initial summary prospectus and updating summary prospectus.⁵²⁶

As under rule 498A for variable contracts, the use of summary prospectuses for non-variable annuity contracts is voluntary. This is appropriate to provide non-variable annuity issuers with sufficient time to transition to a summary prospectus regime, as well as to recognize that there could be different relative benefits of using a summary prospectus for certain non-variable annuity issuers and investors in these contracts.⁵²⁷ Similar considerations informed the Commission's decision to adopt a voluntary summary prospectus regime for variable contracts.⁵²⁸

2. Initial Summary Prospectus

As with an initial summary prospectus for a variable annuity, an initial summary prospectus for a non-variable annuity contract must only describe a single contract that the insurance company currently offers for sale.⁵²⁹ An initial summary prospectus may describe more than one class of a currently offered contract.⁵³⁰ Aggregating disclosures for multiple contracts 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 limited to a single contract currently offered for sale is designed to simplify and consolidate lengthy and complex disclosures. The content and ordering of items are designed to highlight aspects of a non-variable annuity that may not be emphasized in marketing materials and other disclosures.

Like other summary prospectuses that rule 498A for variable contracts addresses, we are adopting as proposed a standardized presentation for non-variable annuity 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 information.⁵³¹ The required presentation also could facilitate comparisons of different non-variable annuities, as well as comparisons between non-variable annuities 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.⁵³² The information is required to appear in the same order, and under relevant corresponding headings, as the rule specifies.

The chart in Table 7 below outlines the information that must appear in an initial summary prospectus for a non-variable annuity contract. These are the same content requirements for an initial summary prospectus for a variable contract, with the exception of the ordering of the Overview of the Contract and KIT disclosures. We are adopting these content requirements as proposed. The Commission has historically viewed these items as providing annuity

⁵²⁴ To facilitate this change, and to make the terminology used in rule 498A more consistent with certain terms used in the final amendments to Form N-4, we are also adopting amendments to the rule's definitions. Specifically, we are (1) amending the definitions to "Class," "Contract," "Investment Option," "Registrant," "Variable Annuity Contract," and "Variable Life Insurance Contract" to address non-variable annuities, 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 will otherwise affect the way these terms are defined in rule 498A); (2) adding definitions for "Contract Adjustment," "Fixed Option," "Index-Linked Option," "Insurance Company," "Registered Market Value Adjustment Annuity Contract," "Registered Separate Account," "RILA Contract," and "Variable Option" consistent with their counterparts in the Form N-4 amendments; and (3) deleting the definition of "Depositor." These changes are necessary to implement the provisions of the rule that will be applicable to non-variable annuities and combination contracts.

⁵²⁵ See final 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. Final rule 498A extends this provision to non-variable annuities. See final rule 498A(g). Under the final amendments, the rule 498A provision addressing information that may be incorporated by reference into a summary prospectus also applies the same to non-variable annuities as it does to other contracts currently within the scope of the rule. See final rule 498A(d).

⁵²⁶ This 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 final rule 498A(b)(5)(ix); final rule 498A(c)(6)(iv).

⁵²⁷ 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).

⁵²⁸ See VASP Adopting Release at discussion accompanying nn.41–45; see also *infra* Section IV.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 non-variable annuity issuers 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).

⁵²⁹ See final rule 498A(b)(1).

⁵³⁰ The definition of the term "class" in the final 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). Final rule 498A(a).

⁵³¹ See VASP Adopting Release at paragraph accompanying nn.58–59.

⁵³² Final rule 498A(b)(5).

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.⁵³³ This rationale is equally

true in the context of non-variable annuity disclosure.

Further, as discussed above, the Overview of the Contract disclosures (previously Item 3 of Form N-4, but now re-numbered as Item 2) must precede the KIT (previously Item 2 of Form N-4, but now 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.⁵³⁴ This change is reflected in final rule 498A. Otherwise, the same order of disclosures under final rule 498A is provided as under the current rule.

TABLE 7—OUTLINE OF THE INITIAL SUMMARY PROSPECTUS

Heading in initial summary prospectus	Relevant paragraph in amendments to rule 498A	Item of Form N-4 (as amended)	Applicable to non-variable annuities?	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) through (vi) ..	.....	✓ .....	✓
EDGAR Contract Identifier (back cover page).	Rule 498A(b)(3)(ii) .....	.....	✓ .....	✓
Table of Contents (optional)	Rule 498A(b)(4) .....	.....	✓ .....	✓
Content:				
Overview of the [Contract]	Rule 498A(b)(5)(ii)	2	✓	✓
			(each paragraph of Item 2, as applicable).	(each paragraph of Item 2 except (b)(2) and (d), which are generally only applicable to non-variable annuity contracts).
Important Information You Should Consider About the [Contract].	Rule 498A(b)(5)(i)	3	✓	✓
			(with instructions applicable to non-variable annuities).	(with instructions applicable to variable annuities).
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	✓	✓
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(b)(5)(ix)	17	✓	✓
			(Items 17(b), 17(c), and 17(d), as applicable).	(Items 17(a), 17(c), and 17(d), as applicable).

Notes

¹ The beginning or front cover page of a non-variable annuity contract's initial summary prospectus, like the initial summary prospectus of a variable annuity registered on Form N-4, must 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 are the same for non-variable annuities 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 certain investment products, including the type of contract has been prepared by Commission staff and is available at *investor.gov*. They also include, for RILAs and combination contracts that offer index-linked options along with other investment options, a legend that the Commission has not approved or disapproved of the securities being registered. The initial summary prospectuses for non-variable annuities as well as for variable annuities also must include additional statements that we require on the cover page of the prospectus for all Form N-4 issuers. *See supra* Section II.C.10; *see also* Item 1(a)(6) through (8) of final Form N-4. We also have updated the legends in the summary prospectus to reflect the final text of these items, including a statement that while an investor can cancel the contract within 10 days, contract adjustments may be applied.

A non-variable annuity initial summary prospectus is 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 non-variable annuity summary prospectus as they are for a summary prospectus of a variable annuity registered on Form N-4.⁵³⁵ Nevertheless, certain of these required

⁵³³ 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 7 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 non-variable annuity context as a general matter in Section II.C *supra*.

⁵³⁴ *See supra* Sections II.C.2 and II.C.3. Prior to the final amendments, rule 498A required issuers to place "Important Information You Should Consider About the [Contract]" disclosures before "Overview of the [Contract] disclosures."

⁵³⁵ Final rule 498A(b)(5).

contents vary in substance to reflect the unique aspects of non-variable annuities as compared to variable annuities. These are indicated in Table 7 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, and disclosure for RILAs and registered MVA annuities must include information about 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 the instructions vary for non-variable annuities as opposed to variable annuities;
- Disclosure provided under the heading “Additional Information About Fees” (Item 4 of Form N-4), where the instructions vary for non-variable annuities as opposed to variable annuities; and
- Disclosure under the heading “Appendix: Investment Options Available Under the Contract” (Item 17 of Form N-4), where RILA contract disclosure includes a different summary table for index-linked options offered under the contract than the summary table of variable options offered under a variable annuity. In addition, the disclosure includes a summary table for fixed options offered under the contract (which could be applicable for RILAs, registered MVA annuities, or variable annuities, depending on the investment options the contract offers).

Each of these disclosure items, which also appears in a non-variable annuity statutory prospectus, is discussed in more detail in Section II.C. above.

One commenter suggested that because a RILA has the term “registered” in its name, the Commission should require the cover pages of both an initial summary prospectus and an updating summary prospectus to include the legend that is required to be on the cover pages of registration statements—namely, that the Commission has not approved or disapproved of the securities or passed upon adequacy of the disclosure of in the prospectus.⁵³⁶

After considering the commenter’s suggestion, the Commission has determined to amend rule 498A to require the legend required by rule 481 under the Securities Act on the cover

pages of initial and updating summary prospectuses for RILAs or combination contracts that offer index-linked options along with other investment options. Many RILAs whose offerings are registered with the Commission use the term “registered” in their names and, accordingly, clarification about the term “registered” is important to the extent that this term may cause confusion. The legend required by rule 481 on RILAs’ and combination contracts’ summary prospectus cover pages is anticipated to communicate important information to an investor about what “registered” means in this context. Further, the legend required by rule 481 will alert investors about the limits of the Commission’s registration process. We do not anticipate that the disclosure required by the legend would be so lengthy as to dissuade an investor from reviewing the summary prospectus. We recognize that previously the Commission determined not to require the legend required by rule 481 under the Securities Act on initial and updating summary prospectus cover pages for variable annuities and mutual funds.⁵³⁷ Those investment products, however, do not typically include the term “registered” in their names.⁵³⁸

3. Updating Summary Prospectus

As proposed and as under current rule 498A for variable contracts, insurance companies under final rule 498A will not send an updated initial summary prospectus to investors each year. Instead, insurance companies will send an updating summary prospectus, which will provide a brief description of certain changes with respect to the contract that occurred within the prior year.⁵³⁹ This will allow investors to focus their attention on new or updated information relating to the contract. Additionally, the updating summary prospectus, as proposed and as required by final rule 498A, includes 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

⁵³⁷ See VASP Adopting Release at paragraph accompanying n.100; see also rule 498 under the Securities Act.

⁵³⁸ Similarly, we are not including registered MVA annuities in this instruction because they also typically do not include the term “registered” in their name.

⁵³⁹ A non-variable annuity issuer, like a variable annuity issuer, can 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. Final rule 498A(c)(1). See also VASP Adopting Release at n.209 and accompanying text.

because they affect how investors evaluate non-variable annuity contracts and are relevant to investors when considering additional investment decisions or otherwise monitoring their contracts. This is consistent with the Commission’s approach for variable annuity updating summary prospectuses.⁵⁴⁰ All comments received about the proposed amendments to rule 498A, including updating summary prospectuses, are discussed above.⁵⁴¹

Because the Commission designed the initial summary prospectus for someone making an initial investment decision, existing non-variable annuity investors will 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.⁵⁴² 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 only can describe a single contract that the insurance company currently offers for sale, an updating summary prospectus for a non-variable annuity may describe one or more contracts covered in the statutory prospectus to which the updating summary prospectus relates, as proposed and as under current rule 498A for variable contracts.⁵⁴³ Similar to the initial summary prospectus, an updating summary prospectus may also describe more than one class of a contract.

⁵⁴⁰ See VASP Adopting Release at Section II.A.2.a. As discussed above, the policy rationale for the content of a non-variable annuity updating summary prospectus and the location of that required content is the same rationale that the Commission articulated in adopting rule 498A for a variable annuity updating summary prospectus. 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 8 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 non-variable annuity context as a general matter in Section II.C. *supra*.

⁵⁴¹ See *supra* sections II.D.1. and 2. One commenter, as discussed above, specifically addressed an updating summary prospectus. That commenter suggested that the Commission include an additional legend on the cover pages of initial and updating summary prospectuses. See VIP Working Group Comment Letter.

⁵⁴² The Commission discussed this rationale when it initially adopted rule 498A. See VASP Adopting Release at Section II.A.2.a.

⁵⁴³ Final rule 498A(c)(2); see also VASP Adopting Release at nn.342–343 and accompanying paragraph.

⁵³⁶ See VIP Working Group Comment Letter.

Updating summary prospectuses for non-variable annuities, like initial summary prospectuses, must include specific disclosure items appearing in a prescribed order, under relevant corresponding headings.⁵⁴⁴ An updating

summary prospectus for a non-variable annuity must contain the information required by the rule, and only that information, in the order specified by the rule. We are adopting these content requirements generally as proposed.⁵⁴⁵

The chart in Table 8 below outlines the information that is required to appear in an updating summary prospectus for a non-variable annuity.

TABLE 8—OUTLINE OF THE UPDATING SUMMARY PROSPECTUS

Heading in updating summary prospectus	Relevant paragraph in amendments to rule 498A	Item of final Form N-4	Applicable to non-variable annuities?	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) through (vi) ..	.....	✓ .....	✓
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 instructions applicable to non-variable annuities).	(with instructions applicable to variable annuities)
Appendix: [Investment Options/Portfolio Companies] Available Under the Contract.	Rule 498A(c)(6)(iv)	17	✓	✓
			(Items 17(b), 17(c), and 17(d), as applicable).	(Items 17(a), 17(c), and 17(d), as applicable)

Notes

¹ The beginning or front cover page of a non-variable annuity's updating summary prospectus, like the updating summary prospectus of a variable annuity registered on Form N-4, must 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 are the same for non-variable annuities 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 certain products, including the type of contract, has been prepared by the SEC staff and is available at investor.gov. They also include, for RILAs and combination contracts that offer index-linked options along with other investment options, a legend that the Commission has not approved or disapproved of the securities being registered. Updating summary prospectus cover pages also must include additional statements that are required on the cover page of the prospectus for all Form N-4 issuers. See *supra* Section II.C.10; see also final Form N-4, Item 1(a)(6) through (8).

³ The requirements for this optional table of contents are the same for an updating summary prospectus as for an initial summary prospectus. See final rule 498A(b)(4); final rule 498A(c)(5).

The updating summary prospectus for a non-variable annuity must 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 appear under the heading "Updated Information About Your Contract," with a required legend following the heading.⁵⁴⁶ The changes that the rule requires a non-variable annuity 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 non-variable annuity issuer wishes to disclose, provided they occurred within the same time period as the other changes the rule requires the issuer to describe. In providing a concise description of a contract-related change in the updating summary prospectus, non-variable annuity issuers must provide enough detail to allow investors to understand the change and how it will affect them.⁵⁴⁷

The topics for which a change necessitates a description in the

updating summary prospectus, as proposed, are the same for non-variable annuities as for variable annuities registered on Form N-4. We do not anticipate that disclosures addressing these topics in a contract statutory prospectus will 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.⁵⁴⁸ 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 non-variable annuity contract.⁵⁴⁹

⁵⁴⁴ Final rule 498A(c)(6).

⁵⁴⁵ In a change from the proposal, the cover page of an updating summary prospectus for a RILA or combination contract that offers index-linked options along with other investment options must contain the legend required by rule 481 under the Securities Act. See *supra* paragraph accompanying footnote 537.

⁵⁴⁶ The legend is the same for non-variable annuities 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]." Final rule 498A(c)(6)(i)(A).

⁵⁴⁷ Final rule 498A(c)(6)(i)(B); see also VASP Adopting Release at paragraph accompanying n.374.

⁵⁴⁸ See VASP Adopting Release at paragraph following n.372.

⁵⁴⁹ See *id.* at paragraph accompanying nn.365–369.

Substantially as proposed, we are amending rule 498A to specify that, in the context of a RILA 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)(1) of Form N-4 requires (that is, the features that are disclosed in the table in the appendix of investment options that will appear in a RILA contract summary prospectus).⁵⁵⁰ Similarly, in a change from the proposal, we are adopting a conforming change to rule 498A to specify that, for a contract that offers fixed options, the change of availability of investment options includes a change to any of the features of the fixed options disclosed in the table that Item 17(c) of Form N-4 requires.⁵⁵¹ 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.⁵⁵² In the context of index-linked options, any change to the features of the index-linked options that the required table will describe—that is, the index, type of index, crediting period, index crediting methodology, and/or current limit on index loss—as well as the inclusion or exclusion of index options will meaningfully change the investor's experience of investing in a RILA contract. Similarly, in the context of fixed options, any change to the features of the fixed options that the required table will describe—that is, the term and the minimum guaranteed interest rate—will meaningfully change the investor's experience of investing in an annuity contract offering fixed options. For these reasons, under the final amendments a change to any of these features represents a change in the availability of the investment options that the 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—are, as proposed, the same for non-variable annuities and for variable annuities registered on Form

N-4.⁵⁵³ Certain of these required contents, however, as proposed vary in substance to reflect the unique aspects of non-variable annuities as compared to variable annuities. These are indicated in Table 8 above and include:

- Disclosure provided under the heading “Important Information You Should Consider About the Contract” (Item 3 of Form N-4), where instructions to the required table are specific to non-variable annuities as opposed to variable annuities; and
- Disclosure under the heading “Appendix: Investment Options Available Under the Contract” (Item 17 of Form N-4), where RILA contract disclosure will 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. In addition, the disclosure includes a summary table for fixed options offered under the contract (which could be applicable for RILAs, registered MVA annuities, or variable annuities, depending on the investment options the contract offers).

4. Online Accessibility of Contract Statutory Prospectus and Certain Other Documents Relating to the Contract

Investors who receive a non-variable annuity initial or updating summary prospectus will have access to more detailed information about the non-variable annuity, either by reviewing the information online, or by requesting the information to be sent in paper or electronically. In this respect, the final amendments include the same requirements for non-variable annuities as for variable contracts. These requirements further the layered disclosure framework that rule 498A creates for variable contracts and will, under the final amendments, similarly create for non-variable annuities. Those insurance companies that issue non-variable annuities, 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 non-variable annuity investors to access the contract statutory prospectus in several ways (online and by physical or electronic delivery) maximizes the accessibility and usability of this information for all

investors, including investors who continue to prefer to access information through paper resources.⁵⁵⁴

As discussed above, commenters stated that investors and registrants will benefit from rule 498A's layered disclosure framework, with access to more detailed information available online and electronically or in paper format on request.⁵⁵⁵ No other commenters specifically addressed online accessibility to the statutory prospectus and certain other documents relating to the contract.

Under the final amendments and as proposed, an insurance company relying on rule 498A to satisfy prospectus delivery obligations with respect to non-variable annuities (like a variable annuity issuer relying on this rule before the final amendments), must make the contract's current initial summary prospectus, updating summary prospectus, statutory prospectus, and SAI (together, the “required online contract documents”) available online.⁵⁵⁶ These required online contract documents are 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.⁵⁵⁷ 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.⁵⁵⁸ The required online contract documents must be presented

⁵⁵⁴ See VASP Adopting Release at n.417 and accompanying text; see also Office of Investor Education and Advocacy of the U.S. Securities and Exchange Commission, Study Regarding Financial Literacy Among Investors (Aug. 2012) at iv, xix, available at <https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf>. These 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.

⁵⁵⁵ See *supra* footnote 521 and accompanying text.

⁵⁵⁶ For requirements relating to the required online contract documents, see generally final rule 498A(h).

⁵⁵⁷ A current version of each of the required online contract documents must 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. Final rule 498A(h)(1).

⁵⁵⁸ Final rule 498A(b)(2)(v)(B).

⁵⁵⁰ As the Item 17(b) table does not include current limits on index gains, changes in current limits on index gains are not changes in the features of index-linked options that would require discussion in the updating summary prospectus.

⁵⁵¹ Final rule 498A(c)(6)(i). The amendments reflect a conforming change from the proposal to address the inclusion of registered MVA annuities on Form N-4.

⁵⁵² VASP Adopting Release at n.361.

⁵⁵³ Final rule 498A(c)(6).

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 final amendments require 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.

As proposed, both initial summary prospectuses and updating summary prospectuses for non-variable annuities, like variable annuity summary prospectuses, must define any “special terms” elected by the registrant, using any presentation that clearly conveys their meaning to investors.⁵⁵⁹ In non-variable annuity summary prospectuses that are available online, the final amendments (like the current rule) as proposed 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, as proposed, a condition for an insurance company to rely on rule 498A to satisfy prospectus delivery obligations with respect to non-variable annuities.⁵⁶⁰ 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 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 final amendments, like rule 498A before the amendments that we are adopting and as proposed, include a safe harbor provision addressing temporary noncompliance.⁵⁶¹

5. Other Requirements for Summary Prospectus and Other Contract Documents

Like current rule 498A, final rule 498A as proposed includes additional requirements for non-variable annuity summary prospectuses.⁵⁶² These include:

- Certain requirements regarding 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 will not, however, negate a person’s ability to rely on the rule to satisfy prospectus delivery obligations.⁵⁶³ No commenters specifically addressed these additional requirements.

E. Accounting (Items 16 and 26)

We are adopting, as proposed, amendments to permit RILA issuers to provide financial statements on Form N-4 in the same way that insurance companies currently provide financial statements on Form N-4. We are also extending these amendments to registered MVA annuities. As a result, the financial statements filed in connection with a registration statement that relates to the offering of either of these securities may be prepared in accordance with SAP to the same extent as currently permitted for insurance companies’ financial statements filed on that form.

As discussed in the Proposing Release, 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).⁵⁶⁴ 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.⁵⁶⁵ In interpreting this instruction, the Commission has stated that SAP financial statements could be used under the insurance product forms, in limited circumstances, 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.⁵⁶⁶

Commenters supported permitting RILA issuers to provide financial statements on Form N-4 in the same way that insurance companies offering variable annuities currently provide financial statements on Form N-4.⁵⁶⁷ Commenters stated that requiring GAAP financial statements in cases where the insurance company is not otherwise

⁵⁶⁴ See Proposing Release at Section II.D. Similar to insurance products currently filing registration statements on these forms, insurance companies registering offerings of non-variable annuities will 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. See current and final Form N-4, Item 16.

⁵⁶⁵ Similar instructions are contained in the other forms used to register insurance products issued by investment companies. See Form N-3, Instruction 1 to Item 31(b), and Form N-6, Instruction 1 to Item 28(b).

⁵⁶⁶ 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).

⁵⁶⁷ CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter, Gainbridge Comment Letter; Johnson Comment Letter; Meeting of American Council of Life Insurers, Committee of Annuity Issuers, and Insured Retirement Institute with SEC Staff Regarding SAP Financial Statements (Sep. 29, 2023) (“Presentation from Insurance Product Trade Groups on SAP Financial Statements”).

⁵⁵⁹ Final rule 498A(e).

⁵⁶⁰ Final rule 498A(f)(4); final rule 498A(g)(4).

⁵⁶¹ Final 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.

⁵⁶² For these additional requirements, see generally final rule 498A(i).

⁵⁶³ Final rule 498A(i)(5).

required to prepare financial statements in accordance with GAAP would result in significant costs and administrative burdens.⁵⁶⁸ Some commenters further stated that permitting the use of SAP financial statements would reduce the burdens on many insurance companies offering or seeking to offer RILAs, which would lead to an increased selection of competitive products available to investors.⁵⁶⁹ Some commenters also suggested that SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, provide sufficient material information that is relevant and meaningful for investors evaluating RILAs.⁵⁷⁰ Moreover, some commenters suggested that permitting the use of SAP financial statements would benefit investors by promoting comparability between insurance companies, allowing contract holders to compare issuers and their solvency.⁵⁷¹ Commenters also supported extending this treatment to registered MVA annuities for the same reasons.⁵⁷²

One commenter suggested that we eliminate or more clearly explain the instruction to Form N-4 that says that an insurance company cannot use SAP financial statements if it prepares GAAP financial statements for a corporate parent that is a GAAP filer.⁵⁷³ This commenter questioned the basis for the instruction because insurance companies that have publicly-traded parent companies have been provided exemptions from the requirement to provide GAAP financial statements in connection with the registration of certain annuities based on the authority provided in 17 CFR 210.3-13 ("3-13 Exemptions").⁵⁷⁴ We are retaining this instruction without modification. GAAP

financial statements provide the most useful information for all users of financial statements,⁵⁷⁵ and requiring filers to provide GAAP financial statements promotes uniformity and consistency in financial reporting.⁵⁷⁶ Accordingly, the Commission generally requires that all financial statements be presented on a GAAP basis and has permitted the use of SAP financial statements only in limited circumstances. In the examples cited by the commenter, 3-13 Exemptions from the requirement to provide GAAP financial statements were provided to insurance companies consistent with the instructions regarding financial statements on Forms N-3, N-4, and N-6.⁵⁷⁷ Under the final amendments, an insurance company registering a RILA or registered MVA annuity offering on Form N-4 will not need a 3-13 Exemption in order to provide SAP financial statements provided the insurance company satisfies the requirements of the instruction in Form N-4.⁵⁷⁸

Amendments permitting insurance companies registering offerings of RILAs and registered MVA annuities to rely on Instruction 1 to Item 26 to provide SAP financial statements to the same extent as they do when registering offerings of variable annuities on Form N-4 alleviate the cost burdens that would be imposed by requiring GAAP financial statements in cases where the insurance company is not otherwise required to prepare financial statements in accordance with GAAP and provide for the consistent treatment of financial statements for all insurance companies that meet the circumstances permitted by Form N-4.⁵⁷⁹ Additionally,

permitting RILA and registered MVA annuity issuers to provide SAP financial statements to the same extent as variable annuity issuers registering offerings on Form N-4 is consistent with maintaining investor protection. At the same time, SAP financial statements, which focus on an issuer's ability to meet its obligations under its insurance contracts, as regulated by State law, provide material information for investors evaluating RILAs and registered MVA annuities.

Requiring insurance companies to register offerings of non-variable annuities on Form N-4 will also provide those companies greater flexibility to update their registration statements without the need to update certain financial statements. Under section 10(a)(3) of the Securities Act, insurance companies currently are generally required to file a post-effective amendment annually to update their audited fiscal year-end financial statements as they relate to offerings of non-variable annuities.⁵⁸⁰ In addition, Regulation S-X currently 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.⁵⁸¹ However, Form N-4 filers are not subject to this requirement.⁵⁸² Moreover, after the end of an insurer's fiscal year, insurance companies are currently required to include year-end audited financial statements in any new registration statement or post-effective amendment relating to non-variable annuities filed 45 days after the fiscal year-end.⁵⁸³ However, Form N-4 filers

⁵⁶⁸ CAI Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

⁵⁶⁹ CAI Comment Letter; Gainbridge Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

⁵⁷⁰ CAI Comment Letter; IRI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

⁵⁷¹ CAI Comment Letter; Presentation from Insurance Product Trade Groups on SAP Financial Statements.

⁵⁷² See, e.g., CAI Comment Letter (stating that "we completely support extending Form N-4 [to facilitate registering offerings of registered MVA annuities on the form]" and that "[o]ur comments here relating to financial statements apply equally to MVA contracts").

⁵⁷³ VIP Working Group Comment Letter.

⁵⁷⁴ 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 thereof of appropriate statements of comparable character."

⁵⁷⁵ See generally Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Investment Company Act Release No. 26028 (Apr. 23, 2003) [68 FR 23333 (May 1, 2003)].

⁵⁷⁶ See VASP Adopting Release at text following n.813.

⁵⁷⁷ See Form N-3, Instruction 1 to Item 31(b); current Form N-4, Instruction 1 to Item 26(b); and Form N-6, Instruction 1 to Item 28(b).

⁵⁷⁸ See final Form N-4, Instruction 1 to Item 26(b).

⁵⁷⁹ These amendments are consistent with the Commission's current approach to non-variable annuities registered on Form S-1. Because Forms S-1 and S-3 do not include an instruction similar to Form N-4, Instruction 1 of Item 26(b), non-variable annuities currently registered on these forms are required to provide their financial statements in accordance with GAAP. However, the Commission, acting through authority delegated to the staff, has permitted insurance companies registering on Form S-1 to include SAP financial statements in non-variable annuity registration statements in the limited circumstances permitted by Form N-4. See, e.g., Letter from Jenson 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>. The 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. 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.

⁵⁸⁰ See Proposing Release at Section II.D.

⁵⁸¹ 17 CFR 210.3-12(a). Insurance companies 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.

⁵⁸² See final Form N-4, Instruction 3 to Item 26(b).

⁵⁸³ See 17 CFR 210.3-01(c).

instead have a 90-day grace period.⁵⁸⁴ Consequently, under the final amendments, insurance companies will be able to file and amend their non-variable annuity registration statements during certain times of year without the need to update their financial statements.⁵⁸⁵ The final amendments, similar to permitting insurance companies to rely on Instruction 1 to Item 26 for non-variable annuities, as discussed above, provide for the consistent treatment of financial statements for all insurance companies registering offerings on Form N-4 that meet the circumstances permitted by Form N-4. The commenter that addressed this aspect of the proposal suggested that relief from these requirements to prepare interim financial statements on a quarterly basis is appropriate because investors in non-variable annuities, like investors in variable annuities, are less interested in the insurance company's operating results from period to period.⁵⁸⁶

We are also adopting, as proposed, a requirement for RILA issuers 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") in the SAI. We are also extending this requirement to registered MVA annuity issuers. Additionally, non-variable annuities will 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. Prior to these amendments, non-variable annuities provided these items on Forms S-1, 8-K, and 10-K, as applicable. These items 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.⁵⁸⁷ The commenter that addressed this issue stated that it did not oppose this requirement as it applied to RILA issuers only and agreed with the placement of the disclosures modeled on Item 304 of Regulation S-K in the SAI.⁵⁸⁸

Some insurance companies issue index-linked life insurance products that have a similar payment structure to RILAs, resulting in similar regulatory treatment as RILAs currently. Some commenters stated that these life insurance policies should be permitted to register on Form N-6,⁵⁸⁹ which, among other things, would allow insurance companies registering those policies to provide SAP financial statements in the same way that other insurance companies are currently permitted to on Form N-6.⁵⁹⁰ The Commission did not propose to amend Form N-6 to permit insurance companies to register offerings of index-linked life insurance on the form, and

any such amendments are beyond the scope of this rulemaking.

F. Filing and Prospectus Delivery Rules

1. Fee Payment Method and Amendments to Form 24F-2

We are adopting, largely as proposed, amendments to require insurance companies to pay securities registration fees relating to RILA offerings using the same method used for variable annuities.⁵⁹¹ In a modification from the proposal, we are also adopting this framework for registered MVA annuities. Under the final amendments, issuers registering the offerings of non-variable annuities on final Form N-4 will be deemed to be registering an indeterminate amount of securities upon effectiveness of the registration statement.⁵⁹² These issuers will 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 Form 24F-2, the form that is used by registered separate accounts to pay securities registration fees relating to variable annuities.⁵⁹³ We are further

⁵⁸⁴ Consistent with the proposal, insurance companies filing on Form N-4 will have a 90-day grace period to file audited financial statements after fiscal year-end. See final Form N-4, Instruction 3 to Item 26(b). One commenter suggested amending Form N-4 to provide separate accounts filing on the form the same 90-day grace period provided to insurance companies filing on the form. See VIP Working Group Comment Letter. In a change from the proposal, Item 26(a) has been amended to provide separate accounts a 90-day grace period for financial statements similar to the 90-day grace period provided to insurance companies for similar reasons. The exceptions to rule 3-12 of Regulation S-X contained in instruction 5 to Item 26(a) do not apply if the financial statements of the registered separate account have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act. See final Form N-4, Instruction 5 to Item 26(a). The exceptions to rule 3-12 of Regulation S-X contained in instruction 3(a) to Item 26(b) have been modified from the proposal so that the exceptions do not apply if the financial statements of the insurance company have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act. See final Form N-4, Instruction 3 to Item 26(b). As proposed, the exceptions would not have applied if the financial statements of the insurance company had never been included in an effective registration statement for annuity contract or variable life insurance contracts.

⁵⁸⁵ A further consequence of the changes will be that insurance companies will generally be making available their non-variable annuity-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 non-variable annuity-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.

⁵⁸⁶ CAI Comment Letter.

⁵⁸⁷ 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)] ("Disclosure Amendments to Regulation S-K, Form 8-K and Schedule 14A"); see also Form S-1, Item 11(i).

⁵⁸⁸ See CAI Comment Letter. As registered MVA annuities similarly provide this disclosure currently and it will also be in the SAI, we are applying this requirement to registered MVA annuities for the same reason we are applying it to RILAs.

⁵⁸⁹ Similar to Form N-4 and variable annuities, Form N-6 is used to register offerings of variable life insurance policies.

⁵⁹⁰ See, e.g., CAI Comment Letter; ACLI Comment Letter; IRI Comment Letter.

⁵⁹¹ To accommodate the changes, EDGAR will be modified to require insurance companies registering non-variable annuities to use a different CIK than that used for their other offerings. One CIK will be utilized to register the offerings of non-variable annuities on Form N-4 and pay registration fees for securities relating to non-variable annuity offerings on Form 24F-2. The other CIK will be utilized to register the insurance company's other offerings of securities as they do currently. As a result, insurance companies will need to utilize separate CIKs for their non-variable annuity-related filings. If the issuer only offers non-variable annuities, the issuer will only use one CIK. Further, we are amending rule 313 of Regulation S-T to permit filings relating to non-variable annuities offerings to have both an investment company type and contract identifier to facilitate insurance companies filing these forms and for ease in identification of particular contracts.

⁵⁹² The rule amendments apply the same registration fee payment approach to non-variable annuities that is provided by rule 24F-2 to other Form N-4 issuers. See final rules 456(e) (providing that where the registration statement relates to an offering of non-variable annuities, insurance companies will 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 insurance companies to pay registration fees for offerings of non-variable annuity securities on the same annual net basis as other Form N-4 issuers); see also final Form 24F-2. See 15 U.S.C. 78d(e) and 77z-3. We believe that these actions are necessary and appropriate in the public interest and consistent with the protection of investors.

⁵⁹³ As a general matter, the final amendments provide the same process for registering an indeterminate amount of securities relating to non-variable annuity offerings as is currently provided for exchange-traded vehicle securities under rule 456(d) (which, in turn, mirrors the process for current Form N-4 issuers to register securities) except that: (1) this process will be mandatory for

specifying the calculation method for paying securities registration fees for non-variable annuity offerings, consistent with the fee calculation methodology that applies to variable annuities.⁵⁹⁴ We also are amending, as proposed, Form 24F-2 to specify when issuers can take credits for non-variable annuity 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.⁵⁹⁵ Commenters were supportive of our proposal to allow RILA issuers to pay fees in arrears on Form 24F-2, though they did have comments on specific elements of this part of the proposal as discussed below.⁵⁹⁶ Commenters also supported extending this treatment to registered MVA annuities, subject to those comments.⁵⁹⁷

Without the adoption of these final amendments, insurance companies, like most issuers, would need to register a specific amount of securities when registering non-variable annuities. Indeed, until now, issuers of non-variable annuities were required to pay a registration fee for such securities to the Commission at the time of filing a registration statement on Form S-1 or S-3.⁵⁹⁸ As a result, under Forms S-1

insurance companies that register non-variable annuities on Form N-4; and (2) such insurance companies will pay fees on Form 24F-2 instead of filing a prospectus supplement in accordance with rule 424. *See also* Closed-End Fund Offering Reform Adopting Release. For example, the final amendments will provide the same mechanics as other Form 24F-2 issuers when addressing interest calculations for late payments.

⁵⁹⁴ All payments of filing fees for non-variable annuities registration statements will continue to be made by wire transfer, debit card, or credit card or via an ACH and there will be no refunds. *See* 17 CFR 230.111; Final Form 24F-2, Instruction A.5.

⁵⁹⁵ In addition to conforming changes in final Form 24F-2 to effectuate the changes discussed below, to improve the form we are: (1) removing reporting relating to shares paid for prior to Oct. 11, 1997; (2) removing 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) removing 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) revising current Instruction C.9 for Item 5(vii) to correspond to the current instructions for fee filing rates on the Commission's website; (5) correcting the website linked in current Instruction D.1; and (6) removing 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.

⁵⁹⁶ *See* CAI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter.

⁵⁹⁷ *See, e.g.,* CAI Comment Letter.

⁵⁹⁸ In general, issuers today—including insurance companies issuing non-variable annuities—are

and S-3, insurance companies had to ensure that they did not inadvertently sell more non-variable annuities than were registered, even though this was not (and is not) a concern in relation to variable annuities. Further, insurance companies were required to pay fees at effectiveness on Forms S-1 or S-3 for the non-variable annuities being registered, in contrast with registered separate accounts, which do not have to 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. Now, under the final amendments, insurance companies will be required to pay fees under the framework outlined by the Investment Company Act, which 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.⁵⁹⁹ Instead of having to pay registration fees at the time of filing a registration statement, the final amendments will require insurance companies to pay registration fees in arrears based on their net issuance of non-variable annuities, no later than 90 days after the issuer's fiscal year end, on Form 24F-2.⁶⁰⁰

The final amendments are designed to require insurance companies to use the same framework to pay securities registration fees for non-variable annuities that they do for variable annuities. Insurance companies offer non-variable annuities in a manner substantially similar to variable annuities and similarly will benefit from paying registration fees on an annual net basis and from registering offerings of an indeterminate number of securities. The final amendments 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

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 ("WKSI") have additional flexibility in paying filing fees, none of the insurance companies that issue non-variable annuities currently claim status as a WKSI. *See* Proposing Release at n.21 and accompanying text (citing, *inter alia*, section 6(b)(1) of the Securities Act [15 U.S.C. 77f(b)(1)]).

⁵⁹⁹ *See* 15 U.S.C. 80a-24(f).

⁶⁰⁰ *See id.*; final Form 24F-2.

combination annuity contracts.⁶⁰¹ The final amendments' requirement that insurance companies pay registration fees for non-variable annuities on Form 24F-2 therefore should be efficient for insurance companies. This approach eliminates the risk that an insurance company will inadvertently oversell non-variable annuities 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 these securities.⁶⁰² Further, by requiring insurance companies to use the same form and payment method under the final amendments for both variable and non-variable annuities, this process also will be efficient for the Commission.

The fee calculation method is consistent with the continuous offering of non-variable annuities to investors. These investors may make additional allocations or other investment decisions over time with respect to an investment in non-variable annuities. One effect of this was that, prior to these rule amendments, insurance companies, unlike other Form S-1 or S-3 issuers, could have increased difficulty in using the filing fees associated with unsold non-variable annuities of a particular offering to offset the filing fees due for a subsequent registration statement. This was because many insurance companies could not easily terminate an offering of non-variable annuities, a necessary step to recoup fees paid on unsold securities for use in a separate offering.⁶⁰³

We also are amending Form 24F-2 to indicate when insurance companies can take credits for redemptions of non-variable annuity securities not claimed

⁶⁰¹ 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 or MVA option) will file a separate Form 24F-2 relating to the payment of registration fees for its respective securities offered under the product.

⁶⁰² As part of the amendments to Form 24F-2, insurance companies will be required to include the value of any expiring non-variable annuities contract or index-linked or MVA 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. Insurance companies further will be required to report such contracts or options as redemptions. This will result in zero net sales being reported in this situation. *See* final Form 24F-2, Instruction C.4.

⁶⁰³ *See* 17 CFR 230.457(p). To facilitate the transition to calculating fees on an annual net basis and filing Form 24F-2, a filer will reduce the number reported in Item 5(i) in connection with non-variable annuities by any excess securities that were registered under its last registration statement that remain unsold prior to the effectiveness of the final rule. *See* final Form 24F-2, Instruction C.5. This will be so that a filing fee is not charged twice for the same securities being registered.

during a prior fiscal year (“non-claimed prior redemptions”). Typically, issuers that file Form 24F–2 are eligible for a credit for fees paid on prior redemptions, which may be used to offset registration fees due for securities sold during the current fiscal year. This credit will only be available for non-claimed prior redemptions that occurred during any prior fiscal year that ended no earlier than the date the issuer became eligible to use Form 24F–2.⁶⁰⁴ The current form, however, includes a legacy instruction that permits a credit 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–2.⁶⁰⁵ With the addition of non-variable annuities 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 Form 24F–2 is clear that issuers only will be able to take credit for non-claimed prior redemptions for a fiscal year prior to the date the issuer became eligible to use the form, which for insurance companies issuing non-variable annuities would be the date on which we adopt these amendments.⁶⁰⁶

While generally supportive of the proposal, commenters had some specific recommendations on how we could modify Form 24F–2. One commenter recommended that a separate line item be added to Form 24F–2 for unsold interests that were registered using Forms S–1 and S–3 registration statements.⁶⁰⁷ This commenter suggested that, to provide greater transparency in the calculation of registration fees and to ensure RILA issuers receive credit for the amount of registration fees previously paid for unsold securities registered on the Forms S–1 and S–3 registrations statements, we provide a separate line item (e.g., a “redemption credit line”) on Form 24F–2 to explicitly treat such unsold securities as redemption credits. We have not added such a line item to Form 24F–2 because final Form 24F–2 will allow insurance companies to

exclude non-variable annuities previously registered on Forms S–1 or S–3 from the registration fee payment calculation in the first Form 24F–2 filed following the conversion to Form N–4. Specifically, the form, both as proposed and as adopted, instructs filers to reduce the calculation of the amount of securities sold (and, thus, for which registration fees are to be paid) by the amount of securities registered under the Securities Act for which the issuer paid registration fees on a form other than Form 24F–2.⁶⁰⁸ Thus, because those securities identified by the commenter were not registered pursuant to the final amendments (or section 24(f) of the Investment Company Act), insurance companies will be able to deduct those securities from the calculation without the need for a specific line item in that calculation that eventually would become obsolete. If additional clarity is desired, insurance companies may optionally use the explanatory notes section of the form to provide it.

Proposed Instruction C.4 to Form 24F–2 provided a special rule for RILAs that clarified that the value of any expiring annuity contract or investment option that is rolled over into a new crediting period should be reported both as securities sold and as securities redeemed, resulting in a net-zero calculation to the extent that these amounts are the same. One commenter stated, in discussing this proposed approach, that transfers from index-linked options to options (and variable options to index-linked options) should be viewed as substantially similar to rollovers of crediting periods from a registration fee payment perspective. The commenter stated that, in both cases, simultaneous purchases and redemptions of equal amounts occur, and thus both should be afforded comparable treatment in the context of registration fee payment.⁶⁰⁹ This commenter therefore recommended that, with respect to combination contracts, we provide expanded guidance in Instruction C.4 in Form 24F–2 regarding net zero fee transactions to include (1) transfers from index-linked options to variable separate account subaccounts; and (2) transfers from variable separate account subaccounts to index-linked options. We are not adopting this recommendation because in a combination contract, the separate account and insurance company each file their own separate Form 24F–2.

Expanding net zero fee transactions to include transfers from index-linked or MVA options to variable separate account subaccounts and vice versa would expand the ability of a registrant to determine net sales, and thus potentially reduce registration fees, to a greater extent than other registrants using Form 24F–2. This is because the form does not currently permit two or more legal entities to net purchases and redemptions and we do not believe netting across legal entities is appropriate. Therefore, we are not adding transfers from index-linked or MVA options to variable separate account subaccounts (and vice versa) to final Instruction C.2.

One commenter asked us to confirm that RILA issuers could file a single Form 24F–2 annually to pay registration fees for all ongoing RILA offerings and pay registration fees on a net basis across all such offerings rather than having to make multiple Form 24F–2 filings and pay registration fees on a RILA offering-by-offering basis as with variable product separate account registration fee payments because paying registration fees in the aggregate across all RILA offerings would allow companies to more effectively use their unsold interests registered on Forms S–1 or S–3.⁶¹⁰ Another commenter suggested that we permit RILA issuers to use a single Form 24F–2 on the grounds that requiring multiple nearly identical filings has little value to investors, leads to additional complexity for both the staff and insurance companies, makes tagged data less useful (as a single product will have multiple identical tags under different registrants and IDs), and provides no upside.⁶¹¹ Consistent with the treatment for variable annuity and variable life insurance offerings, we agree that issuers should be permitted to pay registration fees for multiple offerings of non-variable annuities with different Securities Act numbers—provided that those Securities Act numbers are under the same Central Index Key (CIK) number—on a single Form 24F–2 and have added an instruction to that effect.⁶¹²

2. Post-Effective Amendments and Prospectus Supplements

The final amendments, which we are adopting as proposed, will require RILA issuers to use the same framework for filing post-effective amendments to the registration statement that other issuers on Form N–4 use. We are also adopting

⁶⁰⁴ See Form 24F–2, Item 5(iii); see also generally Closed-End Fund Offering Reform Adopting Release at n.348.

⁶⁰⁵ 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.

⁶⁰⁶ In addition to insurance companies, 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.

⁶⁰⁷ CAI Comment Letter.

⁶⁰⁸ See Final Form 24F–2, Item 5(i) and Instruction C.5; see also *supra* footnote 603.

⁶⁰⁹ CAI Comment Letter.

⁶¹⁰ CAI Comment Letter.

⁶¹¹ VIP Working Group Comment Letter.

⁶¹² See final Form 24F–2, Instruction A.6.

this requirement in connection with offerings of registered MVA annuities. Specifically, we are amending rule 485 to require insurance companies to use that rule when amending non-variable annuity registration statements on Form N-4. This change will permit insurance companies to file post-effective amendments relating to non-variable annuity registration statements 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).⁶¹³ In addition, we also are requiring insurance companies to apply rule 497 under the Securities Act when appropriate to file non-variable annuity prospectuses and prospectus supplements with the Commission.⁶¹⁴ These amendments will facilitate a uniform post-effective amendment and prospectus filing framework for issuers on Form N-4 and will provide increased efficiencies for insurance companies and Commission staff by applying consistent procedures for all security offerings registered on Form N-4. The one commenter who addressed this aspect of the proposal supported the proposed amendments and supported their application to registered MVA annuities.⁶¹⁵

Prior to the adoption of these final amendments, our rules provided different processes for insurance companies when registering offerings of non-variable annuities on Forms S-1 and S-3, as compared to those of variable annuities on Form N-4, to update and keep current a registration statement or prospectus. Form N-4 was 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. As such, these issuers had 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 to, among other things, comply with Securities Act requirements.⁶¹⁶ 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, such as 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.⁶¹⁷ 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.

Prior to the final amendments that we are adopting today, insurance companies had to follow the processes operating companies use, when these insurance companies were updating non-variable annuity registration statements. Operating companies that are engaged in a continuous offering of securities, like these 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.⁶¹⁸ For non-variable annuities whose offerings were registered on Form S-1, these updates typically occurred through a post-effective amendment.⁶¹⁹ Rule 462 provided insurance companies with a limited set of circumstances, none of which are specific or generally relevant to offerings of non-variable annuities, in which a post-effective amendment to a registration statement is effective upon filing.⁶²⁰ Rather, when an insurance

company sought to update a non-variable annuity registration statement on Form S-1, the issuer had to file a post-effective amendment that was typically declared effective by Commission staff acting pursuant to delegated authority.⁶²¹

In addition to differences in the post-effective amendment process, insurance companies also followed, prior to the adoption of the final amendments, different processes to file non-variable annuity prospectuses than current Form N-4 filers, relying on rule 424 rather than rule 497. Although these rules provide for similar processes, certain differences affected these insurance companies. 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.⁶²² Accordingly, under the final amendments, an insurance company will need to file every prospectus relating to a non-variable annuity offering that varies in form from a previously filed prospectus before the modified prospectus is first used.⁶²³ This approach will provide a publicly accessible, usable database of current non-variable annuity prospectuses which also will assist the Commission in conducting its regulatory functions. In addition, rule 424 includes provisions related to continuous or delayed securities offering under rule 415.⁶²⁴ However, in light of the amendments we are making to the non-variable annuity registration framework with this rulemaking, these provisions will no longer be applicable to non-variable annuities.⁶²⁵

Consistent with the other elements of this proposal, the final amendments are designed to provide parity between non-variable annuities and variable annuities that are currently registered on Form N-4. Non-variable annuities, 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

shelf registration statement with immediate effectiveness, none of the insurance companies currently offering non-variable annuities currently claims status as a well-known seasoned issuer.

⁶²¹ See 15 U.S.C. 77h; 17 CFR 229.501(a); 17 CFR 230.473. See also *supra* footnote 619 (describing the Form S-3 post-effective amendment process).

⁶²² See rule 424(a); rule 497.

⁶²³ See rule 497(e).

⁶²⁴ See rule 424(b).

⁶²⁵ See rule 415(b).

⁶¹³ See rule 485(b).

⁶¹⁴ Consistent with this change, we are making corresponding changes to (1) rule 424(f) to specify that insurance companies must use rule 497 rather than rule 424 when filing non-variable annuity prospectuses and prospectus supplements, and (2) rule 415(b) to exempt offerings of non-variable annuities from the requirements of paragraph (a) of that rule consistent with the treatment of variable annuity separate accounts.

⁶¹⁵ CAI Comment Letter. This and one other commenter did raise questions on the effective dates of the amendments to rules 485 and 497 which we address below. See CAI Comment Letter; VIP Working Group Comment Letter; see also *infra* Section II.J. Additionally, while not specific to this requirement, one commenter suggested that we amend 17 CFR 240.10b-10(b)(1) to permit RILA issuers to use quarterly statements rather than the immediate confirmations usually required, consistent with the treatment of variable annuities under that rule. See CAI Comment Letter. We are not adopting this change at this time because it is beyond the scope of this rulemaking.

⁶¹⁶ See, e.g., section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)].

⁶¹⁷ See rule 485(b)(1)(i). Material post-effective amendments, however, are not immediately effective. See rule 485(a).

⁶¹⁸ See, e.g., section 10(a)(3) of the Securities Act; rule 415(a); Item 512 of Regulation S-K.

⁶¹⁹ 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.

⁶²⁰ 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

or reallocate assets. Accordingly, applying rule 485's simplified post-effective amendment process is a more appropriate framework for non-variable annuity registration statements given their similarity to variable annuities. Non-variable annuity 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 final amendments address the post-effective amendment process for non-variable annuity registration statements and thereby provide benefits to insurance companies currently using Form S-1 in relation to non-variable annuity offerings 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.⁶²⁶ Requiring insurance companies to rely on the simplified post-effective amendment process will enable these issuers to update their disclosures in a manner that complements and facilitates the offering structure of non-variable annuities and will provide efficiency in the context of combination contracts.⁶²⁷

Requiring insurance companies to rely on rules 485 and 497 in connection with non-variable annuities also will 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 or MVA options offered as part of combination annuity contracts, consistent filing requirements across related products. This also should 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 will provide Commission staff with an increased degree of administrative efficiency by facilitating the review of amendments containing material changes to non-variable annuity registration statements while permitting

amendments with non-material changes to become effective immediately.

3. Prospectus Delivery

As proposed, we are prohibiting the use of rule 172 in connection with RILA offerings. We are also prohibiting its use in connection with registered MVA annuity offerings. 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 the final prospectus with the Commission as part of the registration statement within the required rule 424 prospectus filing timeline.⁶²⁸ We received no comments on this aspect of the proposal.

Registered investment companies, including variable annuity separate accounts, are excluded from rule 172 and therefore must deliver a prospectus to investors.⁶²⁹ Therefore, we are excluding offerings of non-variable annuities from rule 172 to ensure that investors receive a prospectus about these complex investments and because we are treating these offerings like offerings of variable annuities in other respects. Moreover, we understand that, as a practical matter, insurance companies typically do not rely on rule 172 in connection with non-variable annuities because they usually deliver prospectuses to accompany or precede other communications, such as annuity applications, to avoid those communications being offers that otherwise would be non-conforming prospectuses that violate section 5 of the Securities Act.⁶³⁰

G. Communication Rules Applicable to Non-Variable Annuities

As proposed, we are amending rule 156 to make its provisions applicable to RILA sales literature, and, in a change from the proposal, we are also applying these changes to registered MVA

annuities in light of the similarities in the products.⁶³¹ Additionally, in a change from the proposal, we are also making a technical amendment to rule 433 to allow certain RILA issuers that can meet the rule's conditions to continue to use a free writing prospectus without it needing to be preceded or accompanied by a prospectus that satisfies the requirements of section 10 of the Securities Act.

1. Sales Literature (Rule 156)

Under the Federal securities laws applicable to all securities (including non-variable annuity offerings), it is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.⁶³² 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, in the specific context of investment company sales literature, a statement involving a material fact is or might be misleading for purposes of the Federal securities laws.⁶³³ Amending rule 156's provisions to include non-variable annuity sales literature will provide guidance to insurance companies on ways to avoid presenting investors with materially misleading advertisements, which, consistent with the RILA Act, should help ensure that investors receive the information necessary to make informed decisions about these products.

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.⁶³⁴ Like investment company sales literature generally (and variable annuity marketing materials particularly), RILA advertisements discuss complex investment features that could benefit from rule 156's contextual analysis in considering whether a particular representation is materially misleading. Moreover, Commission staff reviewed RILA advertisements to better understand how insurance companies market these products to investors. As part of this review, and based upon prior

⁶²⁶ See rule 485.

⁶²⁷ Some commenters asked if RILA issuers would be permitted to use the "rate sheet" process outlined in ADI 2018-05 for the disclosure of certain rate changes. See CAI Comment Letter. The application of that staff statement beyond variable contracts is beyond the scope of this rulemaking. Insurance companies are encouraged to engage with Commission staff on this ADI and whether modifications to address RILAs would be appropriate.

⁶²⁸ See rule 172(b) and (c); see also Closed-End Fund Offering Reform Adopting Release at n.561 and accompanying text.

⁶²⁹ *Id.* at Section VI.B.1.a.

⁶³⁰ 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 Closed-End Fund Offering Reform Adopting 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)).

⁶³¹ See final rule 156.

⁶³² See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b-5.

⁶³³ 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").

⁶³⁴ See current rule 156(b).

experience reviewing RILA registration statements, the staff identified 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. Thus, by extending this guidance to RILAs, the final amendments to rule 156 focus attention to specific areas of RILA sales literature that we have identified as being particularly susceptible to misleading statements.⁶³⁵ These considerations are equally applicable to registered MVA annuities given the similarities in the products.

Several commenters expressed support for the proposed amendments to rule 156 and no commenters opposed them.⁶³⁶ Commenters stressed the benefits to investors of applying rule 156 to RILA advertising. One commenter stated that the application of rule 156 to RILA sales literature is a "natural fit" given the applicability of its guidance to RILAs, noting that the proposed amendments would protect investors by, among other things, requiring insurance companies to consider the potentially misleading nature of statements about past performance in their sales literature.⁶³⁷ Because the features of a RILA investment, such as limits on gains, change frequently, this commenter observed that past performance is often irrelevant to current RILA investors who are not able to utilize those past rates in current market conditions. Referring to news reports expressing concerns about sales techniques used to sell annuities generally, this commenter suggested that these concerns further emphasize the need for marketing rule protections in the context of RILA sales literature.⁶³⁸

⁶³⁵ See 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").

⁶³⁶ See, e.g., Better Markets Comment Letter; Johnson Comment Letter. One commenter stated concern that the Proposing Release implied that misleading marketing practices are common in RILA advertising. See CAI Comment Letter. We did not intend to express, and are not expressing, a view about the prevalence of misleading marketing practices in RILA advertising. This commenter also suggested that it is noteworthy that most RILA advertisements are submitted for review to the Financial Industry Regulatory Authority even though there is currently no legal requirement to do so. We discuss this in more detail below. See *infra* Section II.G.2.

⁶³⁷ See Better Markets Comment Letter.

⁶³⁸ See *id.* (citing 2023 N.Y. Times article discussing the fact that investors often face aggressive sales pitches on annuities with opaque terms and hefty commissions that give brokers incentives to sell annuities that pay them the most).

Some commenters also expressed concerns about the potential for confusion about other RILA features.⁶³⁹ One of these commenters stated that RILAs are inherently misleading products and urged the Commission to do more to protect investors with regard to certain confusing RILA features.⁶⁴⁰ For example, some commenters stated that claims that RILAs have no ongoing fees are misleading because investors will sometimes incur fees even if they hold the investment past the surrender charge period.⁶⁴¹ These commenters urged that we require disclosure of such fees and charges even if they are hard to quantify. These commenters also stated that there was the potential for investor confusion because RILA returns are based on a price return index instead of a total return index, suggesting that insurance companies need to explain the difference and specify which return is applicable to the RILA so that investors can understand the difference between investing in an index fund (which might be subject to explicit ongoing fees, but in which investors receive a total return, including dividends) and a RILA based on a price return index (whose return would be less than that of an index fund that includes a total return).

One commenter also expressed concerns about representations concerning tax deferral and death benefits in RILA advertisements.⁶⁴² For example, this commenter suggested that the term "death benefit" is misleading because these features are just a return on an investment (like that provided by mutual funds, stocks, and bonds), and further, unlike other comparable investments, death benefits are fully taxed at ordinary income rates. Similarly, this commenter expressed a concern that annuity advertisements frequently exaggerate the benefits of tax deferral by providing charts and examples that rely on unreasonable assumptions (such as comparing the tax-deferred value of an annuity to the value of a taxable account without reflecting an investor's inability to access her investment from a tax-deferred account without paying taxes). Finally, this commenter also expressed concern regarding the discretion of an insurance company to change key terms, such as minimum rates. This commenter suggested that this discretion was particularly concerning because, unlike

⁶³⁹ See Johnson Comment Letter; Lee Comment Letter.

⁶⁴⁰ See Lee Comment Letter.

⁶⁴¹ See Johnson Comment Letter; Lee Comment Letter.

⁶⁴² See Johnson Comment Letter.

most other investments where the issuer is a fiduciary (such as funds or equity investments), RILA issuers have no duty to act in the investor's interest when acting unilaterally to alter the product by setting or changing rates.

This same commenter stated that focusing on RILA marketing practices is important because investors may not read an entire prospectus and thus may rely on marketing materials for information about a RILA's complex features. This commenter, however, suggested that RILA issuers should be permitted (or even required) to produce fair presentations of performance, which the commenter believed would allow investors to see how RILAs operate under real market conditions. This commenter agreed that providing fair representations of RILA performance is difficult because the rates offered by insurance companies are constantly changing but suggested that RILA performance presentations could be required to use average cap rates over a calendar year, while prohibiting those presentations from using back-tested index performance or performance of the RILA prior to the product's launch. As described above, rule 156 is an interpretive rule that provides factors to weigh in considering whether, in the specific context of sales literature, a statement involving a material fact is or might be misleading for purposes of the Federal securities laws. Because rule 156 does not prohibit or permit any particular representations or presentation, we disagree with the commenter's suggestion that we impose a requirement under rule 156 regarding the use of cap rates in providing representations as to historical RILA performance.

After considering these comments, we are adopting the amendments to rule 156 as proposed, with the added application to registered MVA annuities. As discussed below, these amendments address commenter concerns about potentially misleading statements in RILA sales literature by providing insurance companies with guidance about the contextual analysis to use in determining whether a particular representation in non-variable annuity advertising could be materially misleading.

For example, as stated above, commenters expressed concern about the potential for investors to be misled in connection with representations in RILA marketing materials about a lack of ongoing fees. Final rule 156(b)(4) provides that representations about fees or expenses associated with an investment in a non-variable 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 non-variable annuity omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading.” While non-variable annuity investors are not typically charged direct ongoing fees or expenses, RILAs do typically limit an investor’s ability to participate in upside performance, and non-variable annuities with contract adjustments (including registered MVA annuities) can impose implicit costs upon highlighted features such as guaranteed benefits.⁶⁴³ Thus, in the context of non-variable annuity sales literature, under this provision of rule 156, consideration should be given about whether representations or portrayals either of a non-variable annuity’s costs or charges (e.g., advertising implying that a RILA has 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 non-variable annuity.

Similarly, final rule 156(b)(1)(ii)’s extension to non-variable annuity sales literature also addresses some of the commenter concerns we received regarding RILA features that, when described in marketing materials, may require additional context to ensure they are not misleading. Final rule 156(b)(1)(ii) provides that a statement in non-variable annuity sales literature could be misleading because of “[t]he absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading.” Whether a given explanation, qualification, or limitation is necessary or appropriate to make statements in sales literature not misleading will depend on the facts and

circumstances in each case. The examples that follow are areas where an insurance company should consider the need for further explanation, qualifications, or limitations, but are not intended to suggest that that further explanation, qualifications, or limitations are necessary in each case in order to make the examples not misleading.

For example, where a RILA advertisement includes statements regarding index returns, under this provision, consideration should be given as to whether the insurance company needs to explain the difference between a price return index and a total return index, including how that difference can affect an investor’s returns, or if an advertisement describes a RILA as a growth product, whether qualification of the statement is necessary in light of relevant RILA features, such as the existence and extent of any limitations on upside index performance.

If RILA sales literature discuss 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. For instance, if sales literature advertises a particular feature of a RILA’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, under the rule consideration should be given regarding whether the statement could be misleading without providing additional context as to the insurer’s discretion.

Additionally, under these provisions of final rule 156, insurance companies should also consider whether representations that highlight downside protections of a RILA (e.g., describing the RILA as a loss avoidance vehicle) could also be misleading without qualifying explanations or statements, including the context of the cost or limitation of those protections (e.g., upside limitations). Insurance companies should further consider whether the same analysis would apply to representations that accentuate the benefits of 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 do not explain that the insurance company has reserved the right to change or remove key features of the contract.

Lastly, final 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 non-variable annuity advertising, under this provision, consideration should be given to whether illustrations about the operation of a non-variable annuity or its features could be misleading. This could be the case in a RILA advertisement because, for example, it uses 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.

Similarly in the case of RILA and registered MVA annuity advertising, with regard to the commenter concern regarding the potential for statements that exaggerate the benefits of tax deferral, under final rule 156(b)(2)(i) consideration should be given to whether portrayals of the tax-deferred value of the annuity, especially where this value is compared to the value of a taxable account, should reflect the advantages of taxable accounts (e.g., discussing, if applicable, whether a taxable account would be taxed at lower capital gains rates).⁶⁴⁴ Likewise, given the frequency with which RILA terms can change and the sensitivity of a RILA’s returns to the particularized choices made by individual investors,⁶⁴⁵ including the historical performance of a RILA or any particular index-linked option itself in an advertisement may be inconsistent with amended rule 156’s guidance.⁶⁴⁶

⁶⁴⁴ See Johnson Comment Letter.

⁶⁴⁵ Registered MVA annuity advertisements do not raise the same concerns, as investor returns in a registered MVA are not subject to the same range of particularized investor choices, but are instead based on a particular fixed rate that is periodically reset by the insurance company.

⁶⁴⁶ Because the terms of a RILA investment, such as limits on gains, change frequently, past performance is often 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

⁶⁴³ Insurance companies may apply a contract adjustment to an investor’s 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, e.g., Dodie Kent and Ronald Coenen, Jr., *The Design and Regulatory Framework of Registered Index-Linked Annuities*, ALI CLE Conference on Life Insurance Products 2023 (“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.”).

Further, including historical index performance in an advertisement also would be misleading 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 solely to illustrate how a RILA works, and *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 final rule 156, assuming those advertisements otherwise include appropriate caveats to ensure that the illustrations are not misleading and do not suggest that the illustrations show the performance of the RILA or a particular index-linked option.

2. Free Writing Prospectuses and Advertisements (Rules 433 and 482)

In addition to the prohibition against using materially misleading communications in connection with the offer or sale of any security, Congress has imposed advertising restrictions to the extent that certain advertisements are considered prospectuses under the Securities Act.⁶⁴⁷ The Commission has stated that Congress imposed these restrictions so that investors base their investment decisions on the full disclosures contained in the *statutory* prospectus, which is intended to be the primary selling document.⁶⁴⁸ However, these advertising restrictions require special considerations for many investment companies. Specifically, investment companies are uniquely situated in that the only “product” of the typical investment company is its shares, and “because it is in continuous registration, any advertisement for such

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. *See* Proposing Release at n.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.

⁶⁴⁷ *See, e.g.*, section 2(a)(10) of the Securities Act (defining prospectus); section 5(b)(1) of the Securities Act (prohibiting the use of any means or instruments of transportation to carry or transmit any prospectus relating to any security with respect to which a registration statement under the Securities Act has been filed unless such prospectus meets the requirements of section 10 of the Securities Act); section 10 of the Securities Act (stating information required in prospectus).

⁶⁴⁸ *See, e.g.*, Advertising by Investment Companies, Investment Company Act Release No. 9811 (June 8, 1977) [42 FR30378 (June 14, 1977)] (“Investment Company Advertising Rules Proposing Release”); Amendments to Investment Company Advertising Rules, Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)] (“482 Amendment Adopting Release”).

a company is a prospectus that is illegal unless it complies with statutory requirements.”⁶⁴⁹ Because of these restrictions, investors were unable to learn about the investment company itself, as they would about other companies, “from advertisements of its products or policies or from widely disseminated annual reports to shareholders or similar publications.”⁶⁵⁰ In recognition of these problems, the Commission adopted specialized advertising rules for registered investment companies and business development companies (collectively “funds”), including rule 482, which permits funds to provide advertisements and sales literature to investors without being accompanied or preceded by a statutory prospectus (“prospectus delivery requirements”) by treating such advertisements as prospectuses under section 10(b) of the Securities Act.⁶⁵¹ Accordingly, a rule 482 advertisement is a prospectus for purposes of potential civil liability under section 12(a)(2) of the Securities Act.⁶⁵² Currently, rule 482 is only available to funds, which are substantively regulated under the Investment Company Act. These substantive regulations provide a range of direct and indirect investor protections by, for example, regulating fund structure, holdings and operations, and reducing fund complexity and helping ensure that fund fees are reasonable in relation to services

⁶⁴⁹ *See* Investment Company Advertising Rules Proposing Release.

⁶⁵⁰ *Id.* (stating that these concerns put investment companies on a different footing than insurance companies, “since institutions such as . . . insurance companies which compete with investment companies for investor interest are not subject to the same limitations on their advertising as are investment companies,” such that, absent rule 482's provisions, those limitations could restrict the availability to investors of information about all relevant investment possibilities).

⁶⁵¹ Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)]. When the investment company advertising rule was first adopted, it applied to advertisements of any registered investment company (including closed-end funds) so long as the investment company was engaged in a continuous offering, *i.e.*, “is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act.” *See* Advertising by Investment Companies, Investment Company Act Release No. 10852 (Aug. 31, 1979) [44 FR 52816 (Sep. 10, 1979)] (“1979 Adopting Release”). The rule was subsequently revised to include business development companies and omit the requirement that the investment company be engaged in a continuous offering. *See* Adoption of Integrated Disclosure System, Investment Company Act Release No. 12264 (Mar. 3, 1982) [47 FR 11380 (March 16, 1982)].

⁶⁵² *See* Investment Company Advertising Rules Proposing Release (citing 15 U.S.C. 771(2)).

rendered.⁶⁵³ Insurance companies offering non-variable annuities, like other non-fund issuers, are not subject to these requirements under the Investment Company Act.

Rule 482 also requires enhanced disclosures in fund advertisements designed to convey balanced information to prospective investors, including standardized methodologies that certain funds must use if they wish to include performance data in their advertisements.⁶⁵⁴ These advertisements also generally are filed with the Financial Industry Regulatory Authority (“FINRA”), which has adopted rules providing standards for the fund advertising practices of its members and established and implemented procedures to review that advertising.⁶⁵⁵ FINRA does not currently have rules that expressly require similar standards for non-variable annuities. As they are offered by registered investment companies, variable annuity advertisements are currently subject to rule 482, including the requirement to provide standardized performance information to the extent that they are providing performance data in their advertisements.⁶⁵⁶

Further, Congress expressly directed the Commission to adopt rules that permit registered investment companies to use prospectuses that include information the substance of which is not included in the statutory prospectus, and that are deemed to be

⁶⁵³ *See, e.g.*, section 12(d) of the Investment Company Act (restricting the ability of registered investment companies to invest in the securities of other investment companies); section 15(c) of the Investment Company Act (requiring directors to request and evaluate information reasonably necessary to evaluate the terms of advisory contracts); and section 26(f) of the Investment Company Act (imposing reasonableness requirements regarding the fees and charges that may be imposed in connection with variable annuity separate accounts).

⁶⁵⁴ In addition to standardized performance requirements, rule 482 also mandates certain disclosures and generally prohibits rule 482 advertisements from being accompanied by an application for investment in the investment company. *See, e.g.*, rule 482(b) and (c).

⁶⁵⁵ Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] requires the filing with the Commission of “any advertisement, pamphlet, circular, form letter, or other sales literature” for any registered investment company other than a closed-end fund. 17 CFR 270.24b–3 (“rule 24b–3”) relieves such funds of the obligation under the Investment Company Act to file advertisements and other sales materials with the Commission if those materials are filed with a national securities association (such as FINRA) registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising; *see also* FINRA Rule 2210.

⁶⁵⁶ Rule 482(d).

permitted by section 10(b) of the Securities Act.⁶⁵⁷ Thus, rule 482 was amended in 2003 to permit investment company sales literature that includes information not included in the statutory prospectus.⁶⁵⁸ Congress has not provided a similar direction for issuers other than registered investment companies. However, the Commission has used its exemptive authority to permit the use of prospectuses that include information the substance of which is not included in the statutory prospectus for issuers that are not investment companies if the free writing prospectus meets the requirements of rules 433 and 17 CFR 230.164 (“rule 164”).⁶⁵⁹ In addition to permitting free writing prospectuses that include information the substance of which is not in the statutory prospectus, rule 433 also permits seasoned issuers, that is, issuers of offerings registered on Form S-3, and other select issuers to use a free writing prospectus that is not subject to the prospectus delivery requirements, much like rule 482 permits for fund sales literature.⁶⁶⁰ We stated in the Proposing Release that, under the proposal, the ability of RILA sales literature to be treated as “free writing prospectuses” would continue to be subject to rule 433 and rule 164, as well as any other applicable rule that permits a communication notwithstanding the “gun jumping” provisions of the Securities Act.⁶⁶¹

As explained in the Proposing Release, we determined extending rule 482 to RILA issuers was not warranted currently. This conclusion largely followed from our understanding that the rule’s emphasis on providing standardized performance data requirements would be conceptually difficult to apply to RILAs and inconsistent with current RILA advertising practices.⁶⁶² However, we

sought comment on these questions and acknowledged that circumstances might change in the future.

Several commenters suggested that we amend rule 482 to extend its provisions to RILAs despite the concerns discussed in the Proposing Release.⁶⁶³ Some of these commenters suggested that an extension of rule 482 to RILAs would remedy what they view as an improper dichotomy under the current rule 433 framework that impedes the ability of some insurance companies to engage in broad-based advertising for RILA offerings.⁶⁶⁴ Specifically, these commenters stated that this framework often makes it practically impossible to do broad-based advertising (such as television commercials) for RILA offerings registered on Form S-1 due to the application of the prospectus delivery requirements to those advertisements.⁶⁶⁵ Conversely, non-variable annuity offerings registered on Form S-3, or variable annuity options that can use rule 482, can be broadly advertised in print and on television because they are not subject to the prospectus delivery requirements. These commenters expressed the view that the purposes underlying this different treatment under rule 433 of seasoned issuers and well-known seasoned issuers (who can file on Form S-3) as compared to the treatment of non-reporting and unseasoned issuers (who must file on Form S-1) are not relevant to RILA offerings or the ability of a RILA investor to contextualize RILA advertisements.⁶⁶⁶

Thus, according to these commenters, amending rule 482 to include RILAs would bring regulatory uniformity both between RILAs whose offerings have, until this rulemaking, been registered on different forms (*i.e.*, Forms S-1 and S-3), and between RILAs and variable annuity options, and therefore reduce the burdens and risks that insurance companies face in applying the different advertising frameworks to their

insurance offerings.⁶⁶⁷ Some commenters suggested that not extending rule 482 to include RILAs would essentially result in a regulatory preference for variable annuity contracts over RILAs by perpetuating prospectus delivery requirements for some RILA issuers that do not apply to registered variable annuity contracts by virtue of their ability to rely on rule 482.⁶⁶⁸ Additionally, one commenter suggested that, in addition to being consistent with the Commission’s approach to revising Form N-4, expanding rule 482 to include RILAs would be consistent with congressional intent and that investors would benefit from standardizing the regulation of advertising and sales literature across RILA and variable annuity products.⁶⁶⁹

While some commenters acknowledged our concerns about the inapplicability of rule 482’s standardized performance provisions to RILAs, they suggested that these concerns could be addressed either by excluding RILAs from those provisions, or subjecting the ability of RILA advertisements to use rule 482 to a condition that they not contain historical performance data for the RILA or any particular index-linked option.⁶⁷⁰ Commenters stated that the mere absence of standard performance rules for RILAs should not be a bar to amending rule 482, with one commenter observing that closed-end funds may advertise using rule 482 even though standard performance rules do not exist for those investments.⁶⁷¹ Commenters also suggested that the Commission could exercise regulatory oversight of RILA advertisements by conditioning their ability to use rule 482 on review by FINRA or, in the alternative, review by the Commission.⁶⁷² One commenter suggested that, in addition to such regulatory review, the ability of RILA advertisements to use rule 482 could be conditioned upon other criteria, such as performance principles that ensure that performance presentations are not misleading, or requiring that RILAs

⁶⁵⁷ 15 U.S.C. 80a–24(g); *see also* National Securities Markets Improvement Act of 1996, Public Law 104–290, Section 204.

⁶⁵⁸ *See* 482 Amendment Adopting Release at Section II.A.

⁶⁵⁹ *See* Securities Offering Reform, Securities Act Release No. 8591 (Jul. 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (“Securities Offering Reform”) at Section III.D.3.b.iii(C)(2)(a). Rule 164 generally permits the use of a free writing prospectus where an eligible user has filed a registration statement, the other requirements of rule 164 are met, and the conditions of rule 433 are satisfied. *See id.* at n.212 and accompanying text.

⁶⁶⁰ RILAs registered on Form S-1 are subject to prospectus delivery requirements when using free writing prospectuses pursuant to current rule 433.

⁶⁶¹ *See* Proposing Release at n.356.

⁶⁶² *See* Proposing Release n.356 and accompanying text (noting that while variable annuity marketing materials frequently utilize standardized performance returns, this is not the case with RILA advertisements, which 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).

⁶⁶³ *See* CAI Comment Letter; ACLI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter.

⁶⁶⁴ *See* CAI Comment Letter; Gainbridge Comment Letter; ACLI Comment Letter.

⁶⁶⁵ These considerations also apply to communications regarding registered MVA annuities.

⁶⁶⁶ One of these commenters suggested that offerings of other registered annuity and life insurance products, including registered MVA annuities, may be similarly situated to RILAs. *See* CAI Comment Letter.

⁶⁶⁷ *See* CAI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter; IRI Comment Letter.

⁶⁶⁸ *See* ACLI Comment Letter; Gainbridge Comment Letter.

⁶⁶⁹ *See* Gainbridge Comment Letter.

⁶⁷⁰ *See* CAI Comment Letter (stating that the Proposing Release correctly noted that RILA issuers do not utilize such performance metrics in RILA advertisements, so this condition would not be a substantive departure from existing practice); IRI Comment Letter; Gainbridge Comment Letter.

⁶⁷¹ *See* CAI Comment Letter; ACLI Comment Letter; VIP Working Group Comment Letter.

⁶⁷² *See* CAI Comment Letter; Gainbridge Comment Letter; VIP Working Group Comment Letter.

meet certain standards applicable to variable annuity products, such as a requirement that rates and fees be reasonable in relationship to the services rendered and risks assumed under the contract.⁶⁷³

A number of these commenters suggested that if the Commission were unwilling to amend rule 482 to include RILA sales literature, in the alternative, we should amend rule 433 to allow all RILAs to use free writing prospectuses without meeting the prospectus delivery requirements in order to make such requirements consistent for all RILA issuers without regard to their seasoned status.⁶⁷⁴ One commenter stated that, at a minimum, the Commission would need to amend rule 433 in order to maintain the status quo by explicitly exempting RILA offerings that are registered on Form N-4 by issuers who file reports pursuant to section 15(d) of the Exchange Act from the prospectus delivery requirements.⁶⁷⁵ Absent such an amendment, the rulemaking would have the effect of imposing new, universal prospectus delivery requirements in connection with RILA marketing materials, even for RILA issuers that would otherwise be eligible to rely on rule 433 by virtue of registering on Form S-3. This commenter suggested that changing the status quo in this way would be unduly restrictive and inconsistent with our approach to other securities offerings.

Consistent with the proposal, we have determined not to extend rule 482 to RILA issuers at this time. As discussed, commenters raised broader concerns about the impact of the prospectus delivery requirements in rule 433 and how they may operate to impede the ability of some insurance companies to engage in broad-based advertising for RILA offerings. Commenter suggestions that we amend rule 482 to include RILA advertising (so that *all* insurance companies would be permitted the ability to provide RILA sales literature to investors without being accompanied or preceded by a summary or statutory prospectus), subject to certain conditions, would benefit from further consideration, and the Commission

invites further engagement on these issues.⁶⁷⁶ Factors to consider in any future proposal regarding amendments to rule 482 would include the nature and scope of any applicable conditions, the benefits of any such potential conditional expansion of rule 482, and the potential risk of misleading investors.

In response to commenters, however, we are, in a modification from the proposal, making a technical amendment to rule 433 in order to maintain the status quo for insurance companies that can meet that rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without meeting the prospectus delivery requirements, notwithstanding their use of Form N-4 going forward.⁶⁷⁷ It would not be appropriate to subject non-variable annuity offerings to a categorically different regulatory treatment than offerings of other seasoned issuers or to deprive those insurance companies that are considered seasoned issuers of the ability to rely on the provisions of rule 433 to use a free writing prospectus without complying with the prospectus delivery requirements.⁶⁷⁸ It is therefore necessary and appropriate in the public interest and for the protection of investors to amend rule 433 to provide that an insurance company may use a free writing prospectus without needing to meet the prospectus delivery requirements with respect to those non-variable annuity offerings registered on Form N-4 where the issuer would otherwise be eligible to use Form S-3 pursuant to that form's General Instructions I.B.1, I.B.2, I.C, or I.D.⁶⁷⁹ Consistent with the current requirements applicable to these non-variable annuity offerings, these free writing prospectuses can be used after a registration statement has been filed and may also include information the

substance of which is not included in the registration statement.⁶⁸⁰

H. Existing Commission Letters

Certain Commission letters, or portions thereof, providing 3-13 Exemptions in connection with the registration of an offering of RILAs and registered MVA annuities on Form S-1 will be withdrawn or rescinded in light of the change to permit RILAs and registered MVA annuities to provide SAP financial statements on final Form N-4 in the same way that other insurance companies offering variable annuities are permitted on current Form N-4. On the compliance date of the final amendments, some letters, or portions thereof, will be moot, superseded, or otherwise inconsistent with the final amendments and, therefore, will be withdrawn or rescinded.

Commenters generally supported or stated that they did not oppose withdrawing or rescinding these 3-13 Exemptions.⁶⁸¹ Some commenters agreed that the 3-13 Exemptions extended to RILAs would no longer be needed in light of the change to permit RILAs to register on Form N-4 and provide SAP financial statements in the same way that Form N-4 currently permits other insurance companies registering variable annuities to provide financial statements.⁶⁸² One of these commenters agreed with a statement in the Proposing Release that the 3-13 Exemptions previously granted to registered MVA annuities would be withdrawn or rescinded to the extent that offerings of those securities are permitted to be registered on Form N-4.⁶⁸³ Another commenter stated that these 3-13 Exemptions should not be withdrawn or rescinded until after the final compliance date.⁶⁸⁴ As proposed, the exemptions provided in the letters outlined below will not be rescinded or withdrawn until the compliance date.

We are not withdrawing or rescinding 3-13 Exemptions, or portions thereof, providing exemptions from the GAAP financial statement requirements with respect to annuity products other than RILAs and registered MVA annuities. With respect to RILAs, this is consistent

⁶⁷⁶ See *supra* footnotes 670-673 and accompanying text.

⁶⁷⁷ Additionally, to the extent an insurance company otherwise meets the requirements of a well-known seasoned issuer under rule 405, that issuer would be able to rely on rule 422(b)(1)(iii) in connection with an offering of non-variable annuities, notwithstanding its registration of the offering on Form N-4.

⁶⁷⁸ While commenters only specifically raised this issue with respect to RILAs, by moving registered MVA annuities to Form N-4 as well, applying this change to registered MVA annuity offerings is necessary to preserve their ability to communicate under rule 433 for the same reason the change is necessary for RILA communications.

⁶⁷⁹ See section 10(b) of the Securities Act and final rule 433(b)(1)(v). We also are amending paragraphs (b)(1)(i) and (ii) of the rule to correct citations to Form S-3 and Form F-3.

⁶⁸⁰ See final rule 433(a) and (b).

⁶⁸¹ See CAI Comment Letter; IRI Comment Letter; VIP Working Group Comment Letter.

⁶⁸² CAI Comment Letter; IRI Comment Letter.

⁶⁸³ CAI Comment Letter. See also Proposing Release at Section II.G and n.363 (stating that "if [insurance companies were required to use Form N-4 for registered MVAs], 3-13 Exemptions provided in connection with registered MVAs would be withdrawn or rescinded for the reasons discussed in" Section II.G of the Proposing Release).

⁶⁸⁴ VIP Working Group Comment Letter.

⁶⁷³ See VIP Working Group Comment Letter. Congress has expressly prohibited the sale of any variable annuity contract unless the fees and charges deducted under the contract, 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. Congress further requires that insurance companies represent this in a variable annuity contract's registration statement. 15 U.S.C. 80a-26(f)(2)(A). These provisions do not apply to RILAs.

⁶⁷⁴ See CAI Comment Letter; ACLI Comment Letter; Gainbridge Comment Letter.

⁶⁷⁵ See CAI Comment Letter.

with the proposal.⁶⁸⁵ Commenters agreed with this approach.⁶⁸⁶

On the compliance date of the final amendments, 3–13 Exemptions that will be withdrawn or rescinded include all

of the 3–13 Exemptions listed below to the extent they relate to RILAs and registered MVA annuities.

TABLE 9—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
MONEY Life Insurance Company of America	3/7/2019
Lincoln Benefit Life Company	3/15/2019
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
Wilton Reassurance Life Company of New York	9/30/2021
Union Security Insurance Company	1/11/2022
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
Brighthouse Life Insurance Company of New York	9/21/2023
Jackson National Life Insurance Company and Jackson National Life Insurance Company of New York	9/26/2023
Eagle Life Insurance Company	9/29/2023
Pacific Life Insurance Company and Pacific Life & Annuity Company	3/1/2024
American General Life Insurance Company, The Variable Annuity Life Insurance Company, and The United States Life Insurance Company in the City of New York	5/28/2024

I. Technical Amendments to Forms N–3 and N–6

The Commission is adopting as proposed 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”).⁶⁸⁷ 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).⁶⁸⁸ The Commission received no comments on the proposed

technical amendments. The final amendments 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 adopting a technical amendment to Item 30 of Form N–6 to correctly reflect the placement of the amendment that the Commission adopted in the Exempt Offering Framework Adopting Release in this item instead of in Item 26.

In addition, we are adopting technical amendments to the definition of “Summary Prospectus” in Forms N–3 and N–6 to reflect the lack of subparagraphs in rule 498A(a). When these definitions were originally adopted, they inadvertently referred to subparagraphs that did not appear in rule 498A(a).⁶⁸⁹

J. Effective and Compliance Dates

The effective date for all rules and forms associated with the final amendments is September 23, 2024, which is 60 days from the date of publication of the final amendments in the **Federal Register**. As discussed in

more detail below, the compliance date for the final amendments will be May 1, 2026, except with respect to rule 156 and the technical amendments to Forms N–3 and N–6. We are not providing a compliance period for rule 156 and the technical amendments to Forms N–3 and N–6 and compliance will therefore be required on the effective date.

We proposed a six-month delayed effective date for all amendments except for the final Form N–4, amended rule 498A, and technical amendments to Form N–6 which we did not propose to delay. Commenters generally supported or did not oppose the proposed effective date for final Form N–4, final rule 498A, or the technical amendment to Form N–6 and agreed that this approach was consistent with the RILA Act.⁶⁹⁰ However, comments on the proposed 6-month delayed effective date for the remaining amendments were mixed. One commenter opposed delaying the effectiveness of the rule 485 amendments for six months.⁶⁹¹ This commenter stated that the rule 485 amendments should be effective before the calendar year-end of 2024 so that insurance companies could file under

⁶⁸⁵ See Proposing Release at n.357.

⁶⁸⁶ CAI Comment Letter; IRI Comment Letter.

⁶⁸⁷ 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)].

⁶⁸⁸ See Exempt Offering Framework Adopting Release at amendatory instructions 50 and 51; see also VASP Adopting Release at Section II.C.4 (Table 6).

⁶⁸⁹ See final rule 498A(a); see also VASP Adopting Release in the Text of Rule and Form Amendments. These amendments are ministerial,

do not make any substantive modifications, and do not impose any new substantive recordkeeping or information collection requirements.

⁶⁹⁰ See, e.g., CAI Comment Letter; IRI Comment Letter.

⁶⁹¹ See VIP Working Group Comment Letter.

rule 485(a) ahead of their May 1, 2025 annual update. We also received a number of comments requesting that we clarify the practical effect of having two effective dates.⁶⁹² For example, one commenter asked whether final rules implementing the final Form N-4 framework and subject to the six-month delayed effective date (e.g., final rules 415, 485, 497) would nevertheless apply on the effective date to RILAs registered on Form N-4.⁶⁹³ Specifically, this commenter asked whether, as of the effective date, RILAs registered on the final Form N-4 would be required to pay registration fees in arrears consistent with final rule 456 and final Form 24F-2, file post-effective amendments and supplements consistent with final rules 485 and 497; and be exempt from three-year refreshes consistent with final rule 415.

We reasoned in the proposing release that the six-month delayed effective date for certain amendments would provide the Commission with the necessary time to prepare the EDGAR system to accommodate transitioning RILA offerings onto the proposed framework. After further consideration and preparation, we have determined that the EDGAR system will be ready to accommodate the transition as of the effective date and an additional 6-month delayed effective date for certain amendments will be unnecessary. A single effective date for all of the amendments adopted in this release will provide filers with a simpler timeline that reduces confusion about the logistics of filing.

We proposed a compliance date of one year after publication of the final amendments in the **Federal Register**.⁶⁹⁴ All initial registration statements and post-effective amendments that were annual updates to effective registration statements on Form N-4 and filed after the proposed compliance date under the proposal would have been required to comply with the amendments. We also proposed that RILAs that had previously registered offerings of securities on Form S-1 or Form S-3 would file a post-effective amendment to their registration statement pursuant to rule 485(a) at the time of their next annual update following the compliance date, using final Form N-4.⁶⁹⁵

Commenters generally supported the proposed timeline or supported the proposed timeline except as applied to certain amendments. In particular, one commenter stated that the compliance date would allow sufficient time for all insurers to prepare for compliance with the final amendments, but urged the Commission to modify the approach to better accommodate insurance companies currently registering RILA offerings on Form S-3.⁶⁹⁶ The Commission proposed that compliance would be required in the first annual update after the compliance date but, because an annual report on Form 10-K operates as an annual update to a registration statement filed on Form S-3 and must be filed before an annual update to a registration statement on Form S-1, the commenter asserted that this approach would unfairly result in a shorter compliance period than that of a Form S-1 registrant (on or before December 31, 2025 and May 1, 2026, respectively). The commenter suggested that we should not consider these Form 10-Ks annual updates for purposes of complying with the final amendments.

We agree that RILA filers should not have different compliance periods based on whether they currently file on Form S-1 or S-3 and did not intend to provide different compliance periods based on the Securities Act form an insurance company is currently using. We therefore are providing a compliance date of May 1, 2026 rather than an approach based on the timing of an insurance company's annual update. Accordingly, all issuers of non-variable annuities that have previously registered offerings of securities on Forms S-1 or Form S-3 will be required to file a post-effective amendment to their registration statement pursuant to final rule 485(a) that will be effective on or before May 1, 2026, using final Form N-4.⁶⁹⁷ Similarly, all initial registration

statements and post-effective amendments filed on Form N-4 and effective on or after May 1, 2026 will be required to comply with the final amendments. This compliance period is designed to give all insurance companies sufficient time to comply with the proposed changes, including to update their registration statements; to prepare to use final rules 485 and 497 to update their registration statements and file prospectuses with the Commission; and to begin paying securities registration fees on final Form 24F-2. Nonetheless, issuers of non-variable annuities may choose to file on Form N-4 as early as the effective date (and will thereafter be required to comply with the final amendments).

The Proposing Release stated that, in appropriate circumstances, we would consider requests by registrants with respect to existing variable annuity contracts to file post-effective amendments pursuant to rule 485(b)(1)(vii) when these post-effective amendments make conforming changes to comply with the proposed amendments to Form N-4.⁶⁹⁸ One commenter requested that we allow certain insurance companies, on a case-by-case basis, to forgo filing a rule 485(a) post-effective amendment entirely for insurance companies' stand-alone variable annuities on the grounds that the changes necessary to comply with the proposal may not be substantive.⁶⁹⁹ After consideration of the final amendments to Form N-4, we have concluded it would be appropriate for registrants of existing variable annuity contracts that are not combination contracts that offer indexed options or MVA options to file post-effective amendments pursuant to rule 485(b) to make conforming changes

purposes and is not an official filing) 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) followed by a 485APOS or 485BPOS in EDGAR.

⁶⁹⁸ Proposing Release at text accompanying n.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).

⁶⁹⁹ See CAI Comment Letter.

⁶⁹² See CAI Comment Letter; VIP Working Group Comment Letter.

⁶⁹³ See CAI Comment Letter.

⁶⁹⁴ This compliance period would have applied for all of the amendments in the Proposing Release other than the technical amendment to Form N-6 discussed in Section II.I.

⁶⁹⁵ See Proposing Release at n.372 and accompanying text.

⁶⁹⁶ See CAI Comment Letter.

⁶⁹⁷ 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. Insurance companies registering offerings of non-variable annuities generally should be able to rely on template filing relief, in which case they will not need to file a rule 485(a) filing for each non-variable annuity. See 485(b)(1)(vii). Insurance companies with currently-registered non-variable annuities that only issue non-variable annuities and will be using the same CIK will 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. Insurance companies that will be acquiring new CIKs for their non-variable annuity offerings will need to transition by filing an administrative Form N-4 submission (which is only used for EDGAR

to comply with the amendments to Form N-4.

Commenters were mixed regarding our proposed approach of not having a separate Inline XBRL compliance period. One commenter supported the proposed approach, stating that service providers are accustomed to Inline XBRL requirements and will be able to transition RILAs within our proposed compliance period.⁷⁰⁰ Another commenter opposed having the same compliance period for the Inline XBRL requirements and the other final amendments, stating that RILA issuers without variable products will not be familiar with Inline XBRL.⁷⁰¹

We are not creating a separate, longer compliance period for filers to comply with the Inline XBRL requirements because we have determined that compliance by May 1, 2026 is feasible. Insurance companies already have experience with Inline XBRL tagging. In this regard, 22 of the 23 insurers that issue RILAs also offer products that are subject to tagging requirements on Forms N-3, N-4, or N-6 or otherwise have experience tagging registration statements.⁷⁰² Further, although we permitted a phased-in compliance date for Inline XBRL tagging in connection with the variable product summary prospectus rulemaking, we reasoned in that rulemaking that we could collect better data as a result because we could observe the new disclosures and create better taxonomies prior to the end of the XBRL compliance period, which in turn could lead to more accurate tagging and increased comparability of tagged disclosures.⁷⁰³ The benefit of additional time is reduced in this rulemaking because we already update and release our taxonomies annually, which allows us to address any concerns about the quality of the tagged data we receive. In light of insurers' existing experience with tagging registration statements and our ability to update taxonomies, any increase in data quality gained from extending the Inline XBRL compliance period to May 2027 would be marginal compared to the impact on investors and the Commission from not having tagged data until 2027—specifically, reduced comparability, data aggregation, and a general ability to synthesize and consume non-variable annuity disclosures.

One commenter stated that registration on Form N-4 should be

optional for registered MVA annuity offerings that no longer involve the issuance of new contracts (*i.e.*, closed blocks).⁷⁰⁴ In the alternative, if such “closed block” registered MVA annuities were required to register on Form N-4, this commenter stated that the compliance period should be extended from 12 months to 24 months. As we discussed above, we are requiring all registered MVA annuities to register on Form N-4.⁷⁰⁵ Providing a single compliance date of May 1, 2026, however, provides a similar period of time to the commenter's suggestion.

One commenter asked that we clarify whether a registrant can choose to comply with only a portion of final Form N-4 prior to the end of the compliance period.⁷⁰⁶ For an insurance company that continues to use either Form S-1 or Form S-3 for non-variable annuity offerings prior to the compliance date, the requirements of those forms and associated rules will continue to apply until the insurance company begins using Form N-4. An insurance company that uses Form N-4 for non-variable annuity offerings must comply with all of the requirements of final Form N-4 and associated rules, including, for example, filing fees on Form 24F-2, after the effective date, provided that the insurance company is not required to comply with Inline XBRL tagging requirements until the compliance date. The Commission has taken a similar approach in other contexts with respect to early compliance by issuers.⁷⁰⁷

In a change from the proposal, we are not providing a compliance period for the amendments to rule 156 after the amended rule is effective.⁷⁰⁸ The rule is designed to protect investors by addressing practices that could lead to materially misleading sales literature in connection with the offer or sale of a security, and historically the Commission has not provided a transition period to comply with amendments to this rule in light of investor protection concerns associated with the dissemination of materially misleading sales literature.⁷⁰⁹ Further,

we understand that a number of insurance companies already comply with rule 156 with respect to their offerings of non-variable annuities and so compliance with the rule should not impose significant additional burdens.⁷¹⁰ We are also not providing an additional compliance period for technical amendments to Forms N-3 and N-6, as these amendments entail no compliance burden.

We appreciate that these amendments will result in changes in practices for insurance companies, both in updating disclosures and in registering contract offerings. The final amendments also could result in insurance companies reviewing their sales literature in light of the final amendments to rule 156. In considering these changes, insurance companies are encouraged to contact the Commission staff with any questions they may have about these issues.

III. Other Matters

Pursuant to the Congressional Review Act,⁷¹¹ the Office of Information and Regulatory Affairs has designated the final amendments as a “major rule” as defined by 5 U.S.C. 804(2). If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

IV. 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

Tailored Shareholder Reports Adopting Release at Section II.J.

⁷¹⁰ At all times the Federal securities laws prohibit materially misleading communications in connection with the offer or sale of any security (including non-variable annuity offerings). See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); rule 10b-5.

⁷¹¹ 5 U.S.C. 801 *et seq.*

⁷⁰⁴ See CAI Comment Letter.

⁷⁰⁵ See *supra* Section II.B.

⁷⁰⁶ See VIP Working Group Comment Letter.

⁷⁰⁷ See VASP Adopting Release at paragraph preceding n.994.

⁷⁰⁸ While the Proposing Release did not specifically discuss a compliance period for the proposed amendments to rule 156, we stated that the compliance period would apply for all of the amendments in the release other than the technical amendments to Form N-6. See Proposing Release at n.371.

⁷⁰⁹ This approach is consistent with our past practice regarding the rule's compliance date. See

⁷⁰⁰ See XBRL US Comment Letter.

⁷⁰¹ See CAI Comment Letter.

⁷⁰² See Proposing Release at n.472 and accompanying text.

⁷⁰³ See VASP Adopting Release at n.917 and accompanying text.

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 adopting 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 amending the form currently used by most variable annuity separate accounts, Form N-4, to require insurance companies to register offerings of RILAs, as well as registered MVA annuities on that form as well. To facilitate this amendment, the Commission is also amending certain filing rules and making other related amendments to Form N-4 that apply to all issuers that use that form. The final amendments also require insurance companies to comply with rule 156, a current Commission rule that provides guidance as to when sales literature is materially misleading under the Federal securities laws to RILA and registered MVA annuity advertisements and sales literature.

While the Commission has developed a set of specific registration forms for variable insurance contracts and their issuers, insurance companies that offer non-variable annuities cannot use those forms because those issuers are not investment companies. Currently, insurance companies register the offerings of non-variable annuities 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 non-variable annuities (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 or registered MVA annuity and do not include line-item requirements mandating specific information that is of importance to investors in these products. The inclusion of disclosures that are of little relevance to their investors and the omission of information that is of importance to their investors limits the usefulness of the information investors currently receive about RILAs and registered MVA annuities 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, provide material information for investors evaluating RILAs and registered MVA annuities and assessing an issuer's solvency. For those insurers that will be able to include or incorporate SAP financial statements in the Form N-4 registration statement, investors will 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.

We have considered the potential costs and benefits that will result from the final rules in Section IV.C., as well as the potential effects on efficiency, competition, and capital formation in Section IV.D. Certain potential economic effects of the final amendments will stem from the statutory mandate, while others will stem from the discretion we are exercising in amending Form N-4, rule 498A, the filing and prospectus delivery rules, as well as the communication rules applicable to non-variable annuities. We also consider certain alternatives to our approach to implementing the statutory mandate, as discussed in Section IV.E. Where possible, we have attempted to quantify the economic effects. 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. For example, the final amendments could reduce the amount of time and effort investors require to make an investment decision. We do not have data on the extent to which the final amendments would reduce the amount of time and effort investors require to make an investment decision, or the value of that time and effort to investors. Also, because the final amendments facilitate not only the evaluation and comparison among non-variable annuities, but also facilitate the comparison of non-variable annuities to other annuity products, we may observe a change in investment in annuities. We do not have data that would allow us to estimate the extent to which we may observe a change in investment in annuities. 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 has sought comment on all aspects of the economic analysis, especially any data or information that would better enable a quantification of economic effects, and

the analysis below takes into consideration relevant comments received.

B. Baseline

1. Affected Parties

The final amendments affect issuers of and investors in RILAs, issuers of and investors in registered MVA annuities, as well as issuers of and investors in variable annuities currently registered on Form N-4.

a. The Market for Annuity Products

As of May 1, 2024, there were 104 RILAs registered with the Commission issued by 29 insurance companies.⁷¹² Among the 104 RILAs, 60 are stand-alone RILA products, while 44 are products with a RILA component. The number of RILAs registered on Form S-1 is 64, while the remaining 40 are registered on Form S-3. About 60% of the registered RILAs (63 RILAs) report SAP financials, with the remainder (41 RILAs) reporting GAAP financials.⁷¹³

RILA contracts offer a variety of index-linked options. Specifically, RILA contracts offer index-linked options whose returns are linked, in part to, indices such as 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 lower frequency.⁷¹⁴

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.⁷¹⁵

The final amendments also affect issuers of and investors in registered MVA annuities. As of May 1, 2024, there were 53 registered MVA annuities registered with the Commission issued

⁷¹² Based on analysis of Forms S-1, S-3 and POS AM filed by RILA issuers.

⁷¹³ EDGAR Database. Certain Commission letters, or portions thereof, exempt certain 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 *supra* Section II.E.

⁷¹⁴ See Proposing Release at Section III.B.1. for more details.

⁷¹⁵ For more details, see Proposing Release at Section III.B.1.

by 16 insurance companies.⁷¹⁶ The number of registered MVA annuities registered on Form S–1 is 26, while the remaining 27 are registered on Form S–3. A little over one third of the registered MVA annuities (18 MVA

annuities) report SAP financials, with the remainder (35 MVA annuities) reporting GAAP financials.

Table 10 provides information on the dollar amount of RILA sales over the past eight years.⁷¹⁷ RILA sales increased

from \$7.3 billion in 2016 to \$47.4 billion in 2023, which represents a 549% increase between these seven years.⁷¹⁸ We do not have access to data on the sales of registered MVA annuities.

TABLE 10—SALES OF RILAS
[\$ billions]

	2016	2017	2018	2019	2020	2021	2022	2023
Sales of RILAs	7.3	9.0	11.2	17.4	24.1	38.7	41.1	47.4

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 2023).

Additionally, the final amendments affect issuers of and investors in variable annuities currently registered on Form N–4. As of 2019, there were a total of 2,396 unique variable annuity products offered by a total of 33 companies.⁷¹⁹ Net assets totaled \$2,018.0 billion. Also in 2019, variable annuity sales totaled \$98.3 billion.⁷²⁰ Of the total sales, \$62.8 billion (64% of total sales) were annuities within qualified plans and \$35.5 (36%) were non-qualified annuities.⁷²¹ 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%); wire houses/regional broker-dealers, \$12.6 billion (13%); and direct response, \$2.8 billion (3%).⁷²²

b. Issuing Insurance Companies

The number of insurance companies currently offering securities registered as RILAs with the Commission is 29, from 24 insurance company complexes. Out of these 29 insurance companies, 20 register RILAs on Form S–1, while the remaining 9 use Form S–3.⁷²³ Insurance

companies offer, on average, 4.3 RILA contracts, ranging from a maximum of 13 RILAs to a minimum of 1 RILA. The top five issuers offer 58 RILAs in total, or 56% of the number of existing RILAs.⁷²⁴

The number of insurance companies currently offering registered MVA annuities registered with the Commission is 16, from 14 insurance company complexes.⁷²⁵ Out of the 16 insurance companies, 8 register MVA annuities on Form S–1 and 8 register MVA annuities on Form S–3.⁷²⁶ Insurance companies offer, on average, 3.8 registered MVA annuity contracts, ranging from a maximum of 8 registered MVA annuity contracts to a minimum of 1 registered MVA annuity. The top five issuers offer 32 registered MVA annuities in total, or 60 percent of the number of existing registered MVA annuities.⁷²⁷

c. Investors

In 2023 there were an estimated 82.3 million individuals aged 45–64 and 59.3 million individuals aged 65 or older in the United States, representing 25 percent and 18 percent of the total population, respectively.⁷²⁸ The number

of individuals aged 65 or older is projected to be 63 million (19 percent of the projected population) in 2025, 76 million (22 percent of the projected population) in 2035, 80 million (22 percent of the projected population) in 2045, and 85 million (23 percent of the projected population) in 2055.⁷²⁹

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.⁷³⁰ In addition, financial innovation has led to more complex financial products.⁷³¹ 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 choose to limit the time and effort (i.e., resources) expended to make investment decisions.

Decision making limitations may be particularly problematic in the context

⁷¹⁶ Based on analysis of Forms S–1, S–3 and POS AM filed by RILA issuers.

⁷¹⁷ *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 2023).

⁷¹⁸ 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. See discussion in Proposing Release at Section III.B.1.a.

⁷¹⁹ 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.

⁷²⁰ *Id.*

⁷²¹ *Id.*

⁷²² *Id.*

⁷²³ As of May 1, 2024. Data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers.

⁷²⁴ Calculated using data obtained from Forms S–1, S–3 and POS AM filed by RILA issuers, as of May 1, 2024.

⁷²⁵ Some of these insurance companies also issue RILAs, or annuity contracts offering index-linked options and MVA options. There are 38 insurance companies in total that issue RILAs, registered MVA annuities, or annuity contracts offering index-linked options and MVA options.

⁷²⁶ As of May 1, 2024. Data obtained from Forms S–1, S–3 and POS AM filed by MVA annuity issuers.

⁷²⁷ Calculated using data obtained from Forms S–1, S–3 and POS AM filed by MVA annuity issuers, as of May 1, 2024.

⁷²⁸ U.S. Census Bureau, Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States: Apr. 1, 2020, to July 1, 2023 (NC–EST2023–AGESEX–RES). We do not have demographic data on RILA investors. A 2022 survey found that 84 percent of individual annuity

investors purchased their first annuity before age 65, including 45% 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 74. See The Gallup Organization and Mathew Greenwald & Associates for The Committee of Annuity Insurers, *Survey of Owners of Individual Annuity Contracts* (2022), available at <https://www.annuity-insurers.org/wp-content/uploads/2023/07/Gallup-Survey-of-Owners-of-Individual-Annuity-Contracts-2022.pdf>.

⁷²⁹ Projected Age Groups and Sex Composition of the Population: Main Projections Series for the United States, 2023 to 2100. U.S. Census Bureau, Population Division: Washington, DC.

⁷³⁰ John Y. Campbell et al., *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 conditions, particularly for financial decisions that are undertaken only infrequently.

⁷³¹ See Campbell Paper.

of saving for retirement because learning from experience is difficult. Investing in retirement products is only done infrequently and the outcomes of 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).⁷³²

2. Current Regulatory Requirements

As discussed in Section I above, non-variable annuities are securities for purposes of the Securities Act, and public offerings of non-variable annuities, therefore, must be registered with the Commission.⁷³³ Unlike variable annuity contracts for which the Commission has adopted a specific

registration form tailored to those products, insurance companies register non-variable annuity 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 EDGAR. 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 requires audited financial statements prepared in accordance with GAAP.⁷³⁴ Currently, disclosures about non-variable annuity offerings are largely unstructured. However, 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.⁷³⁵ 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.⁷³⁶ 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.⁷³⁷ Reporting obligations under the Exchange Act include audited financial statements prepared in accordance with GAAP and are 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 EDGAR.

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.⁷³⁸

difficulty in using filing fees associated with unsold securities of a prior offerings.

⁷³⁷ 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.

⁷³⁸ One commenter noted that it can be more efficient and provide a better investor experience to register RILAs on Form S-3 rather than on Form S-1 because, unlike an S-1 prospectus, due to the fact that Form S-3 incorporates by reference company-related information from periodic reports filed on Forms 10-K and 10-Q, an S-3 prospectus concentrates on disclosures about the features, benefits, and risks associated with the RILA contract that is not impeded by extensive and irrelevant company-related disclosures. *See* CAI Comment Letter.

⁷³² See Campbell et al. Paper. The Campbell et al. 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 invest sub-optimally 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 an asset will perform in the future. If investors' ambiguity is great enough, they simply may choose 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.

⁷³³ See *supra* footnote 26 and accompanying text.

⁷³⁴ Certain Commission letters, or portions thereof, exempt certain insurance companies from the requirement to provide financial statements prepared in accordance with GAAP in connection with the registration of an offering of non-variable annuities on Form S-1. As discussed in Section IV.B.1.a, 63 RILAs and 18 registered MVA annuities report SAP financials.

⁷³⁵ See 17 CFR 229.601(b)(101)(i)(B).

⁷³⁶ Generally, Form S-1 (or Form 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. Non-variable annuities 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 non-variable annuity investors may make additional allocations or other investment decisions with respect to an investment, unless a prior non-variable annuity offering is completely unsold, non-variable annuity issuers may have increased

A Form S-3 filed by a non-WKSI must be declared effective by the Commission.⁷³⁹ A Form S-3 receives either a full review or a targeted review of one or more sections of the registration statement. 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 non-variable annuity offerings), it is unlawful for any person to use materially misleading communications in connection with the offer or sale of any security.⁷⁴⁰ 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.⁷⁴¹ There are multiple types of annuities available to help investors who have different financial goals or tolerances for risk save for retirement: fixed annuities (including registered MVA annuities), variable annuities, and RILAs. Generally, fixed annuities offer investors preservation of their investment by guaranteeing a minimum rate of return, but with little opportunity for asset growth. For example, during the accumulation phase,⁷⁴² a traditional (*i.e.*, book value) fixed annuity offers

investors a fixed rate of return (known in advance) for a given period of time.⁷⁴³ A registered MVA annuity is similar to a traditional fixed annuity, but the surrender value is subject to a market value adjustment based on interest rate changes. Fixed index annuities guarantee a certain rate of return, but also provide the potential for (limited) additional returns based on the performance of a specified market index.⁷⁴⁴

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 funds, and international funds.⁷⁴⁵ 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.⁷⁴⁶

RILAs are an index-linked product that can be purchased by individual investors as part of both qualified and non-qualified retirement accounts.⁷⁴⁷ RILAs combine features of fixed-index annuities and variable annuities. RILAs limit or reduce downside risk, but also limit 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.⁷⁴⁸ RILAs allow investors some ability to customize a level of risk with which they are comfortable.⁷⁴⁹ Like other annuities, RILAs have an accumulation phase followed by a payout phase. The accumulation phase is divided into one or more crediting periods.⁷⁵⁰ 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.⁷⁵¹ Investors, however, may lose money if they withdraw early from an investment option or, in some RILAs, from the contract within a specified period, as explained in Section II.C.6 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, subject to restrictions on the upside, through a cap and/or "participation rate," as well as some form of downside protection.⁷⁵² 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).⁷⁵³ 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.⁷⁵⁴ 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

⁷³⁹ Currently, none of the insurance companies that issue non-variable annuities currently claim status as a well-known seasoned issuer. See *supra* footnote 598.

⁷⁴⁰ See 15 U.S.C. 77q(a); 15 U.S.C. 78j(b); 17 CFR 240.10b-5.

⁷⁴¹ See IRI Fact Book (arguing that annuities give investors the ability to create their own pensions). For example, as also discussed in the IRI Fact Book, death benefits provide principal protection in the event that an investor dies during a market downturn.

⁷⁴² See *id.* 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.

⁷⁴³ *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. Also, the surrender value is based on the annuity's purchase value plus credited interest, net of any charges. Currently, insurance companies with a minimum A.M. Best Insurance Ratings of A- offer fixed rate annuities that guarantee between 3.55% and 5.40% for a three-year period, and between 3.20% and 5.40% for a ten-year period. *Multi-Year Guarantee Annuities (MYGA)*, Annuity Advantage (accessed Feb. 16, 2024, and filtered by "State" of "- All"; "Min AM Best" of "A-"; "Years" of "10"; and "Range" of "Exact"), available at https://www.annuityadvantage.com/annuity-rates-quotes/multi-year-guarantee-annuities/?rating=4&years=10&pos=300&sort=guarantee_period_yield&limit=all.

⁷⁴⁴ See *id.*

⁷⁴⁵ *Id.*

⁷⁴⁶ 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.

⁷⁴⁷ Thorsten Moenig, *It's RILA Time: An Introduction to Registered Index-Linked Annuities*, 89 J. Risk & Ins. 339 (2022) ("Moenig Paper").

⁷⁴⁸ See IRI Fact Book.

⁷⁴⁹ *Id.*

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.*

⁷⁵² *Id.*

⁷⁵³ *Id.* See also Moenig Paper arguing 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%).

⁷⁵⁴ See Moenig Paper. One commenter agreed, stating that although index-linked options include multiple parts, including an index, crediting period, upside crediting feature and rate, downside protection feature and rate, and associated fees (as applicable), the only "moving part" is the upside protection. See CAI Comment Letter.

to reduce its upside risk by lowering cap rates.⁷⁵⁵ 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.⁷⁵⁶

Also, unlike variable annuities, most RILAs do not include any direct ongoing fees or charges to the investor. Insurance companies, however, potentially can benefit from offering RILAs in at least three ways.⁷⁵⁷ 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.⁷⁵⁸ That is, insurance companies might benefit to the extent the cost of providing the downside protection is less than the value, to the insurance company, of the upside limits.⁷⁵⁹ One

study estimates an average annual cost to investors from the imbalance between the downside protections and the upside limits that a RILA contract offers is approximately 0.17% of the RILA investment amount.⁷⁶⁰ Similarly, holding constant the other terms of the contract, 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.⁷⁶¹ 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.”⁷⁶²

Letter. Another commenter stated that RILAs are intended to produce revenue for insurance companies sufficient to cover the cost of doing business. *See* ACLI Comment Letter.

⁷⁶⁰ *See* Moenig Paper; Public Filings on EDGAR. Staff examined 24 one-year term rates linked to the S&P 500 index, Nasdaq 100 index, Russell 2000 index, and MSCI EAFE and found results consist with the 0.17% estimate of the Moenig Paper. *See* discussion in Proposing Release, Section III.B.3.

⁷⁶¹ *See* Moenig Paper. The Moenig Paper provides the following example: assuming insurance companies hold the underlying securities, 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. When insurance companies rely on derivative securities, omitting dividend payments can also benefit insurers by reducing the cost of providing a given amount of downside protection (e.g., through lower option prices). Comment letters were mixed regarding whether insurance companies benefit when a RILA offers index-linked options whose index for measuring performance is a price-based index. One commenter noted that insurance companies do not earn or keep any dividends paid by the companies whose securities comprise an index because insurance companies invest in derivatives, rather the underlying securities themselves. The same commenter also noted that while it is true that using a price return index lowers options costs for insurance companies, those lower costs are passed along to RILA investors in the form of greater participation in upside performance. *See* CAI Comment Letter. Other commenters offered an opposing view. For example, one commenter stated that the biggest “drag,” and benefit to the insurance company, on RILAs and all indexed annuities is the use of a price return index instead of a total return index. In particular, the commenter stated that the insurance company, in essence, gets the total return on its investments and passes along the lower price return, keeping the difference. *See* Johnson Comment Letter. Another commenter suggested that the use of price return indices misleads investors regarding RILA performance. *See* Lee Comment Letter.

⁷⁶² We understand that insurance companies can similarly benefit from offering registered MVA

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.C.3.b, charges for early or mid-term withdrawals could include surrender charges and contract adjustments.

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.⁷⁶³ In terms of the returns an investor experiences, the issuer of a variable annuity has no contractual obligations to fund such returns, in that premiums are directly invested into subaccounts which in turn are invested in shares of underlying portfolio companies. On the other hand, the RILA issuer does have contractual obligations relating to the returns an investor experiences, taking into account RILA contracts’ bounded return structures, because the RILA premiums are not directly invested in the assets of the underlying index. These obligations 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.⁷⁶⁴

Like RILAs, registered MVA annuities have an accumulation phase divided into one or more crediting periods followed by a payout phase. Also like RILAs, registered MVA annuities apply contract adjustments upon withdrawals prior to term maturity. Unlike RILAs, however, registered MVA annuities’ credited interest is not linked to the performance of an index. Registered MVA annuities offer a rate of return that is determined by the insurance company for a set period, subject to a specified minimum.⁷⁶⁵ At the end of the period, the insurance company may

annuities to the extent insurance companies’ investment yields exceed interest credited to investors. One commenter stated that insurance companies do not benefit from the entire credit risk premium when offering RILAs. The commenter stated that much of the credit risk premium is used to pass additional value to customers via greater participation in upside performance. *See* CAI Comment Letter.

⁷⁶³ *See* Moenig Paper.

⁷⁶⁴ *Id.*

⁷⁶⁵ *See* IRI Fact Book.

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ One commenter observed, without providing examples, that insurance companies utilize a variety of means to produce profit from RILAs. *See* ACLI Comment Letter.

⁷⁵⁸ *See* Moenig Paper. One commenter agreed with our description, stating that RILAs are “spread” products, meaning that the issuer’s profits are principally embedded in the structuring of the product and are not a portion of an overt fee or charge. The same commenter noted that there is an inextricable relationship between the limits on potential gains and the protection from potential losses while also stating that spreads cover expenses and compensate the insurer not only for the investment elements of the product, but liquidity, protection and other insurance features that are bundled together. *See* CAI Comment Letter. Another commenter stated that the amount of market participation or upside performance is oftentimes directly related to the amount of downside risk the investor wishes to assume. *See* Gainbridge Comment Letter. Also, one commenter noted that distribution costs are not recouped through the spread, but through explicit surrender charges. *See* CAI Comment Letter.

⁷⁵⁹ We understand that insurance companies may use derivative securities to closely approximate the insurer’s liabilities from a RILA contract at the end of each crediting period. *See, e.g.*, Moenig Paper and CAI Comment Letter. 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 may be able to 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 could purchase a call option, sell a call option (with a higher strike price), and sell a put option (with a lower strike price, as appropriate given the downside buffer). In this case, the insurance company might be able to 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. One commenter stated that insurance companies set downside protections and upside limits such that a favorable imbalance between the two does not exist. *See* CAI Comment

offer a new rate for the next period.⁷⁶⁶ Like RILAs, generally registered MVA annuities typically do not impose direct fees on the investor, other than surrender charges. Instead, insurance companies can benefit from the difference between what the insurance companies expects to earn on the proceeds from registered MVA annuity sales and what the insurance company has committed to paying out (*i.e.*, the “spread”).⁷⁶⁷

Additionally, non-variable annuities and variable annuities differ with respect to their use of proceeds. As discussed in Section II.C.5, variable annuity proceeds are held in separate accounts insulated from the insurance company’s general account and, therefore, are insulated from the issuer’s general account creditors. Variable annuity proceeds in unitized sub-accounts must be invested as the investor chooses and returns are credited to the account directly. On the other hand, contract values, benefits, and guarantees provided by non-variable annuities are paid out of assets held in the insurance company’s general account or a non-unitized separate account, and may not be insulated from the claims of the insurer’s general creditors (and thus subject to the insurance company’s claims-paying ability).

Also, non-variable annuity proceeds can be invested as the issuer sees fit. We understand that insurance companies are able to invest RILA proceeds in derivative securities that closely approximate the issuer’s liabilities from RILA contracts.⁷⁶⁸ In doing so, insurance companies are able to hedge away their risk at a low cost. Further, we understand that insurance companies can invest remaining proceeds into fixed-income securities (*e.g.*, corporate bonds) that allow them to earn a “credit risk premium.”⁷⁶⁹ The credit risk premium can be an important source of benefits to RILA issuers.⁷⁷⁰

⁷⁶⁶ *Id.* Generally, registered MVA annuities specify a minimum credited interest rate for the lifetime of the contract.

⁷⁶⁷ See IRI Fact Book.

⁷⁶⁸ See Moenig Paper. One commenter noted that investments supporting RILA contracts are not generally specifically earmarked to a contract, but rather are managed based on the insurer’s aggregate reserves supporting all its RILA contracts. See CAI Comment Letter.

⁷⁶⁹ *Id.*

⁷⁷⁰ *Id.* One commenter noted that insurance companies do not benefit from the entire credit risk premium, stating that “Much of this credit risk premium is used to pass additional value to customers via greater participation in upside performance.” See CAI Comment Letter.

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 non-variable annuity offerings on Forms S–1 or S–3. Forms S–1 and S–3 include a number of disclosure requirements that are specific to the insurance company issuing the non-variable annuity that the Commission does not require in the registration statements for offerings of variable annuities.

The final amendments require that insurance companies use Form N–4 to register the offering of RILAs and registered MVA annuities and we are adapting Form N–4 for that purpose.⁷⁷¹ Because it is an existing form, non-variable annuity issuers and investors are familiar with Form N–4. As a result of expanding the scope of Form N–4 to address non-variable annuities, non-variable annuity offerings will be registered on the same form as variable annuities. Requiring insurance companies to register non-variable annuity offerings on Form N–4 leverages insurance-product specific disclosure requirements reflected in the form and also makes use of 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 and registered MVA annuities will benefit investors by making it easier for them to evaluate and compare non-variable annuities, and also to compare other annuity products with non-variable annuities. For example, investors may require less effort to evaluate and compare annuity products that register using the same form and may find the focus of Form N–4 on insurance-product specific information helpful in evaluating and comparing these annuity products. Additionally, investors in combination contracts will benefit by receiving one prospectus that describes the entire contract and available investment options, rather than two prospectuses that separately describe variable and non-variable options (and that repeat information about contract features that variable- and non-variable annuity contracts have in common). To the extent that investors require less effort

⁷⁷¹ See Form N–4, proposed General Instruction B.1. Commenters broadly supported this element of the proposal. See discussion in *supra* Section II.A.

to evaluate and compare these annuity products, investors may be more likely to make decisions that better align with their investment goals. Commenters broadly agreed that the proposed amendments to Form N–4 would provide RILA investors with more meaningful and helpful disclosures as compared to the more generic disclosures required on Forms S–1 and S–3.⁷⁷²

One commenter, who agreed with the Commission’s proposal to amend Form N–4 to include existing disclosures for registered MVA annuities that are filed on Form S–1 or S–3, requested that MVA issuers be permitted to continue to register MVA contracts no longer offered for sale to new investors on Form S–1 or S–3.⁷⁷³ The commenter went on to state that the costs of transitioning a closed block of MVAs from Form S–1 or S–3 to Form N–4 could “significantly outweigh the benefits.”⁷⁷⁴ We disagree with the commenter’s statement that the costs of transitioning a closed block of MVAs from Form S–1 or S–3 to Form N–4 could significantly outweigh the benefits. By requiring rather than permitting insurance companies to register all MVA annuities on Form N–4, investors will benefit by having access to more tailored and comparable information necessary to make informed investment decisions.⁷⁷⁵ For registered offerings of closed block registered MVA annuities, tailored disclosures will benefit investors when making additional investments in the contract or deciding how to reallocate their existing investment at the expiration of the MVA period.

b. Contents of Form N–4

The final amendments are designed to help investors make informed investment decisions regarding the annuity products that are registered on Form N–4. 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 reader-friendly presentation, with access to more detailed information for those investors who want it. Providing investors with key information is particularly

⁷⁷² See discussion in *supra* Section II.A. With respect to issuers that already provide the same or similar disclosures on Forms S–1 or S–3 as are required by the final amendments, the benefits of disclosure of that same information may be mitigated.

⁷⁷³ See CAI Comment Letter.

⁷⁷⁴ See *id.* See also IRI Comment Letter (stating that transitioning registered MVA annuities that are no longer offered or sold to new investors to Form N–4 would be unnecessary.)

⁷⁷⁵ See discussion in *supra* Section II.B.

important in the context of annuity contracts such as RILAs, registered MVA annuities, and variable annuities because their structures are typically more complex than other types of investment products commonly sold to retail investors.

In particular, the final amendments update the contents of Form N-4 to specifically address non-variable annuities, 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 (or "KIT"); (4) providing new principal disclosures regarding non-variable annuity investment options; and (5) providing for new contract adjustment and fee disclosures. The final amendments also include certain other technical and conforming amendments to Form N-4 and related rules designed to accommodate the inclusion of non-variable annuity 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.⁷⁷⁶

General Instructions

The final amendments require RILA and registered MVA annuity 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.

One commenter stated that the proposed amendments would delete the last sentence of General Instruction C.3.(a), which states that information required in the KIT or the overview section need not be repeated elsewhere in the prospectus. That commenter stated that excessive repetition adds to the length of the prospectus without any commensurate value to investors.⁷⁷⁷ The final form amendments take commenter concerns into account and address areas where the discussion of the same or similar topics in multiple locations could be limited while continuing to promote the goal of highlighting key information about non-variable annuities and enhancing understanding of non-variable annuity features and risks.⁷⁷⁸ Also, the final amendments, like the proposal, incorporate layered disclosure. The use of layered disclosure means that the disclosure requirements necessarily address particular topics in more than one location in the registration statement. Where this occurs, the disclosure requirements intentionally include summary disclosure in the first "layer," and additional details building on the summary in the second "layer."

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 will facilitate not only the evaluation and comparison among RILA and registered MVA annuity offerings, but also will facilitate the comparison of non-variable annuities to other annuity products.⁷⁷⁹ Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs or registered MVA annuities as investment options. Presentation of information in a consistent manner on Form N-4 could increase investor awareness of non-variable annuities as an investment option.

Front and Back Cover Pages

The final amendments make certain changes to information currently

required on the front and back pages of a prospectus for all registrants on Form N-4. Like variable annuities registered on Form N-4, RILAs and registered MVA annuities are required to present certain information on the front and back cover pages of the prospectus. The final amendments require several new cover page disclosures for all Form N-4 issuers. One set of changes provides 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. Some commenters suggested that the proposed cover page disclosures were too voluminous given the purpose of the front cover page and could cut against the form's layered disclosure approach, thereby reducing the benefits to investors.⁷⁸⁰ The number of specific features and risks highlighted on the cover page is driven by the complex nature of the non-variable annuity being registered. Further, because these points are generalized on the cover page but discussed in more detail later in the prospectus, they are consistent with the concept of layered disclosure.

Some commenters also raised concerns about specific required front and back cover disclosures.⁷⁸¹ Generally, the disclosures highlight risks that are particularly prevalent in non-variable annuities. These new disclosures should benefit investors by putting them on notice of key considerations at the outset, helping investors make informed decisions.

Key Information Table

As required for current Form N-4 issuers, the final amendments require RILA and registered MVA annuity issuers to provide a Key Information Table in their registration statements. The KIT includes a summary of five areas: (1) fees, expenses, and adjustments; (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 final amendments to the KIT requirements are intended to highlight important considerations related to non-variable annuities, including certain unique and/or opaque aspects of non-variable

⁷⁷⁷ See CAI Comment Letter.

⁷⁷⁸ See discussion of comments related to repetition informing the final amendments in Section I.D.2.

⁷⁷⁹ 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.

⁷⁸⁰ See discussion in *supra* Section II.C.1.

⁷⁸¹ See discussion in *supra* Section II.C.1.

⁷⁷⁶ The technical amendments to Forms N-3 and N-6 discussed in Section II.I have no economic effects.

annuities.⁷⁸² Consistent with our layered disclosure approach for variable annuities registered on Form N-4, non-variable annuity issuers are 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 apply to all Form N-4 issuers. In particular, in a change from the current KIT requirements for Form N-4 issuers, the final amendments require that responses to various line items be presented in a Q&A format.⁷⁸³ Some commenters stated that the format requirement would reduce the benefits of the KIT because it may reduce comparability and because answers provided may not always be concise.⁷⁸⁴ As discussed above, because the KIT disclosures as amended continue to be brief, we anticipate that any negative effect that the Q&A format may have on comparability or conciseness will be limited.⁷⁸⁵ In addition, as stated in the Proposing Release, the Q&A format should improve investor comprehension of variable and non-variable annuities and contract adjustment-specific topics based on the results of our quantitative investor testing.⁷⁸⁶

In a change for all Form N-4 issuers, the final amendments change the order in which the KIT appears relative to the Overview of the Contract disclosures in the prospectus. We received one comment on this aspect of the proposal. The commenter stated that the repetition of information required in the Overview of the Contract and KIT would reduce the benefits of the KIT.⁷⁸⁷ We disagree that covering the same topics in the Overview of the Contract and the KIT would reduce the benefits of the KIT. The disclosure is included in both locations to allow the reader to understand the contract at a high level (in the Overview of the Contract), as well as key features and risks of the

annuity whose offering is being registered (in the KIT). Further, KIT requirements that address the same topic in different contexts may aid investor understanding of complex disclosure, and this approach is consistent with a layered disclosure approach.

Overall, the final KIT requirements (like the KIT requirements for variable annuities prior to these amendments) are designed to provide a brief description of key facts about RILAs and registered MVA annuities in a specific sequence and in a standardized presentation that is designed to be easy to read and navigate. 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 non-variable annuity offerings. Also, the standardized presentation of information could facilitate not only the evaluation and comparison among non-variable annuity offerings, but also could facilitate the comparison of RILAs and registered MVA annuities to other annuity products.

Principal Disclosure Regarding Index-Linked or MVA Options

The final amendments to Form N-4 require disclosures that will provide investors with information about all annuities whose offerings are registered on Form N-4 as well as with specific information about RILAs and registered MVA annuities and non-variable options under the contract. With regard to Form N-4 issuers generally, the final amendments require registrants to disclose market risk, early withdrawal risk, contract benefits risk, insurance company risk, and the risk of contract changes. With regard to specific information about non-variable annuities, the final amendments include requirements related to: (1) information about non-variable annuities generally and an overview of certain key elements of any index-linked option offered under the contract; (2) a more in-depth description of any index-linked investment options available under the contract; (3) the inclusion of an appendix that consolidates certain summary information related to any index-linked options and fixed options available under the contract (which will accompany similar information about variable options offered under a “combination” contract); and (4) certain principal risk disclosures relating to investing in the non-variable annuity contract that the prospectus describes. The final requirements are designed to provide additional information regarding the risk of investing in Form

N-4 products generally, as well as the unique aspects of non-variable annuities and certain summary and detailed information about index-linked options available under a non-variable annuity contract. The information should benefit investors by making it easier for investors to evaluate and compare variable and non-variable annuity products registered on Form N-4. The required disclosure relating to index-linked and fixed options available under a contract should 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 non-variable annuity contracts offer.

The final amendments permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information directly in the prospectus, as proposed, or by including a website address where the current upside rates can be found and incorporating by reference the information on the website into the prospectus.⁷⁸⁸ Investors likely will find it more efficient to obtain current upside rates on the insurer’s website identified in the prospectus than to review a potentially high number of prospectus supplements. It also will be familiar to many investors because this is the approach that many RILA investors currently use to obtain information about current upside rates. Moreover, allowing insurance companies to disclose current upside rates on a website and to incorporate this information by reference into the prospectus also will retain prospectus and registration statement liability, and ready accessibility of information that is a core aspect of the RILA offering. It will also accommodate RILA issuers’ practice of changing current upside rates in response to market conditions. Because the approach we are adopting is consistent with current practice, we anticipate that all insurance companies will choose to use the website posting approach to disclose current upside rates instead of disclosing such information directly in the prospectus. To the extent the approach we are adopting is consistent with current practice, the benefits discussed above would be reduced.

Addition of Contract Adjustments and Other Amendments to Fee and Expense Disclosures

RILA and registered MVA annuity investors have the ability to withdraw or transfer their money before the end of a

⁷⁸² 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, final rule will 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 *supra* footnote 163 and accompanying text.

⁷⁸³ Currently, such format is suggested but not required. See Form N-4, General Instruction C.3.(c).

⁷⁸⁴ See ACLI Comment Letter; CAI Comment Letter.

⁷⁸⁵ See discussion in *supra* Section II.C.3.a.

⁷⁸⁶ See *supra* footnote 160.

⁷⁸⁷ See discussion in *supra* Section II.C.2.

⁷⁸⁸ Final Form N-4, Instruction 1 to Item 6(d)(2)(ii)(B).

crediting period. If amounts are removed from an index-linked option before the end of a crediting period, typically an insurance company will apply an IVA to the investor's contract value. The IVA, which adjusts the contract value based on a formula, typically changes with market conditions throughout the crediting period and may adjust daily. Similarly, a positive or negative market value adjustment could apply if amounts are partially or fully withdrawn from the contract or from an MVA option 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.

The final amendments to Form N-4 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 and registered MVA annuities 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, it is important to include a detailed description of contract adjustments in the registration statement.

Specifically, the final amendments 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. The final amendments also require 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.

Some commenters opposed certain changes to Item 4 and Item 7, arguing that the changes would mischaracterize the nature or magnitude of the quantities being disclosed, thereby reducing the benefits of the disclosures to investors.⁷⁸⁹ The required disclosures help ensure that investors have access, in one place, to full disclosure regarding the economic consequences of withdrawing money from an index option or the contract. These disclosures will benefit investors by enabling them to better evaluate the costs of

purchasing and owning annuity contracts, including non-variable annuities. In addition, these disclosures can make less-informed investors aware of non-variable annuities' unique characteristics, which could increase investor understanding of non-variable annuities as an investing option.

Some commenters on the proposal raised concerns about the inclusion of the maximum potential loss as part of the fee table disclosure requirements in Item 4, stating that contract adjustments do not reflect fees.⁷⁹⁰ One commenter further stated that characterizing contract adjustments as a fee or charge is confusing.⁷⁹¹ The final amendments clarify the exposition within Item 4 by presenting information related to the maximum potential contract adjustment in a separate "adjustments" table. Further, the description of the new table makes it clear that these contract adjustments are in addition, and thus distinct, from fees. As a result, the revised disclosure should mitigate the concerns raised by commenters on the proposal. At the same time, addressing contract adjustments in the Item 4 disclosure—and clearly distinguishing them from fees—will alert an investor to the possibility of experiencing a contract adjustment, in addition to paying certain fees, if the investor removes money prematurely from an index-linked option or an MVA option, or the contract.⁷⁹² Therefore, including this information in Item 4 could benefit some investors by allowing them to more easily consider the economic consequences of removing amounts from an investment option before the end of a crediting period.

Other Amendments to Form N-4

The final amendments include certain other amendments to Form N-4 and related rules designed to accommodate the inclusion of RILA and registered MVA annuity 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. Because these other amendments to Form N-4 and related rules are designed to accommodate the inclusion

of non-variable annuity 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. For example, amending Form N-4 and related rules to accommodate the inclusion of non-variable annuity offerings on Form N-4 benefits investors because Form N-4 should make it easier for investors to evaluate and compare non-variable annuities, and also to compare other annuity products with non-variable annuities.

The final amendments also amend Form N-4's required exhibits list to add new Item 27(p) for all issuers, which requires 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 regarding the placement of a required power of attorney exhibit within the exhibit list. This amendment will 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 non-variable annuities in a manner that is consistent with their overall financial needs and objectives.⁷⁹³

The final amendments also add new Item 31A in Form N-4 to require census-type information regarding non-variable annuities offered in connection with the applicable registration statement. Under this new item, insurance companies have to provide information regarding any non-variable annuity 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 or fixed 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.

One commenter stated that the information in Item 31A would not be useful to investors in making investment decisions and would require insurance companies to publicly reveal "private and confidential" information that could be used by competitors. We

⁷⁹⁰ See, e.g., CAI Comment Letter; VIP Working Group Comment Letter; Gainbridge Comment Letter.

⁷⁹¹ See CAI Comment Letter (stating that characterizing maximum potential loss due to a negative contract adjustment as a fee or charge is "inaccurate and far more confusing than informative").

⁷⁹² Additional information regarding contract adjustments also is available to investors in other parts of the prospectus where those adjustments are discussed in greater detail. See, e.g., Items 5, 6, 7, 12, 22, and 31A.

⁷⁹³ We did not receive any comments on the proposed amendments to Item 27.

⁷⁸⁹ See discussion in *supra* Section II.C.6.

disagree with the comment suggesting this information to be disclosed will result in private and confidential information being disclosed that will aid competitors.⁷⁹⁴ The information that will be reported would complement the parallel census-type information that is currently required to be reported annually on Form N-CEN by registered unit investment trusts offering variable annuities. Moreover, information that insurance companies will report in response to Item 31A will be aggregated at the contract level, which reduces the possibility that any confidential or private information would be disclosed. The information in new Item 31A will help the Commission and staff in identifying trends in insurance companies' offerings of RILAs and registered MVA annuities by providing a more complete understanding of the marketplace for annuity securities. A more complete understanding of the marketplace for annuity securities will benefit investors by helping us carry out regulatory responsibilities, including monitoring risk and trends, formulating policy and guidance, and reviewing registration statements.

The final amendments also amend Item 34 of Form N-4 to require insurance companies 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 their 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 undertakings are the same as two undertakings insurance companies were required to provide in registration statements registered on Forms S-1 or S-3. It remains appropriate for insurance companies to continue to furnish these representations concerning post-effective amendments to a registration statement as, under the final amendments, non-variable annuities may be continuously offered on a registration statement for an indefinite amount of time.⁷⁹⁵

Remaining Items

The final amendments require RILA and MVA annuity 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 and MVA annuity filers to provide disclosure in response to the remaining items on Form N-4 to the extent applicable will help ensure that comparable information is provided in a standardized, consistent manner for all filers using Form N-4.

Standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare RILA and registered MVA annuity offerings. Also, the presentation of information in a standardized, consistent manner across all filers using Form N-4 will facilitate not only the evaluation and comparison among non-variable annuities, but also the comparison of non-variable annuities to variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs and registered MVA annuities as investment options. Presentation of information in a standardized, consistent manner on Form N-4 could increase investor awareness of RILAs and registered MVA annuities as investing options. Facilitating the comparison of annuity products could benefit investors by helping them to invest in non-variable annuities in a manner that is consistent with their overall financial needs and objectives.

Inline XBRL

The final amendments 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.⁷⁹⁶ In addition, RILA and registered MVA annuity issuers will have to tag those prospectus disclosures that Form N-4 currently requires to be tagged.

As discussed in Section II.C.10., one commenter stated that the Inline XBRL requirements would be beneficial to all investors because they would facilitate access to data about non-variable annuities in a structured, machine-readable format.⁷⁹⁷ Some commenters stated that tagging the newly added disclosures on Form N-4 would benefit investors by highlighting key elements of a RILA, allowing "investors and their investment professionals (as well as data aggregators, financial analysts, and

other data users) to efficiently analyze and compare information about available contracts."⁷⁹⁸ However, one commenter stated Inline XBRL has little value for investment companies and insurance products.⁷⁹⁹

Inline XBRL has value for companies and insurance products, investors, investment professionals, and third parties such as data aggregators, financial analysts and other data users because it will make the tagged disclosures more readily accessible for aggregation, comparison, filtering, and other analysis. The Inline XBRL requirement will facilitate access to data about non-variable annuities, which could improve investor understanding of the disclosed information and indirectly benefit insurance companies.⁸⁰⁰ 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. This could benefit insurance companies and non-variable annuity issuers by increasing investor understanding of non-variable annuities as an investment option, or make investors aware of RILAs' and registered MVA annuities' unique characteristics that may be appropriate for their particular situation. Additionally, an Inline XBRL requirement will enable other analyses that could directly benefit insurance companies, such as the ability to compare/redline disclosures automatically against the same disclosures in other periods, or perform targeted searches and redline comparisons of specific disclosure items, rather than performing such assessments on an unstructured

⁷⁹⁸ CAI Comment Letter. See XBRL US Comment Letter; see also *infra* footnote 449 and accompanying text.

⁷⁹⁹ Johnson Comment Letter.

⁸⁰⁰ It has been observed XBRL requirements improve investor understanding for public operating company financial statement disclosures. 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. et al., *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).

⁷⁹⁴ See discussion in *supra* Section II.C.7.

⁷⁹⁵ We did not receive any comments on the proposed amendments to Item 34.

⁷⁹⁶ See *supra* section II.B.11.

⁷⁹⁷ XBRL US Comment Letter.

document.⁸⁰¹ Accordingly, for Form N-4 filers, Inline XBRL can enhance the efficiency of review, yield savings in time and cost of preparing machine-readable data, and potentially enhance the quality of the data over other machine-readable standards as certain errors will be easier to identify and correct because the data is also human-readable.⁸⁰²

c. Option to Use a Summary Prospectus

The final amendments to rule 498A permit non-variable annuity 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 will continue to have access to the non-variable annuity statutory prospectus and other information about the non-variable annuity 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 final amendments to rule 498A broaden the scope of the rule to expand the layered disclosure approach to non-variable annuity contracts.⁸⁰³

As discussed in Section II.D above, the final amendments to rule 498A involve the use of two distinct types of summary prospectuses for non-variable annuity contracts, employing the same

approach the rule currently uses for variable contracts. An “initial summary prospectus,” covering contracts offered to new investors, will 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 also require “updating summary prospectuses” to be provided to existing investors in non-variable annuity contracts. The updating summary prospectus includes 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 will be provided in both the initial summary prospectus and updating summary prospectus.

The final amendments create a choice for insurance companies. Insurance companies may meet their prospectus delivery obligations by providing the statutory prospectus, or 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 final amendments to meet their prospectus delivery obligations. For example, as discussed in Section II.F.3, we understand that non-variable annuity 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.⁸⁰⁴ Conversely, 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.

If insurance companies choose to meet their prospectus delivery obligations by delivering summary prospectuses to investors, with other documents available online, investors will then have a choice as well. Under the layered disclosure framework we are adopting for non-variable annuities, investors will receive information in the form of a summary prospectus, with more detailed information available online if the investor chooses to access it.⁸⁰⁵ 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 non-variable annuity issuers will 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.

The presentation required for the initial summary prospectus may reduce the investor effort required to compare non-variable annuity contracts, to consider different index-linked options that RILAs offer, or to compare non-variable annuity 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.⁸⁰⁶

⁸⁰¹ While these studies were not done within the insurance company context, it has been observed that XBRL requirements improve firm disclosures and decision making. See Olivia Berkman, XBRL: What are the Benefits, FEI Daily (Aug. 29, 2019), <https://www.financialexecutives.org/FEI-Daily/August-2019/XBRL-What-are-the-Benefits.aspx> (noting in an interview with a public company’s chief financial officer that the company is able to “search through XBRL filings to find similar companies within [its] industry that have had to present certain similar [disclosures] in the past,” which has helped the company “craft[] [its] disclosures to make sure that [the company is] complying with the spirit of GAAP and providing the information that [the company is] supposed to be providing”); see also Hyun Woong (Daniel) Chang, et al., The Effect of iXBRL Formatted Financial Statements on the Effectiveness of Managers’ Decisions when Making Inter-Firm Comparisons, J. Info. Sys. (2020) (finding “iXBRL filings facilitate information search and information match by allowing users to view XBRL data in HTML filings,” and “managers make more effective decisions when presented with financial information formatted in iXBRL (XBRL)”).

⁸⁰² See VASP Adopting Release at Section II.D (articulating similar benefits for tagging variable annuities).

⁸⁰³ Some commenters questioned the inclusion of certain items. See discussion in *supra* Section II.D.

⁸⁰⁴ 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.

⁸⁰⁵ 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 Investor Testing Report at Section 5, Qualitative Testing, Results from Round 1.

⁸⁰⁶ 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 et al., (1999). Preference Reversals Between Joint and Separate Evaluations of Options: A Review and Theoretical Analysis, *Psychological Bulletin*, 125(5), 576–90; see also Samuel B. Bonsall & Brian P. Miller, The Impact of Narrative Disclosure Readability on Bond Ratings and the Cost of Debt, 22 Rev. Acct. Stud. 608 (2017)

Initial Summary Prospectus. Should insurance companies issuing non-variable annuities choose to use summary prospectuses, investors may benefit in a number of ways.⁸⁰⁷ The initial summary prospectus for non-variable annuities will 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 non-variable annuity, thereby facilitating investors' evaluation of those features and risks.

The final amendments require a standardized presentation for non-variable annuity initial summary prospectuses to require certain disclosure items that will be most relevant to investors to appear at the beginning of the initial summary prospectus, followed by supplemental information. An initial summary prospectus must contain the information required by the rule, and only that information, in the order specified by the rule.⁸⁰⁸ The information is 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 non-variable annuity contracts, as well as comparisons between non-variable annuity contracts and variable annuities.

Standardized, consistent disclosure of comparable information benefits investors by making it easier for investors to evaluate and compare non-variable offerings. Also, the presentation of information in a standardized, consistent manner will facilitate not only the evaluation and comparison

and Alistair Lawrence, Individual Investors and Financial Disclosure, 56 J. ACCT. & ECON. 130 (2013) (finding that shorter and more focused disclosures could be more effective at increasing investor understanding than longer, more complex disclosures). Consistent with these findings, other empirical evidence suggests that disclosure simplification may benefit consumers of disclosed information. See, e.g., Sumit Agarwal, et al., *Regulating Consumer Financial Products: Evidence from Credit Cards* Nat'l Bureau of Econ. Rsch (working paper no. 19484, Sept. 28, 2013, last revised Mar. 29, 2023), available at <https://ssrn.com/abstract=2332556> (finding that a series of requirements in the Credit Card Accountability Responsibility and Disclosure Act (CARD Act), including several provisions designed to promote simplified disclosure, have produced substantial decreases in both over-limit fees and late fees, thus saving U.S. credit card users \$12.6 billion annually).

⁸⁰⁷ 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 will, under the final amendments, be available online and in paper or electronic format upon request.

⁸⁰⁸ Rule 498A(b)(5).

among non-variable offerings, but also will facilitate the comparison of non-variable annuities to other variable annuities. Further, certain investors, while aware of variable annuities, simply may not be aware of RILAs and registered MVA annuities as investment options. Presentation of information in a standardized, consistent manner in an initial summary prospectus could increase investor awareness of RILAs and registered MVA annuities as investing options.

In addition, given the time required to review a statutory prospectus, non-variable annuity 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.⁸⁰⁹ 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.⁸¹⁰ 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

⁸⁰⁹ There is evidence that the summarization of key information is useful to consumers. See, e.g., Sumit Agarwal et al., *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.

⁸¹⁰ See John Beshears et al., *How Does Simplified Disclosure Affect Individuals' Mutual Funds Choices?* in *Explorations in the Economics of Aging* 75 (David A. Wise ed., 2010) ("Beshears Paper"), available at <https://scholar.harvard.edu/lalibson/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).

about an investment product or service.⁸¹¹

Also, investors allocate their attention selectively,⁸¹² 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 non-variable annuity 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.⁸¹³ 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.⁸¹⁴

To the extent summary prospectuses increase readership of non-variable annuity contract disclosures, they could improve the quality and efficiency of portfolio allocations made on the basis of disclosed information for those investors who otherwise will not have read the statutory prospectus.

The required presentation for the initial summary prospectus may also reduce the investor effort required to compare non-variable annuity contracts, to consider different index-linked options that a RILA offers, or to compare non-variable annuity contracts with each other and with variable annuity contracts, when an investor considers a new investment. Information provided

⁸¹¹ See 2012 Financial Literacy Study.

⁸¹² See George Loewenstein, Cass R. Sunstein & Russell Golman. (2014) *Disclosure Psychology Changes Everything*, 6 Ann. Rev. Econ. 391 (2014).

⁸¹³ 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.

⁸¹⁴ See Tailored Shareholder Reports Adopting Release.

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.⁸¹⁵ For example, the final amendments require insurance companies to distill certain key product information into tables, which could facilitate comparison across different products.

Further, the final framework for non-variable annuity contract summary and statutory prospectuses also includes design elements to facilitate investor use. In particular, the final 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 will 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 final amendments 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 will 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 requiring that RILA and registered MVA annuity issuers send an updated initial summary prospectus to investors each year. Instead, any non-variable annuity issuer that relies on rule 498A will send an updating summary prospectus, which will provide a brief description of certain changes with respect to the contract that occurred within the prior year.⁸¹⁶ The updating summary prospectus will also include certain of the information required in the initial summary prospectus that we consider most relevant to investors when considering additional investment decisions.⁸¹⁷ Further, updating summary prospectuses for non-variable annuity contracts, like initial summary prospectuses, will include specific disclosure items appearing in a

prescribed order, under relevant corresponding headings.⁸¹⁸ An updating summary prospectus for a non-variable annuity contract will have to contain the information required by the rule, and only that information, in the order specified by the rule.

The updating summary prospectus for RILAs and registered MVA annuities will 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 non-variable annuity 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 final amendments, the updating summary prospectus will 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 non-variable annuity 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 updating summary prospectus, if used by issuers to satisfy their prospectus delivery obligations, will 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 forgoing the repetition of most information that had remained unchanged.

d. Use of Statutory Accounting

The final amendments permit RILA and registered MVA annuity issuers to provide financial statements on amended Form N-4 in the same way that insurance companies currently provide financial statements on that form.⁸¹⁹ As a result of this change, the financial statements filed in connection with a registration statement that relates to the offering of either of these securities may 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, provide material information for investors evaluating RILAs and registered MVA annuities. As a result, permitting insurance companies to provide SAP financial statements when registering the offering of a RILA or registered MVA annuity to the same extent as they can in connection with variable annuities on Form N-4 will be consistent with maintaining investor protection. Also, investors could benefit to the extent the reduced cost burdens provided by SAP financial statements are passed along to investors.

The final amendments also require insurance companies registering non-variable annuities 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, insurance companies will 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 and registered MVA

⁸¹⁹ Certain Commission letters, or portions thereof, exempt certain 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. Comments received on this aspect of the proposal are discussed in Section II.E.

⁸¹⁵ See *infra* footnote 806.

⁸¹⁶ Rule 498A(c)(1).

⁸¹⁷ See Table 8.

⁸¹⁸ Rule 498A(c)(6).

annuities on Forms S-1, 8-K, and 10-K, as applicable, 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.⁸²⁰ Because the requirements for Form N-4 filers under the final amendments are the same as for Form S-1, Form 8-K, and Form 10-K filers currently, we do 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 final filing rules require RILA and registered MVA annuity issuers to pay registration fees for using the same method that other filers on Form N-4 currently use.⁸²¹ Issuers registering the offerings of non-variable annuities on amended Form N-4 are deemed to be registering an indeterminate amount of non-variable annuities upon effectiveness of the registration statement. These issuers will 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 final filing rule further specifies the calculation method for paying non-variable annuity registration fees, consistent with the fee calculation methodology that applies to current Form N-4 filers. The final filing rule also indicates when issuers can take credits for non-variable annuity 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 final filing rules will provide benefits to insurance companies. Registering an indeterminate amount of securities benefits insurance companies by eliminating the risk that a non-variable annuity 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 non-variable annuities. For

example, insurance companies will no longer pay fees on registered, but unsold, securities. 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.F.2, the final amendments require RILA and registered MVA annuity 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 final amendments amend rule 485 under the Securities Act to require non-variable annuity issuers to use that rule when amending non-variable annuity registration statements on Form N-4. Requiring non-variable annuity issuers to use rule 485 when amending non-variable annuity registration statements on Form N-4 permits non-variable annuity 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 non-variable annuity market, to structure terms of non-variable annuities 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 final amendments require RILA and registered MVA annuity issuers to apply rule 497 under the Securities Act when appropriate to file non-variable annuity prospectuses and prospectus supplements with the Commission. Under the final amendments, a non-variable annuity issuer is required to file every prospectus relating to a non-variable annuity 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 expect this benefit to be minimal, however, because rule 424 under the Securities Act requires non-variable annuity issuers only to file prospectuses that contain substantive

changes. Prospectuses required to be filed under rule 497 that will not be required to file under rule 424, then, will be prospectuses updated with minor, non-substantive changes and likely of limited informational benefit to investors.

Issuers may benefit from applying rule 497 as well. The final amendments facilitate a uniform post-effective amendment and prospectus filing framework for all Form N-4 filers, which will 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.

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 final amendments, then, non-variable annuity investors will generally have all the information available in one location (other than current rates, which will be permitted to be incorporated by reference from a website) 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.

f. Materially Misleading Statements in RILA Sales Literature

We are amending rule 156 to make its provisions applicable to RILA and registered MVA annuity sales literature. Rule 156 is an interpretive rule that provides factors to be weighed in considering whether a statement

⁸²⁰ See Disclosure Amendments to Regulation S-K, Form 8-K and Schedule 14A; see also Form S-1, Item 11(i).

⁸²¹ Some commenters had specific recommendations on how we could modify Form 24F-2. See discussion in *supra* Section II.F.1.

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. The final amendments to rule 156 indicate that whether a statement involving a material fact is misleading in non-variable annuity sales literature will 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) 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. Under this provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether an advertisement will 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, under the provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether an advertisement will be materially misleading if sales literature advertises a particular feature of the product's bounded return structure that is not available for the life of the product without providing additional context as to the issuer's discretion to make changes.

Further, rule 156(b)(4), prior to these amendments, provided 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. The final amendments change this provision to also address representations about the fees or expenses associated with a non-variable annuity contract and provide guidance about the contextual analysis to use in determining whether a particular representation in a non-variable annuity advertising could be materially misleading. As discussed in Section II.G.1., when complying with this provision in the context of non-variable annuity sales literature, under final rule 156(b)(4), insurance companies are prompted to consider whether representations or portrayals either of a non-variable annuity's costs or charges, or optional benefits that are

subject to a contract adjustment, would necessitate qualifying statements or explanations regarding the economic costs to the investor to receive an advertised benefit or those generally associated with the non-variable annuity.

Also, rule 156(b)(2)(i) 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. Under the provision, where made applicable to non-variable annuity sales literature, consideration should be given about whether illustrations about the operation of a non-variable annuity 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 non-variable annuity sales literature, applying rule 156 to RILAs and registered MVA annuities provides investors with protections and helps 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 and registered MVA annuities as well as investor comparison of non-variable annuities to other annuity products.

We are also making a technical amendment to rule 433 to maintain the status quo for insurance companies that can meet that rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without meeting the prospectus delivery requirements, notwithstanding their use of Form N-4 going forward. Absent such an amendment, the rulemaking would have the effect of imposing new, universal prospectus delivery requirements in connection with RILA marketing materials, even for RILA issuers that would otherwise be eligible to rely on rule 433 by virtue of registering on Form S-3. Because the technical amendment to rule 433 maintains the status quo for

insurance companies that can meet the rule's conditions to use a free writing prospectus in connection with the offering of non-variable annuities without the prospectus delivery requirements, we do not believe this amendment to rule 433 will create additional economic effects.

2. Costs

The final amendments will likely lead to certain additional costs for insurance companies registering non-variable annuities. These costs will likely vary across insurance companies, depending on their existing lines of business. Costs may also vary depending on the extent to which insurance companies will, as a result of the final amendments, 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 will 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 non-variable annuities frequently, and for those insurance companies that do not experience changes in, and disagreements with, accountants on accounting and financial disclosure. The costs of the final amendments may also be mitigated to the extent that insurance companies already provide the same or similar disclosures on Forms S-1 and S-3, 8-K, and 10-K, as applicable, as are required by the final amendments.

The costs to insurance companies will be composed of both direct compliance costs and indirect costs. Direct costs for insurance companies will 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 final amendments could lead to certain costs for investors as well. Direct costs that will be incurred by the insurance companies in coming into compliance with the final amendments ultimately may be passed on to investors. Investors also may bear costs associated with certain final amendments such as the change in filing rules as well as an insurance companies' option to use a summary prospectus.

a. Direct Costs

Form N-4. The direct costs associated with the final amendments will be most significant for the first Form N-4 registration statement that an insurance company will be required to prepare and file because the insurance company will 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 will 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) will be lower to the extent an insurance company already has experience and systems in place to prepare and file registration statements on Form N-4 (e.g., because the insurance company currently offers variable annuities whose offerings are registered on Form N-4).

Under the final amendments, insurance companies will register non-variable and variable annuity contract offerings on final Form N-4. In addition, the Commission is adopting other amendments to Form N-4 that will apply to all issuers that use that form.⁸²² We estimate the average cost of the final amendments for Form N-4 to be around \$200,000 per contract per year.⁸²³

Insurance companies will 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.⁸²⁴ To the extent these insurance 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 will 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 to be tagged, and reviewing the tags selected for those disclosures. We estimate the average annual cost for XBRL compliance will be around \$500 for each current N-4 filer, which is already familiar with structured disclosure in the context of Form N-4, and around \$2,400 for each non-variable annuity issuer, which would newly file Form N-4.⁸²⁵ However, 32 of the 38 insurers that issue RILAs and registered MVA annuities 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, which would

⁸²⁴ 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/interestareas/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)].

⁸²⁵ The \$500 estimate is based on the following calculations: \$406 (blended hourly rate for compliance attorney and senior programmer at \$406 for 1 hour) + \$50 (costs for external services) = \$500. The \$2,400 estimate is based on the following calculations: \$1,624 (blended hourly rate for compliance attorney and senior programmer at \$406 for 4 hours) + \$700 (costs for external services) = \$2,300. See Table 16 (with relevant details about estimates in footnotes 2–9).

reduce the cost to these issuers compared to our estimate.⁸²⁶

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 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 will 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.⁸²⁷ We estimate the average annual cost to prepare initial and updating summary prospectuses to be around \$2,600 for each separate account registrant, who use rule 498A currently, and around \$13,000 for each insurance company that issues non-variable annuities.⁸²⁸

Insurance companies that choose to provide summary prospectuses are required to make statutory prospectuses and other materials available online. We estimate the average annual cost to comply with the final website posting requirements of the rule to be around \$900 for each insurance company that

⁸²⁶ Based on analysis of Forms S-1, S-3, and POS AM filed by RILA issuers as of May 2024. See also *infra* footnote 867.

⁸²⁷ The final amendments require insurance companies to use Form N-4 for registered MVA annuities and, as is the case with non-variable annuities and variable annuities, allowing registered MVA annuities the option to use a summary prospectus. As a result, additional insurance companies may opt to use summary prospectuses in connection with registering offerings compared to the proposal.

⁸²⁸ The \$2,600 estimate is based on the following calculations: hourly rate for compliance attorney at \$425 for 6 hours = \$2,600. The \$13,000 estimate is based on the following calculations: \$7,512 (blended hourly rate for compliance attorney and intermediate accountant at \$313 for 24 hours) + \$897 (hourly rate for webmaster at \$299 for 3 hours) + \$5,000 (costs for external services) = \$13,000. This estimate includes the cost to include inter-and intra-document linking and special terms definitions. In addition, we estimate that non-variable annuity issuers will incur printing and mailing costs of approximately \$1,500 per registrant for initial summary prospectuses and approximately \$12,000 per registrant for updating summary prospectuses. (Separate account registrants already incur these printing and mailing costs under the baseline.) See Table 11 (with relevant details about estimates in footnotes 2–9).

⁸²² For example, compared to the current Form N-4, the final amendments 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 require more specific principal risk disclosures.

⁸²³ The \$200,000 estimate is based on the following calculations: \$159,600 (blended hourly rate for compliance attorney and senior programmer at \$420 for 380 hours) + \$40,000 (costs for external services) = \$200,000. Salaries for estimates presented in this section are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. See Table 12 (with relevant details about estimates in footnotes 2–5). This estimate assumes that the annual cost per contract is the same regardless of whether a contract is first registered or whether the issuer files a post-effective amendment. We anticipate that the cost of filing post-effective amendments (see Table 13) will be lower than the cost of initial filings. As a result, this estimate is conservative.

issues non-variable annuities.⁸²⁹

However, some of these costs may have already been incurred by issuers of contracts offering variable options as well as non-variable annuities.

Filing the Prospectus. As discussed in Section II.F, insurance companies registering offerings of RILAs and registered MVA annuities 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 final amendments, a non-variable annuity issuer is required to file every prospectus relating to a non-variable annuity offering that varies in form from a previously filed prospectus before it is first used. This requirement could increase the number of prospectuses required to be filed by non-variable annuities which could, in turn, increase costs for issuers.⁸³⁰ One commenter stated that the proposed rule would require RILA issuers to include the current rate in the prospectus on the day it goes effective and subsequently update such rates through the proposed 497 RILA rate-setting regime.⁸³¹ The commenter stated further that the requirement would be a significant change, and added expense, for RILA issuers, particularly companies that change current rates frequently. The commenter provided an example from a member firm suggesting that the member firm would need to file 432 supplements each year. The commenter did not provide an estimate of the cost of providing a supplement. As discussed further in Section II.C.4.a, certain commenters suggested that current upside rates should be posted online instead of included directly in the prospectus. After considering comments, we have determined to permit insurance companies to disclose current upside rates in the prospectus either by disclosing the information

directly in the prospectus, as proposed, or by including a website address where the current upside rates can be found and incorporating by reference the information on the website into the prospectus. Additionally, all upside rate information for the prior calendar year must be filed annually with the Commission in a structured data format in response to Item 31A of Form N-4. Because the approach we are adopting is largely consistent with current practice, we anticipate that insurance companies will not incur significant additional costs.

Securities Registration Fees. Insurance companies registering offerings of RILAs and registered MVA annuities will be required to pay securities registration fees relating to non-variable annuity offerings in arrears annually by filing Form 24F-2. Like Form N-4, insurance companies will need to familiarize themselves with the new form and may need to configure their systems to efficiently gather the required information. We estimate the average annual cost of this requirement to be around \$1,200 for each insurance company that issues non-variable annuities.⁸³²

Materially Misleading Statements in Non-Variable Annuity Sales Literature. The final amendments make the provisions of rule 156 applicable to non-variable annuity sales literature. The cost of the final amendments includes the direct cost of analyzing advertising materials in light of the guidance rule 156 provides. Insurance companies may review and approve advertisements beyond what occurs currently, particularly because determining whether a statement involving a material fact is misleading in non-variable annuity sales literature will 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 adoption of the final amendments. That is, these costs will be transition costs and not sustained beyond the first year. We estimate that the transition costs associated with the advertising rule amendments will be around \$5,800 per advertisement.⁸³³ Also, ongoing sales literature activity may require internal review and approval of advertisements. We estimate that the

costs associated with ongoing sales literature activity will be around \$1,900 annually per advertisement.⁸³⁴ These costs will be borne by insurance companies that issue and advertise non-variable annuities and third parties who prepare these advertisements.

b. Indirect Costs

Form N-4. While the prospectuses and other registration statement disclosure required by the final amendments will likely facilitate investor evaluation and comparison of non-variable annuities, investors could experience certain transition costs, and some investors may experience other ongoing costs. Transition costs will 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 will 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 non-variable annuities who are accustomed to existing non-variable annuity practices. Also, one commenter stated that while the proposed rule would facilitate comparison of non-variable annuities and variable annuities (both registered on Form N-4), the proposed rule would result in inconsistency in the disclosure of non-variable annuities and similar life insurance product offerings (that are not registered on Form N-4).⁸³⁵ However, investors only would bear any associated cost to the extent investors consider life insurance products to be substitutes for non-variable and variable annuities. Generally, investors may treat variable life insurance products as supplements to their non-variable and variable annuity investments, rather than as substitutes.⁸³⁶ As a result, we do not believe this cost, to the extent it exists, would be meaningful for investors.

Option to Use a Summary Prospectus. While we expect that, should insurance companies opt to use summary

⁸²⁹ The \$900 estimate is based on the following calculations: hourly rate for webmaster at \$299 for 3 hours. See Table 11 (with relevant details about estimates in footnotes 2-9).

⁸³⁰ 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.

⁸³¹ See CAI Comment Letter.

⁸³² The \$1,200 estimate is based on the following calculations: \$246 (rate for compliance clerk at \$82 for 3 hours) + \$938 (rate for programmer at \$316 for 3 hours) = \$1,200. See Table 15.

⁸³³ See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at n.744. However, these costs may be lower to the extent the advertisement at issue is less complex.

⁸³⁴ See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements adopting release at n.745. However, these costs may be lower to the extent the advertisement at issue is less complex or higher if it is more complex.

⁸³⁵ See CAI Comment Letter.

⁸³⁶ The Insured Retirement Institute states that "The cash value available in a whole life policy can be used to supplement retirement income." For example, "A whole life insurance policy can be used to soften the effects of a down market by allowing investors to either withdraw cash or take a loan from the life policy and avoid drawing down their other retirement savings at the least opportune time." See IRI Fact Book.

prospectuses, the majority of investors will 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 non-variable annuity investors who prefer to rely on statutory prospectuses when making investment decisions. While non-variable annuity statutory prospectuses will continue to be available online and in paper or electronic copy upon request, access to those statutory prospectuses will 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 will 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 non-variable annuity investors is not universal, those investors without home internet access might experience a reduction in their ability to access statutory prospectus information quickly and easily.⁸³⁷ 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 final amendments permit RILA and registered MVA annuity 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 will be that the financial statements filed in connection with a non-variable annuity registration statement could be prepared in SAP to the same extent as currently permitted for insurance companies' financial statements filed on that form. The final amendments create a choice for certain insurance companies. They may prepare their financial statements

for use in a registration statement in SAP, or they may prepare their financial statements for use in a registration statement in GAAP. Those insurance companies that expect to benefit from preparing their financial statements for use in a registration statement in SAP (e.g., through reduced costs) will choose SAP.⁸³⁸ Those insurance companies that do not expect to benefit from the option to prepare their financial statements for use in registration statement in SAP will continue to prepare their financial statements for use in a registration statement in GAAP. Because the final amendments will create the option, but not the obligation, to prepare their financial statements for use in a registration statement in SAP, we do not believe this provision of the final amendments will create additional costs.

Filing and Prospectus Delivery Rules. As discussed in Section II.F, when a non-variable annuity issuer seeks to amend a non-variable annuity 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 non-variable annuity offerings to become automatically effective may eliminate such reviews and, as a result, possibly increase the costs to investors. However, issuers will 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 only permits updates to become immediately effective in limited, enumerated circumstances, in order to provide an opportunity for staff review for all other changes.

Materially Misleading Statements in RILA Sales Literature. While reducing the potential for misleading or fraudulent statements in non-variable annuity sales literature will 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 issuers would incur to implement the final amendments. Alternatively, if the cost of compliance with these final amendments is significant, some non-variable annuity issuers might reduce advertising to lower the extra costs of compliance. If this occurs, investors who would otherwise rely on advertisements to make investment decisions about non-variable annuities or compare non-variable annuities 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 non-variable annuity 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 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 a contract purchase and could discourage investors from considering non-variable annuities even in circumstances where investment in a non-variable annuity would be beneficial.

For their part, insurance companies only supply RILAs and registered MVA annuities 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 non-variable annuities, 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.⁸³⁹ 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 and registered MVA annuities as well as facilitating the comparison of non-variable annuities to other annuity contracts, the final amendments could reduce frictions for investors. Requiring

⁸³⁷ 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), 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").

⁸³⁸ Some commenters stated that permitting the use of SAP financials would reduce the burdens on many insurance companies offering or seeking to offer RILAs. See *supra* footnote 568.

⁸³⁹ If market frictions are sufficiently large, market frictions can eliminate exchange altogether.

insurance companies to use a single registration form and filing process for all non-variable annuities as well as all variable annuity separate accounts that are structured as unit investment trusts, as well as allowing non-variable annuity 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 non-variable annuity issuers to tag certain key information in Inline XBRL will 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 non-variable annuity investors the final amendments may increase the likelihood that investors choose to invest more or less money in non-variable annuities 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 final amendments may lead existing investors to choose to allocate their money into different investment options that the non-variable annuity offers, or different non-variable annuities (or other insurance products like variable annuities) that best meet their needs.⁸⁴⁰ The final amendments also could help promote investment in non-variable annuities by investors who currently do not invest in non-variable annuities, 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 non-variable annuities when the costs of doing so do not justify the benefits.

Competition. If the final amendments increase efficiency of exchange in the non-variable annuity market, then we may observe a change in investment in non-variable annuities. For example, if there are individuals who currently do

not invest in non-variable annuities (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 non-variable annuities as an investment, then to the extent the final amendments lower those costs or make investors more aware of non-variable annuities, we will expect to observe more investors entering the non-variable annuity market (*i.e.*, there could be an increase in demand for non-variable annuities). Conversely, there may be non-variable annuity 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 non-variable annuities (*i.e.*, there could be a decrease in demand for non-variable annuities).

As stated in the Proposing Release, if there are insurance companies who limited their participation in the non-variable annuity market prior to the final amendments as a result of the requirement to register non-variable annuity offerings on Form S-1 or Form S-3 or because of the costs of current prospectus delivery requirements, those insurance companies might increase participation in the non-variable annuity market (*i.e.*, there could be an increase the supply of non-variable annuities) as a result of the final amendments.⁸⁴¹ Commenters agreed with this assessment in the context of the proposal for RILAs, and provided comments that could similarly apply to registered MVA annuities. For example, several commenters noted that the ability of RILA issuers to provide financial statements on final Form N-4 in the same way that insurance companies currently do on Form N-4 would facilitate new entrants to, and enhanced competition in, the RILA marketplace.⁸⁴² More generally, one commenter stated that Forms S-1 and S-3 are not well-suited for insurance products and, as a result, the use of Form S-1 and S-3 has impeded the entry of new issuers to the RILA marketplace.

While stating that certain provisions of the proposed rule would promote market competition, this commenter did express concern—specific to RILAs—that the proposed requirement to

disclose a guaranteed minimum limit on index losses for the life of the contract for each index-linked option would unreasonably constrain insurance companies from offering competitive upside rates or even certain classes of index-linked options altogether and might have an inadvertent chilling effect on product innovation and, in turn, investor choice.⁸⁴³ As discussed in Section II.C.1, we are modifying the disclosure requirement to reflect the fact that not all non-variable annuities provide minimum guaranteed limits on index loss for the life of the contract. By clarifying that disclosure of minimum guaranteed limits on index loss for the life of the contract is not intended to require insurance companies to establish such minimums, the adopted change mitigates the commenter's concern. 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, non-variable annuities might affect competition in the non-variable annuity market.

The final amendments might also affect competition by requiring that information about non-variable annuities be presented in a concise, user-friendly way, which could allow investors to compare information across products. Requiring non-variable annuity 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 non-variable annuity issuers for investor capital. For example, the final amendments require issuers to distill certain key product information into tables. The presentation of this information in a table facilitates evaluation among different non-variable annuities as well as comparison to variable annuities. Greater comparison among different non-variable annuities as well as comparison to variable annuities could lead to greater competition. Furthermore, by reducing the costs associated with aggregating data across non-variable annuities, the final Inline XBRL requirement could reduce barriers to entry for third-party data aggregators and induce competition among firms that supply information about non-variable annuities to investors, including other third-party aggregators and sales agents. Accordingly, we do

⁸⁴⁰ One commenter stated that extending the relief provided by Form N-4 to issuers of RILA contracts will enable more insurance companies to enter the RILA market, which will increase market competition and the choices available to investors among products for retirement and other long-term purposes. See CAI Comment Letter. Increased choice in the future could benefit investors to the extent increased choices allow investors to allocate their money into different investments that better match their overall financial needs and objectives.

⁸⁴¹ See Proposing Release at Section III.D.

⁸⁴² See, e.g., IRI Comment Letter; Gainbridge Comment Letter; CAI Comment Letter.

⁸⁴³ See CAI Comment Letter.

not anticipate that the costs associated with Form N-4 tagging will be significant enough to deter insurance companies from entering the market for RILAs and registered MVA annuities. As such, we do not expect that the new and modified tagging requirements will decrease competition in the market for RILAs and registered MVA annuities.⁸⁴⁴

The effect on competition between insurance companies could be limited, however, to the extent non-variable annuity investors rely on an agent to help them select their non-variable annuity contract and the investment options under the contract and do not have access to broad comparisons across different non-variable annuities (or among different investment options that non-variable annuities offer) at the time of sale.⁸⁴⁵ Agents generally only provide their customers with a subset of all non-variable annuities available in the general marketplace. Thus, while the product information in summary prospectuses will facilitate comparison across products offered by the agent, the effect will 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 final amendments on competition, if the final amendments increase the efficiency of exchange in the non-variable annuity market, then we may observe a change in investment in non-variable annuities. As discussed in Section IV.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, non-variable annuity premiums are not directly invested into equity securities, but are typically invested into derivative securities or fixed-income securities such as corporate bonds. To the extent that an increase or decrease in the demand for non-variable annuities 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 non-variable annuities to have any effect on the underlying securities. An increase or decrease in the demand for non-variable annuities could, however, increase or

decrease the demand for fixed-income securities such as corporate bonds by insurance companies. To the extent the final amendments 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 non-variable annuities, 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 non-variable annuities 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 non-variable annuity proceeds into fixed-income securities such as corporate bonds, there could be an increase in the demand for those securities.

The final 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 non-variable annuity issuers to find appropriate sources of new investors. Smaller issuers 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 non-variable annuities, smaller non-variable annuity issuers may benefit from improved coverage by third-party information providers and data aggregators.

E. Reasonable Alternatives Considered

1. Creating an Entirely New Registration Form for RILAs

The final amendments require the registration of RILA offerings on Form N-4. As an alternative, we considered requiring insurance companies to register RILA offerings on an entirely new form. 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, along with information about the insurance company and the offering. 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 permits an insurance company to substitute SAP financials for 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.

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 contracts that offer index-linked options along with other investment options such as variable options or fixed investment options). Furthermore, given that we are amending Form N-4 to add information to capture 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 final 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 will efficiently provide investors with product-specific information about these combination contracts. As a result, investors will be able to compare annuity products, and the investment options that these products offer, with less time and effort.⁸⁴⁶ 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.

Requiring RILA offerings to be registered on Form N-4 rather than on an entirely new form will also be more efficient for insurance companies since they will generally follow the same procedures they already use for the registration of variable annuities.⁸⁴⁷ Using Form N-4 to register variable annuities and RILA offerings will 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 will be less costly because, if RILA offerings had to be registered on a form other than

⁸⁴⁴ See also *infra* Section III.D.

⁸⁴⁵ 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 (*see* IRI Fact Book). 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.

⁸⁴⁶ See CAI Comment Letter.

⁸⁴⁷ *Id.*

Form N-4, combination contracts offering variable options and index-linked options would have to use two separate registration forms.

The Commission will also benefit from using Form N-4 for RILAs because the disclosure requirements for variable annuities and RILAs will be located in one form only, and registration statements for these products will be subject to the same filing and review processes.⁸⁴⁸ This will 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 making amendments to Form N-4 so that insurance companies are required to register non-variable annuity offerings using that form. While the substance of many of the requirements in Form N-4 does not change from the current version of the form, we are updating some items to include disclosures specifically tailored to non-variable annuities. 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 required more or less tailoring of the form for non-variable annuities. A larger number of amendments tailored to non-variable annuities than the number we adopted would be more costly for insurance companies registering non-variable annuity 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 have required insurance companies to provide information related to the economic tradeoffs associated with index-linked options. For example, we could have required RILA issuers 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 conducted by the staff in the Proposing Release.⁸⁴⁹ In such a comparison, we could either have required that the insurance company 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 have required 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. We also considered 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 have required the calculation of a disclosure to explicitly include the impact of early withdrawal charges or penalties on the liquidity of the investment. We could also have required more prominent placement of these features on marketing or other materials, or we could have required 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 non-variable annuities than the number we are adopting would be less costly for insurance companies. Since insurance companies already use Form N-4 to register variable annuities, and most non-variable annuity issuers offer variable annuities registered on Form N-4, the costs of complying with the disclosure requirements of the amended form will not be substantial.

The amendments to Form N-4 will promote investor understanding of non-variable annuity contracts by presenting information in a clear and concise manner. We are not adopting a larger number of amendments tailored to non-variable annuities because they 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.⁸⁵⁰ ⁸⁵¹ We

are also not adopting only a subset of amendments tailored to non-variable annuities, as compared with the final rule, because they could result in less investor understanding relative to the understanding resulting from the final amendments.

3. Limiting Scope of Structured Data Requirements

The adopted rule requires many of the newly added disclosures on Form N-4 to be tagged in Inline XBRL, in addition to 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. 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 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. Therefore, we are not excluding the newly added disclosures on Form N-4 from the Inline XBRL tagging requirements.

V. Paperwork Reduction Act

We are amending several rules and forms that will modify the registration, offering, and communications processes for non-variable annuities under the Securities Act. We also are amending Form N-4 and related rules that will apply to all issuers of that form.⁸⁵² The

options would be irrelevant, and even confusing and misleading, to investors. See IRI Comment Letter; CAI Comment Letter.

⁸⁵² We are amending 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

⁸⁴⁹ See Proposing Release at III.B.3., describing the staff analysis and the similar study conducted in the Moenig paper.

⁸⁵⁰ 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 Bernalles, 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.

⁸⁵¹ Some commenters stated that the disclosure of the economic tradeoffs associated with index-linked

⁸⁴⁸ *Id.*

amendments will implement the requirements relating to non-variable annuities in the RILA Act. The amendments will 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 are retitling to “Rule 498A Summary Prospectus for Variable and Non-Variable 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 are retitling 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 are retitling 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 published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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. While the Commission received no comments specifically addressing the estimated PRA burdens and costs that the Proposing Release described, the Commission did receive comments discussing the burdens of implementing certain aspects of the proposal. We discuss those comments below, along with discussing updated estimates of the collection of information burdens associated with the final amendments.

We also discuss below the collection of information burdens associated with 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 amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the amendments can be found in Section III above.

A. Rule 498A

We are amending rule 498A to permit insurance companies registering offerings of non-variable annuities, as well as issuers of “combination contracts” offering a combination of variable and non-variable options, to use a summary prospectus to satisfy statutory prospectus delivery obligations. Consistent with current rule 498A, the use of summary prospectuses for non-variable annuities will be voluntary, but the rule’s requirements will be mandatory for issuers that elect to send or give a summary prospectus in reliance upon rule 498A. We also are making certain amendments to Form N–4 that will affect the variable annuity summary prospectuses currently provided to investors. The 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 non-variable annuities, as discussed in more detail above. These amendments will result in a change in our current 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 non-variable annuities to the estimates.

The respondents to these collections of information will be insurance companies registering offerings of non-variable annuities and registered variable annuity separate accounts. The information provided under rule 498A will not be kept confidential.

The Commission did not receive public comments regarding the PRA estimates for rule 498A in the Proposing Release. Commenters that discussed rule 498A voiced support for the proposal to extend rule 498A to non-variable annuities.⁸⁵³ As discussed above, in a change from the proposal, we are requiring insurance companies to use Form N–4 to register offerings of registered MVA annuities and, as is the case with non-variable annuities and variable annuities, allowing issuers of registered MVA annuities the option to use a summary prospectus. We have adjusted our numbers to account for the potential that additional insurance companies will opt to use summary prospectuses in connection with offerings of registered MVA annuities.

In our most recent Paperwork Reduction Act submission for Rule 498A, we estimated for rule 498A a total aggregate annual hour burden of 7,634 hours, and a total aggregate annual external cost burden of \$9,094,866.⁸⁵⁴ We have historically estimated the paperwork burden of rule 498A based on the number of variable annuity and variable life insurance separate account registrants, and our estimates of the updated burden resulting from the final amendments are similarly based on the number of non-variable annuity issuers.⁸⁵⁵ We estimate that there are 38 insurance companies that issue RILAs, registered MVA annuities, or annuity contracts offering index-linked options and MVA options, and that there are 416 separate account registrants on current Form N–4 that would be impacted by the proposed amendments.⁸⁵⁶ The summary prospectus is voluntary, so the percentage of non-variable annuity 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 non-variable annuities, 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 final amendments to rule 498A.

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 amendments will require insurance companies that issue non-variable annuities 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 V.D below.

⁸⁵³ See CAI Comment Letter.

⁸⁵⁴ On January 9, 2024, the Office of Management and Budget approved this collection of information estimate for rule 498A. The Proposing Release discussed a prior burden estimate, which the Office of Management and Budget approved on November 13, 2020. See Proposing Release at n.494.

⁸⁵⁵ VASP Adopting Release at Section V.E.

⁸⁵⁶ The non-variable annuity issuer estimate is based on a review of non-variable annuity registration statements filed with the Commission as of May 2024. See *supra* footnote 725. The estimate of variable annuity separate accounts is based on Form N–CEN data as of December 31, 2023. The Office of Management and Budget approved the burden estimate for rule 498A on January 9, 2024.

TABLE 11—RULE 498A—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	9	6	\$425 (compliance attorney)	\$2,550	.....
Number of registrants		× 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	24.67	\$313 (blended rate)	\$7,709.38	\$5,000
Online Posting of Contract Documents	2	2.67	\$289 (webmaster)	\$771.63	.....
Total burden per registrant		27.34	.....	8,481.01	\$5,000
Number of registrants		× 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
PROPOSED ESTIMATES FOR PRINTING AND MAILING BY RILA REGISTRANTS					
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 Proposed Estimated 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	+ 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
	Internal initial burden hours	Internal annual burden hours	Wage rate ¹	Internal time costs	Annual external cost burden
FINAL ESTIMATES					
Separate Account Registrants					
Final Amendments	9	² 6	\$425 (compliance attorney)	\$2,550	.....
Number of separate account registrants		³ × 416	.....	× 416	.....
Total annual burden		2,496	.....	\$1,060,800	.....
Use of summary prospectus		× 90%	.....	× 90%	.....
Total new annual burden for Reliance on Rule 498A		2,246	.....	\$954,720	.....
Non-Variable Annuity Registrants					
Preparation and filing of Initial Summary Prospectus/Updating Summary Prospectus	40	⁴ 24	⁵ \$313 (blended rate)	\$7,512	⁶ \$5,000
Online Posting of Contract Documents	2	⁷ 3	\$299 (webmaster)	\$897	.....
Total burden per registrant		27	.....	\$8,409	\$5,000
Number of non-variable annuity issuers		⁸ × 38	.....	× 38	× 38
Total annual burden		1026	.....	\$319,542	\$190,000
Use of summary prospectus		× 90%	.....	× 90%	× 90%
Total new annual burden for Reliance on Rule 498A		923	.....	\$287,588	\$171,000
FINAL ESTIMATES FOR PRINTING AND MAILING BY NON-VARIABLE ANNUITY REGISTRANTS ⁹					
Initial Summary Prospectus					\$57,000
Updating Summary Prospectus					\$456,000
Total annual burden					\$513,000
Use of summary prospectus					× 90%
Total new annual burden for Reliance on Rule 498A					\$461,700
Total Final Estimated Burdens					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	663	7,634	.....	\$2,337,471	\$9,094,866
Aggregate proposed additional annual burden estimates	+ 35	+ 3,169 (2,246 + 923)	.....	+ \$1,242,308 (\$954,720 + \$287,588)	+ \$632,700 (\$171,000 + \$461,700)

TABLE 11—RULE 498A—PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Revised aggregate annual burden estimates	= 698	= 10,803	.....	= \$3,579,779	= \$9,727,566

Notes:

¹ 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").

² Internal annual burden hours represents initial burden estimates annualized over a three-year period (9 hours/3 = 3 hours) plus 3 hours of ongoing annual burden hours.

³ Estimate is based on a review of Form N-CEN reports through December 31, 2023. In its most recently approved PRA submission, the Commission estimated that 419 registrants on Form N-4 would be subject to the information collection burden under current rule 498A. For the estimated burden of the 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 ((40 hours/3 = approximately 13 hours) + 11 hours = approximately 24 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 We estimate that each insurance company that chooses to rely on rule 498A with regards to a non-variable annuity 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.

⁷ Represents initial burden estimates annualized over a three-year period plus two hours of ongoing annual burden hours ((2 hours/3 = approximately 1 hour) + 2 hours = approximately 3 hours).

⁸ This estimate is based on the number of insurance companies issuing non-variable annuities. See *supra* footnote 725. The proposal reflected an estimate of the number of RILAs, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for rule 498A has historically been calculated (reflecting the number of variable annuity separate accounts relying on rule 498A—thus, reflecting the registrants that rely on the rule, not the number of contracts with summary prospectuses under the rule).

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 non-variable annuity issuers printing and mailing costs are based on the currently approved burdens for printing and mailing costs under rule 498A (approximately \$1,500 per registrant for initial summary prospectuses and approximately \$12,000 per registrant for updating summary prospectuses).

¹⁰ The estimated number of new responses is based on the total of the number of non-variable annuity responses under the proposed amendments (38 responses) and the difference between the number of responses for registered separate accounts under the current aggregate annual burden estimate (419 responses) and the final additional annual burden estimates (416 responses). (38 non-variable annuity issuer responses subtracted by 3 registered separate account responses).

B. Form N-4

Under the final amendments, insurance companies will register non-variable and variable annuity contract offerings on Form N-4, as amended, to address the features and risks of non-variable annuities, including RILAs and registered MVA annuities. In addition, we are adopting other amendments to Form N-4 that will apply to all issuers that use that form. For example, the final amendments will 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 will result in a change in our current 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 non-variable annuities to the estimates.

The Commission received no comments specifically addressing the estimated PRA burdens for the proposed amendments to Form N-4. Rather, as discussed above, the Commission received comments supporting the ability of non-variable annuities to register on Form N-4.⁸⁵⁷ Those commenters generally suggested that the current burdens on insurance

companies that register non-variable annuities on Form S-1 or S-3 may be lessened by having such contracts register on Form N-4.⁸⁵⁸

As discussed in the proposal, 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 \$33,348,866.⁸⁵⁹ 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 will be non-variable annuity issuers and registered variable annuity separate accounts. The purpose of the information collection requirements on Form N-4 is to meet the filing and disclosure requirements of the Securities Act and Investment Company Act, as applicable, and to provide investors with information

⁸⁵⁸ *Id.*

⁸⁵⁹ On Oct. 26, 2021, the Office of Management and Budget approved without change this burden estimate.

necessary to evaluate an investment in an offering of securities registered on the form.

At proposal, we presented our information collection estimates by the product type that would be registered on Form N-4. Our proposed information collection estimates addressed RILAs and the initial burdens that a RILA issuer would incur to register a non-variable annuity on Form N-4 and file post-effective amendments; these estimates were the majority of the burden associated with the proposed amendments to rule 498A. We also included information collection estimates that would apply to variable annuity issuers that currently register their offerings on Form N-4, which were more incremental in nature. For each of these proposed information collection estimates—those associated with RILAs and those associated with variable annuities—we based our proposed information collection estimates on average burdens that we anticipated issuers would incur.

We are adopting amendments that require not only issuers of variable annuities and RILAs, as proposed, to register offerings of these annuity products on Form N-4, but also require issuers of registered MVA annuities to register offerings of these annuities on Form N-4. Accordingly, our final information collection estimates reflect these additional registrants as well as updated data since the proposal.

⁸⁵⁷ See *supra* sections II.A. and II.B.

Specifically, our final information collection estimates reflect that the number of entities and responses have been modified from the proposal to include issuers of registered MVA annuities, and also to reflect that the estimated number post-effective amendments filed by issuers of variable annuities have declined from January 1, 2021 to December 31, 2023.

Our final information collection estimates reflect that our per-entity and per-response estimates have not changed from our proposed information collection estimates. This is because we received no comments specifically addressing the estimated PRA burdens for the proposed amendments to Form

N-4, and also we do not anticipate that any of the changes from the proposal we are adopting will make any substantive modifications to the per-entity and per-response estimates or impose any additional substantive recordkeeping or information collection requirements within the meaning of the PRA compared to the proposal. Our final information collection estimates, like our proposed information collection estimates, are based on average burdens that we anticipate issuers will incur in registering annuity offerings and filing post-effective amendments on Form N-4. For ease of administration and in a change from the proposed approach to

calculating these estimates, our final information collection estimates do not separately address the Form N-4 burdens that issuers of different types of annuities (e.g., RILAs, registered MVA annuities, variable annuities) would incur. Instead, the final estimates include average estimates that any Form N-4 issuer would incur.

We estimate that there will be 1,235 responses that will be subject to collection of information requirements under the final amendments to Form N-4.⁸⁶⁰ The tables below summarize our PRA initial and ongoing annual burden estimates associated with the final amendments to Form N-4.

TABLE 12—FORM N-4 INITIAL FILINGS—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	12	14	\$406 (blended rate for compliance attorney and senior programmer).	\$5,684	.....
Estimated number of annual responses .....	.....	× 42	.....	× 42	.....
Total new annual burden .....	.....	588	.....	\$238,728	.....
RILA Issuers					
Proposed amendments to Form N-4	300	390.89	\$406 (blended rate for compliance attorney and senior programmer).	\$158,701.34	\$40,000
Website availability requirement .....	.....	0.5	\$286 (webmaster)	\$143	.....
Estimated number of annual responses .....	.....	× 20	.....	× 20	× 20
Total new annual burden .....	.....	7,827.80	.....	\$3,176,886.80	\$800,000
Total Proposed 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	+ 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
FINAL ESTIMATED BURDENS					
	Internal initial burden hours	Internal annual burden hours ¹	Wage rate ²	Internal time cost	Annual external cost burden
Final Amendments to Form N-4 ³	300	³ 380	\$420 (blended rate for compliance attorney and senior programmer) ⁵ .	\$159,600	⁶ \$40,000
Estimated number of annual responses ⁶ .....	.....	× 101	.....	× 101	× 101
Total estimated annual new burden .....	.....	38,380	.....	\$16,119,600	\$4,040,000
Final 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 additional annual burden estimate ^{7,8}	+ 71	+ 29,953	.....	+ \$13,624,884	+ \$3,285,260
Revised aggregate annual burden estimates	= 101	= 38,380	.....	= \$16,119,600	= \$4,040,000

Notes:

⁸⁶⁰ This includes the number of initial filings plus post-effective amendments that we estimate below. See Table 14. Certain disclosure required by Form N-4 may not be applicable to insurance companies that register the offerings of non-variable annuities. Further, insurance companies that register RILA

contracts, may post the current limit on index gains for each index-linked option on a website. For the ease of administering this collection, the information collection estimates are average estimates reflecting that different registrants could, in practice, incur different burdens regarding the

Form N-4 disclosure requirements depending on the type of product being registered. For both variable and non-variable annuity registrants, this estimate is based on a review of annuity registration statements filed with the Commission from January 1, 2021 through December 31, 2023.

¹ This estimate includes the initial burden estimates annualized over a three-year period, plus the estimate 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 estimated burden applies to an issuer of any annuity registered on Form N-4.

⁴ The final estimate includes the initial burden estimates annualized over a three-year period (300 hours/3 = 100 hours), plus 280 hours of ongoing annual burden hours (the estimate of ongoing internal hours associated with post-effective amendments (which will be filed in the year following an initial registration statement), as referenced in Table 13 *infra*). The final amendments will permit issuers of RILA contracts to incorporate information about current contract limits on gains by reference into their prospectuses from a website. See Item final Form N-4, Item 6. Because this incorporation by reference approach is permitted but not required, burdens associated with this permissible website disclosure are reflected in the burden estimate for the final amendments to Form N-4. For purposes of this information collection, we estimate that 100% of issuers of RILAs would incur burdens associated with website disclosure.

⁵ The \$420 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$440) and a senior programmer (\$399). \$420 is based on the following calculation: $(\$440 + \$399)/2 = \$420$ rounded to the nearest whole dollar.

⁶ We estimate that the external cost to prepare and file an initial registration statement on Form N-4 is \$40,000 per filing. This estimate is based on the currently approved external cost estimate for Form N-4 filings, adjusted to reflect staff experience of the costs associated with drafting and filing a registration statement on Form N-4, such as the cost of outside legal services.

⁷ The estimate of the annual number of registration statements filed on Form N-4 is based on the average annual number of annuity filings (variable annuity, RILA, and registered MVA annuities) received by the Commission over the past three years (Jan. 1, 2021 to Dec. 31, 2023) on Forms N-4, S-1, and S-3. In its most recently approved PRA submission, the Commission estimated that insurance companies that issue variable annuities will make approximately 30 initial registration statement filings per year. For the estimated burden of the amendments to Form N-4, we have taken into account updated data regarding the number of initial annuity filings on Forms N-4, S-1 and S-3.

⁸ The estimated number of new responses, 71 responses, is based on the total of the number of responses under the final amendments, 101 responses, less 30 responses which represents the number of responses for registered separate accounts under the current aggregate annual burden estimate. Similarly, the estimated additional internal hours figure reflects the total estimated annual new burden (38,380 hours) and subtracts the current internal hour estimate (8,427 hours) to avoid double counting the current burden that is applicable to registered separate accounts; the estimated additional internal hour cost figure reflects the total estimated annual new internal hour cost estimate (\$16,119,600) and subtracts the current internal hour cost estimate (\$2,494,716) to avoid double counting current internal hour cost applicable to registered separate accounts; and the estimated additional external cost figure reflects the total estimated annual new external cost (\$4,040,000) and subtracts the current external cost estimate (\$754,740) to avoid double counting current external costs applicable to registered separate accounts.

TABLE 13—FORM N-4 POST-EFFECTIVE AMENDMENT FILINGS—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Separate Account Registrants					
Proposed Amendments	12	6	\$406 (blended rate for compliance attorney and senior programmer).	\$2,436	.....
Estimated number of annual responses .....	.....	× 1,016	.....	× 1,016	.....
Total new annual burden .....	.....	6,096	.....	\$2,474,976	.....
RILA Issuers					
Proposed amendments to Form N-4	210	279.95	\$406 (blended rate for compliance attorney and senior programmer).	\$113,659.70	\$24,000
Website availability requirement .....	.....	0.5	\$286 (webmaster)	\$143	.....
Estimated number of annual responses .....	.....	× 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	– 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
FINAL ESTIMATED BURDENS					
	Internal initial burden hours	Internal annual burden hours	Wage rate ¹	Internal time costs	Annual external cost burden
Final Amendments to Form N-4 ²	210	² 3280	\$420 (blended rate for compliance attorney and senior programmer) ⁴ .	\$117,600	⁵ \$24,000
Estimated number of annual responses ⁵ .....	.....	× 1,164	.....	× 1,164	× 1,164
Total new annual burden .....	.....	325,920	.....	\$136,886,400	\$27,936,000
FINAL 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 additional annual burden estimates ⁶	– 202	+ 41,860	.....	+ \$52,785,946	\$– 4,658,126
Revised aggregate annual burden estimates	= 1,164	= 325,920	.....	= \$136,886,400	= \$27,936,000

Notes:

¹ 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.

² This estimated burden applies to an issuer of any annuity registered on Form N-4.

³ The final estimate includes the initial burden estimates annualized over a three-year period, plus 208 hours of ongoing annual burden hours ((210 hours/3 = 70 hours) + 208 hours = 278 hours (rounded up to 280 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. The final amendments will permit issuers of RILA contracts to incorporate information about current contract limits on gains by reference into their prospectuses from their website. See final Form N-4, Item 6. Because this incorporation by reference approach is permitted but not required, burdens associated with this permissible website disclosure requirement are reflected in the burden estimate for the final amendments to Form N-4. For purposes of this information collection, we estimate that 100% of issuers of RILAs would incur burdens associated with website disclosure.

⁴ The \$420 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney (\$440) and a senior programmer (\$399). \$420 is based on the following calculation: (\$440 + \$399)/2 = \$420 rounded to the nearest whole dollar.

⁵ 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.

⁶ The estimate of the average annual number of post-effective amendments to annuity filings (variable annuity, RILA, and registered MVA annuities) received by the Commission over the past three years (Jan. 1, 2021 to Dec. 31, 2023) on Forms N-4, S-1, and S-3. In its most recently approved PRA submission, the Commission estimated that insurance companies that issue variable annuities will make approximately 1,336 post-effective amendments per year. For the estimated burden of the amendments to Form N-4, we have taken into account updated data regarding the number of post-effective amendments for annuities on Forms N-4, S-1 and S-3. The estimate of annual the annual number of post-effective amendments to annuity filings reflects that the average number of post-effective amendments filed by separate account registrants with the Commission has declined over the past three years. See *infra* note 6.

⁷ The aggregate final additional annual burden estimate reflects that the average number of post-effective amendments over the past three years (Jan. 1, 2021 to Dec. 31, 2023) by separate account registrants (1,088) has declined from the current aggregate annual burden estimate (1,366). The aggregate additional burden estimate takes 1,088 (the average number of post-effective amendments over the past three years by separate account registrant) and deducts 1,366 (the current aggregate burden estimate) which equals -278 and then adds 75 (the average number of post-effective amendments filed by insurance companies that issue RILA and registered MVA contracts over the past three years) which equals -202, as adjusted for rounding. Similarly, the estimated additional internal hours figure reflects the total estimated annual new burden (325,920) and subtracts the current internal hour estimate (284,060) to avoid double counting the current burden that is applicable to registered separate accounts; the estimated additional internal hour cost figure reflects the total estimated annual new internal hour cost estimate (\$137,061,000) and subtracts the current internal hour cost estimate (\$84,100,454) to avoid double counting current internal hour cost applicable to registered separate accounts; and the estimated additional external cost figure reflects the total estimated annual new external cost (\$27,936,000) and subtracts the current external cost estimate (\$32,594,126) to avoid double counting current external costs applicable to registered separate accounts.

TABLE 14—FORM N-4 TOTAL BURDEN—PRA ESTIMATES

	Responses	Internal annual burden hours ¹	Internal time costs ²	Annual external cost burden
TOTAL BURDEN ESTIMATES INCLUDING AMENDMENTS				
Proposed Estimates				
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 proposed aggregate annual burden hours	= 1,168	= 332,240.30	= \$102,729,004	= \$36,263,606
Final Estimates				
Current aggregate annual burden estimates	1,366	292,487	\$86,595,170	\$33,348,866
Aggregate final additional annual burden estimates	³ - 131	⁴ 71,813	⁵ \$66,410,830	⁶ \$ - 1,372,886
Revised aggregate annual burden hours	1,235	364,300	\$153,006,000	\$31,975,980

Notes:

¹ This estimate includes the initial burden estimates annualized over a three-year period.

² This estimate is based on the Commission's estimates of relevant wage rates 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. The particular wage rates that were considered are discussed in Table 12 and Table 13 above.

³ The aggregate final additional annual burden estimates reflect that the average number of post-effective amendments over the past three years (Jan. 1, 2021 to Dec. 31, 2023) by separate account registrants (1,088) has declined from the current aggregate annual burden estimate (1,366). The aggregate final additional annual burden estimate for responses adds 71 (the aggregate annual additional burden estimate for initial registration statements) and -202 (the aggregate annual additional burden estimate for post-effective amendments) = -131.

⁴ The aggregate final additional annual burden estimate for the internal annual burden hours adds 29,953 (the aggregate annual additional burden estimate for initial registration statements) and 41,860 (the aggregate annual additional burden estimate for post-effective amendments) = 71,813.

⁵ The aggregate final additional annual burden estimate for internal time costs adds \$13,624,884 (the aggregate annual additional burden estimate for initial registration statements) and \$52,785,946 (the aggregate annual additional burden estimate for post-effective amendments) = \$66,410,830.

⁶ The aggregate final additional annual burden estimate for the annual external cost burden adds \$3,285,260 (the aggregate annual additional burden estimate for initial registration statements) and \$ - 4,658,126 (the aggregate annual additional burden estimate for post-effective amendments) = \$ - 1,372,886.

C. Form 24F-2

Under the amendments, insurance companies will be required to pay applicable securities registration fees relating to non-variable annuities in arrears on Form 24F-2. Consistent with the other elements of this rulemaking, these amendments are designed to require insurance companies to use the same framework to pay securities registration fees for non-variable annuities 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.

The Commission did not receive public comments regarding the PRA estimates for Form 24F-2 in the Proposing Release. Commenters generally supported the proposal to require insurance companies to pay fees in arrears on Form 24F-2 and did not indicate that they found this fee payment method burdensome.⁸⁶¹ As discussed above, in a change from the proposal, we are requiring insurance companies to pay fees for registered MVA annuities via Form 24F-2. We have adjusted our numbers to account for the fact that more insurance companies than originally anticipated will pay fees with Form 24F-2.

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 20,464 hours, and a total aggregate annual external cost burden of \$0.⁸⁶² The likely respondents to the proposed amendments will include non-variable annuity 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 38 non-variable annuity issuers will be subject to these final amendments and will file

⁸⁶¹ See CAI Comment Letter; IRI Comment Letter; Gainbridge Comment Letter.

⁸⁶² On April 17, 2024, the Office of Management and Budget approved this burden estimate. Before that, the Office of Management and Budget approved a burden estimate for Form 24F-2 on November 13, 2020. The 2020 OMB-approved burden estimate was cited in the Proposing Release.

one Form 24F-2 filing each per year.⁸⁶³
The table below summarizes our PRA
initial and ongoing annual burden

estimates associated with the final
amendments to Form 24F-2.

TABLE 15—FORM 24F-2—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Clerical work to file Form 24F-2	3	3	\$82 (compliance clerk)	\$246	\$0
Submission in a structured data format	3	3	\$316 (programmer)	\$948	\$0
Total annual burden per response		6		\$1,194	
Number of annual responses		× 90		× 90	× 90
Total new annual burden		540		\$107,460	\$0
TOTAL ESTIMATED PROPOSED 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
	Internal initial burden hours	Internal annual burden hours	Wage rate ²	Internal time costs	Annual external cost burden
FINAL ESTIMATES					
Clerical work to file Form 24F-2	3	13	\$82 (compliance clerk) ²	\$246	\$0
Submission in a structured data format	3	13	\$316 (programmer) ²	\$948	\$0
Total annual burden per response		6		\$1,194	
Number of annual responses ³		× 38		× 38	
Total new annual burden		228		\$45,372	\$0
TOTAL ESTIMATED FINAL BURDENS INCLUDING AMENDMENTS					
	Responses	Internal annual burden hours		Internal time costs	Annual external cost burden
Current aggregate annual burden	5,116	20,464		\$4,072,336	\$0
Aggregate final additional annual burden estimates	+ 38	+ 228		+ \$45,372	+ \$0
Revised aggregate final burden estimates	= 5,154	= 20,692		= \$4,117,708	= \$0

Notes:

¹ The estimate includes the initial burden estimates annualized over a three-year period (3 hours/3 = 1 hour), 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 the number of insurance companies issuing non-variable annuities. See *supra* footnote 725. The proposal reflected an estimate of the number of RILAs, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for Form 24F-2 has historically been calculated.

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 amending Form N-4, as well as rule 405 of Regulation S-T, that will require certain new structured data reporting requirements for insurance companies that register offerings of non-variable annuities.⁸⁶⁴ The amendments will require insurance

companies that issue non-variable annuities 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.⁸⁶⁵ The purpose of the information collection is to make information regarding non-variable annuities and variable annuities 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.⁸⁶⁶ For the insurance companies that will now be registering non-variable annuities, including registered MVA annuities, on Form N-4, our amended data tagging requirements would represent new burdens. Nevertheless, non-variable annuity issuers generally do have prior experience submitting filings to the Commission in Inline XBRL. The vast majority of insurance companies that

⁸⁶³ This estimate is based on a review of non-variable annuity registration statements filed with the Commission as of May 2024. See *supra* footnote 725. We do not believe that the 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.

⁸⁶⁴ 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.

⁸⁶⁵ See *supra* Section II.C.10.

⁸⁶⁶ See General Instruction C.3(h) of current Form N-4. As discussed above, some of the amended items will also require certain variable annuity issuers to provide a few additional disclosures, which though relatively minor, will also have to be tagged.

currently register non-variable annuities 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 non-variable annuity registration statements and are thus familiar with the current Form N-4 tagging requirements.⁸⁶⁷ In addition, insurance companies that register non-variable annuities on Forms S-1 and S-3 that file GAAP financial statements must tag them using Inline XBRL.⁸⁶⁸ Given this prior experience, we do not expect the tagging requirements to be as burdensome to many insurance companies that issue non-variable annuities as it will be for issuers that will be going through the Inline XBRL tagging and submission process for the first time.

The Commission did not receive public comments regarding the PRA estimates associated with the Investment Company Interactive Data requirements in the Proposing Release. Commenters who referenced this aspect of our proposal did not mention the hourly or monetary cost burden of the

interactive data requirement.⁸⁶⁹ As discussed above, in a change from the proposal, we are requiring insurance companies that offer registered MVA annuities to use amended Form N-4, which includes additional interactive data requirements. However, as mentioned above, insurance companies that issue registered MVA annuities currently do so with Form S-1 or S-3, which also have structuring requirements, thereby reducing the likelihood that these insurance companies will lack familiarity with structured data requirements. We are updating our estimated number of insurance companies and related filings that likely would be impacted by the amended interactive data requirements on Form N-4 to accommodate the requirement that registered MVA annuities use the form. The Commission recognizes that certain RILAs and registered MVA annuities will be subject to different interactive data requirements given that they will be subject to different aspects of Form N-4 and its accompanying disclosure

requirements. Although certain structured disclosure requirements in Form N-4 might not be applicable to some contracts, depending on the type of annuity being registered, the information collection estimates are average estimates reflecting that different filers could in practice incur different burdens relating to the Form N-4 disclosure requirements that are applicable to particular annuities.

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 327,571 hours, and a total annual external cost burden of \$16,791,000.⁸⁷⁰ 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 tagging requirements that would apply to non-variable annuities that file with the Commission on Form N-4.

TABLE 16—INVESTMENT COMPANY INTERACTIVE DATA—PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Proposed Burdens					
Proposed disclosures for current N-4 filers	1	1	\$406 (blended rate for compliance attorney and senior programmer).	\$406	\$50
Number of current N-4 filers		× 400		× 400	× 400
Total proposed new burden estimates for current N-4 filers		400		\$162,400	\$20,000
Proposed Form N-4 disclosures for RILAs	9	4	\$406 (blended rate for compliance attorney and senior programmer).	\$1,624	\$700
Number of RILAs		× 90		× 90	× 90
Total proposed new burden estimates for RILAs		360		\$146,160	\$63,000
Total proposed new aggregate annual burden		760		\$308,560	\$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
Final Estimated Burdens					
	Internal initial burden hours	Internal annual burden hours ¹	Wage rate ²	Internal time costs	Annual external cost burden
Final disclosures for current N-4 filers ³	1	4 ¹	\$406 (blended rate for compliance attorney and senior programmer).	\$406	⁵ \$50
Number of current N-4 filers ⁶		× 416		× 416	× 416
Total final new burden estimates for current N-4 filers		416		\$168,896	\$20,800

⁸⁶⁷ Based on analysis of Forms S-1, S-3, and POS AM filed by insurance companies that issue non-variable annuities, 32 of the 38 insurance companies that issue RILAs and registered MVA annuities 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.

⁸⁶⁸ See Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

⁸⁶⁹ See *supra* footnote 496 and accompanying text.

⁸⁷⁰ This estimate is based on the last time the PRA renewal for the Investment Company Interactive Data information collection was approved, on January 23, 2024. 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—PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate	Internal time costs	Annual external cost burden
Final Form N-4 disclosures for non-variable annuity issuers ⁷ .	9	⁸ 4 hours	\$406 (blended rate for compliance attorney and senior programmer).	\$1,624	⁹ \$700
Number of non-variable annuity issuers ¹⁰ .....	.....	¹¹ × 38	.....	× 38	× 38
Total final new burden estimates for non-variable annuity issuers.	.....	152	.....	\$61,712	\$26,600
Total final new aggregate annual burden .....	.....	¹² 568	.....	¹³ \$230,608	¹⁴ \$47,400
Total Final Estimated Burdens Including Amendments					
	Responses	Internal hour estimate		Internal hour cost estimate	External cost estimate
Current aggregate annual burden estimates	15,498	327,571	.....	\$28,628,918	\$16,791,000
Final additional annual burdens	+ 38	+ 568	.....	+ \$230,608	+ \$47,400
Revised final aggregate annual burden estimates	15,536	328,139	.....	\$28,859,526	\$16,838,400

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: $((1 \text{ initial hour}/3) + 0.67 \text{ hour of additional ongoing burden hours}) = 1 \text{ hour}$.

⁵ Estimated incremental external cost for Form N-4 variable annuity registrants that already submit certain information using Inline XBRL.

⁶ Based on a review of Form N-CEN reports through December 31, 2023, we estimate that 416 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: $((9 \text{ initial hours}/3 = 3 \text{ hours}) + 1 \text{ hour of additional ongoing burden hours}) = 4 \text{ hours}$.

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. This estimate is based on past estimates of costs—including costs of outside legal services and other service providers—relating to issuers that are newly required to submit certain disclosures in Inline XBRL format. 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 This estimate is based on the number of insurance companies issuing non-variable annuities. See *supra* footnote 725. The proposal reflected an estimate of the number of RILAs, as opposed to the number of insurance companies issuing RILAs. We have updated this approach to better reflect the way that the burden for Investment Company Interactive Data has historically been calculated.

¹¹ In connection with variable and non-variable annuity products, insurance companies only need to tag filings for annuities that are offered to new investors. See VASP Adopting Release at Section II.D. As a result, many non-variable annuity issuers do not—and will not—need to tag their disclosures because their annuities are no longer offered to new investors. Here, because we are not distinguishing between filings associated with annuities offered to new investors and those that are not, we likely are over-estimating the burden.

¹² 568 hours = 416 hours + 152 hours.

¹³ \$230,608 internal time cost = \$168,896 + \$61,712.

¹⁴ \$47,400 annual external cost = \$20,800 + \$26,600.

VI. Regulatory Flexibility Act Certification

The Commission certified, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (“Regulatory Flexibility Act”)⁸⁷¹ that, if adopted, 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. The Commission included this certification in Section V of the Proposing Release. Commenters did not respond to the Commission's requests for comment regarding the Commission's certification, and we continue to believe that there will not be a significant economic impact of the amendments on a substantial number of small entities. As discussed in the Proposing Release, 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.⁸⁷² Similarly, while the analysis is different for existing N-4 filers (*i.e.*, variable annuity issuers) because the insurance company separate accounts registering variable annuities are deemed to be investment companies, we expect few, if any, separate account to be treated as small entities.⁸⁷³

⁸⁷² 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. 5 U.S.C. 601 (defining “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction”); 17 CFR 230.157 (defining “small business” or “small organization” under the Securities Act for purposes of the Regulatory Flexibility Act).

⁸⁷³ 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. 17 CFR 270.0-10(a). Because State law generally treats separate account assets as the property of the sponsoring insurance company, rule

While the final amendments include some modifications to the Commission's proposal, we do not believe that these modifications alter the basis upon which the certification in the Proposing Release was made. With regard to the specific changes from the proposal regarding registered MVA annuities, we do not believe these modifications alter the basis upon which the certification in the Proposing Release was made either, as we do not expect any insurance companies that issue registered MVA annuities to be treated as small entities. Similarly, because we do not expect any insurance companies that issue registered MVA annuities or RILAs to be treated as small entities, and the amendments to rule 433 will affect only a subset of those insurance companies, the amendments to rule 433 do not change the basis upon which the certification in the Proposing Release was made. Accordingly, we certify that

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. 17 CFR 270.0-10(b).

⁸⁷¹ 5 U.S.C. 605(b).

the final amendments will not have a significant impact on a substantial number of small entities.

Statutory Authority

The amendments contained in this Release are being adopted 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 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 amending 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 non-variable 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 non-variable annuity 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 non-variable 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 non-variable annuity or an investment in such company or securities, 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 non-variable 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 non-variable 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 non-variable 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–3 (§ 239.16b of this chapter); or
- (4) Offering of any registered non-variable annuity 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,” “Registered index-linked annuity,” “Registered market value adjustment annuity,” and “Registered non-variable 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 non-variable 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 contract 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.

* * * * *

Registered market value adjustment annuity. The term *registered market*

value adjustment annuity means an annuity or an option available under an annuity, that is not a registered index-linked annuity, and:

- (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) That is not issued by an investment company; and
- (5) Whose contract value may reflect a positive or negative adjustment (based on calculations using a predetermined formula, a change in interest rates, or some other factor or benchmark) if amounts are withdrawn before the end of a specified period.

* * * * *

Registered non-variable annuity. The term *registered non-variable annuity* means any registered index-linked annuity or registered market value adjustment annuity.

* * * * *

■ 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 non-variable annuity, 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 non-variable annuity. 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 § 230.433 by revising paragraph (b)(1) as follows:

§ 230.433 Conditions to permissible post-filing free writing prospectuses.

* * * * *

(b) * * *
(1) *Eligibility and prospectus conditions for seasoned issuers, well-known seasoned issuers, and offerings of registered non-variable annuity securities.* Subject to the provisions of Rule 164(e), (f), and (g), the issuer or any other offering participant may use a free writing prospectus in the following offerings after a registration statement relating to the offering has been filed that includes a prospectus that, other than by reason of this section or Rule 431, satisfies the requirements of section 10 of the Act:

(i) Offerings of securities registered on Form S–3 (§ 239.13 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter) or on Form N–2 (§§ 239.14 and 274.11a–1 of this chapter) pursuant to General Instruction A.2 with respect to the same transactions;

(ii) Offerings of securities registered on Form F–3 (§ 239.33 of this chapter) pursuant to General Instruction I.A.5, I.B.1, I.B.2, or I.C. thereof;

(iii) Any other offering not excluded from reliance on this section and Rule 164 of securities of a well-known seasoned issuer;

(iv) Any other offering not excluded from reliance on this section and Rule 164 of securities of an issuer eligible to use Form S–3 or Form F–3 for primary offerings pursuant to General Instruction I.B.1 of such Forms or an issuer eligible to use General Instruction A.2 of Form N–2 to register a primary offering described in General Instruction I.B.1 of Form S–3; and

(v) Offerings of registered non-variable annuity securities registered on Form N–4 (§ 239.17b of this chapter) where the issuer would otherwise be eligible to use Form S–3 (§ 239.13 of this chapter) pursuant to General Instruction I.B.1, I.B.2, I.C., or I.D.

* * * * *

■ 8. 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 non-variable annuity 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 non-variable 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.

■ 9. 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 non-variable annuity securities 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 September 23, 2024 in the case of registered non-variable 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.

■ 10. 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 non-variable 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 non-variable annuity securities 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 non-variable 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:

* * * * *

■ 11. 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 non-variable 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 non-variable annuities 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 non-variable 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 non-variable 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 non-variable 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).

* * * * *

■ 12. Revise § 230.498A to read as follows:

§ 230.498A Summary prospectuses for separate accounts offering variable annuity and variable life insurance contracts and for offering registered non-variable annuity contracts.

(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, a RILA Contract, or a Registered Market Value Adjustment Annuity Contract as defined in this section, respectively, as well as any Contract that offers a combination of Index-Linked Options, Variable Options, and/or Fixed Options (including Fixed Options subject to a Contract Adjustment).

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 Investment 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.

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. The term Fixed Option includes Fixed Options that are subject to a Contract Adjustment.

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 Market Value Adjustment Annuity Contract means a registered market value adjustment annuity contract, any portion thereof, or any unit of interest or participation therein, issued by an Insurance Company.

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 registered index-linked 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:

(i) 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;

(ii) 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 [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 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 [type of Contract], 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.

(vi) For a RILA Contract and any Contract that offers Index-Linked Options along with other Investment Options, the statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

(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] 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 [type of Contract], has been prepared by the Securities and Exchange Commission’s staff and is available at *Investor.gov*.

(vi) For a RILA Contract and any Contract that offers Index-Linked Options along with other Investment Options, the statement required by rule 481(b)(1) under the Securities Act [17 CFR 230.481(b)(1)].

(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 and Form N-4) or Portfolio Companies (for Registrants on Form 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)(1) of Form N-4 requires, and for Contracts that offer Fixed Options, a change to any of the features of the Fixed Options disclosed in the table that Item 17(c) 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] 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—
GENERAL RULES AND REGULATIONS
FOR ELECTRONIC FILINGS**

■ 13. 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, 78n–1, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 14. 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 non-variable 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 non-variable 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.

* * * * *

■ 15. Amend § 232.405 by revising paragraphs (a)(3), (b)(1), (b)(2), and Note 1 to the section to read as follows:

§ 232.405 Interactive Data File Submissions.

* * * * *

(a) * * *

(3) Be submitted using Inline XBRL:

(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 non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), 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), a clearing agency that provides a central matching service, or is subject to §§ 242.800 through 242.835 (Regulation SE), 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:

(A) A filing that contains the disclosure this section requires to be tagged; or

(B) An amendment to a filing that contains the disclosure this section requires to be tagged if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the filing and the Interactive Data File is the first Interactive Data File the electronic filer submits; or

(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 non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), 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), a clearing agency that provides a central matching service, or is subject to §§ 242.800 through 242.835 (Regulation SE), 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 non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), 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:

(i) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes);

(ii) As applicable, all schedules set forth in Article 6A of Regulation S–X (§§ 210.6A–01–210.6A–05) and Article 12 of Regulation S–X (§§ 210.12–01–210.12–29), and all schedules prepared by plans in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*) and filed with the Commission on Form 11–K (§ 249.311); and

(iii) The disclosure set forth in paragraph (b)(4) of this section.

Note to paragraph (b)(1): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding

comparative financial information for prior periods.

(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 non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), 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:

(i) Items 2, 3, and 4 of §§ 239.15A and 274.11A of this chapter (Form N–1A), as well as any information provided in response to Item 27A(b)–(h) of Form N–1A included in any report to shareholders filed on §§ 249.331 and 274.128 of this chapter (Form N–CSR);

(ii) Items 2, 4, 5, 11, 18 and 19 of §§ 239.17a and 274.11b of this chapter (Form N–3);

(iii) Items 2(b)(2), 2(d), 3, 4, 5, 6(a) (instruction), 6(d), 6(e), 7(e), 10, 17, 26(c), or 31A of §§ 239.17b and 274.11c of this chapter (Form N–4);

(iv) Items 2, 4, 5, 10, 11, and 18 of §§ 239.17c and 274.11d of this chapter (Form N–6);

(v) Any disclosure provided in response to Item 18 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), or

(vi) Item 11 of § 274.12 of this chapter (Form N–8B–2) pursuant to Instruction 2, including to the extent required by § 239.16 of this chapter (Form S–6); as applicable.

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 (Form S–1), 239.13 (Form S–3), 239.25 (Form S–4), 239.18 (Form S–11), 239.31 (Form F–1), 239.33 (Form F–3), 239.34 (Form F–4), 249.310 (Form 10–K), 249.308a (Form 10–Q), and 249.308 (Form 8–K) of this chapter. General Instruction F of § 249.311 of this chapter (Form 11–K) specifies the circumstances under which an Interactive Data File must be submitted, and the 556 circumstances under which

it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 (Form 6–K) of this chapter. Section 240.17Ad–27(d) of this chapter (Rule 17Ad27(d) under the Exchange Act) specifies the circumstances under which an Interactive Data File must be submitted with respect to the reports required under Rule 17Ad–27. Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. General Instruction L of § 240.14d–100 of this chapter (Schedule TO) specifies the circumstances under which an Interactive Data File must be submitted with respect to Schedule TO. Section 240.13a–21 of this chapter (Rule 13a–21 under the Exchange Act) and General Instruction I to § 249.333 of this chapter (Form F–SR) specify the circumstances under which an Interactive Data File must be submitted, with respect to Form F–SR. §§ 242.829 and 242.831 of this chapter (Rules 829 and 831 of Regulation SE) and the Registration Instructions to § 249.1701 of this chapter (Form SBSEF), as applicable, specify 557 the circumstances under which an Interactive Data File must be submitted with respect to filings made under Regulation SE. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and

paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with §§ 210.6–01 through 210.6–10 of this chapter (Article 6 of Regulation S–X). 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 non-variable annuity issuer as defined in Rule 405 under the Securities Act (17 CFR 230.405), 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 (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction 2.(l) of Form N–8B–2 (§ 274.12 of this chapter), General Instruction 5 of § 239.16 of this chapter (Form S–6), and General Instruction C.4 of §§ 249.331 and 274.128 of this chapter (Form N–CSR), specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 16. 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.

* * * * *

■ 17: Revise Form N–3 (referenced in §§ 239.17a and 274.11b).

Note: Form N–3 is attached as Appendix B to this document. Form N–3 does not appear in the Code of Federal Regulations.

■ 18. 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.

- 19. Revise Form N-6 (referenced in §§ 239.17c and 274.11d).

Note: Form N-6 is attached as Appendix C to this document. Form N-6 will not appear in the Code of Federal Regulations.

- 20. 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 non-variable 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 non-variable annuities pursuant to §§ 230.456, 230.457, or 270.24f-2 of this chapter for reporting securities sold during the fiscal year.

- 21. Revise Form 24F-2 (referenced in §§ 239.66 and 274.24).

Note: Form 24F-2 is attached as Appendix D 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

- 22. 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, 78n-1, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and sec. 939A, Pub. L. 111-203, 124 Stat. 1376, unless otherwise noted.

* * * * *

- 23. 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 non-variable 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 non-variable 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: July 1, 2024.
Vanessa A. 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 of 1933 ("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
- ☐ Insurance Company relying on Rule 12h-7 under the Exchange Act
- ☐ Smaller reporting company (as defined by Rule 12b-2 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.

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, (2) insurance companies to register the offerings of registered index-linked annuity contracts, as defined in rule 405 under the Securities Act [17 CFR 230.405], (3) insurance companies to register the offerings of registered market value adjustment annuity contracts, as defined in rule 405 under the Securities Act, and (4) insurance companies to register the offerings of 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.

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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, 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 Investment 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. The term Fixed Option includes Fixed Options that are subject to a Contract Adjustment.

“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) of rule 498A under the Securities Act [17 CFR 230.498A(a)].

“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, Index-Linked Options, and/or Contract Adjustments 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 with the filing of 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, registered index-linked annuities, and registered market value adjustment 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(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(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 a Contract with Index-Linked Options:
 - (a) Prominently state as a percentage the maximum amount of loss an investor could experience from negative Index performance after taking into account the current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested; and
 - (b) Prominently state that the Insurance Company limits the amount an investor can earn on an Index-Linked Option. Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established 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.

- (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, and, if applicable, the Insurance Company, 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.
 - (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%"). Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses.
 - (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%"). Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

- (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 Investment Option or from the Contract prior to the end of a specified period. Briefly describe transactions subject to a Contract Adjustment.

Item 3. Key Information

Include the following information:

Important Information You Should Consider About the [Contract]

FEES, EXPENSES, AND ADJUSTMENTS	
Are There Charges or Adjustments 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?	
What Are the Risks Related to the Insurance Company?	
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, Expenses, and Adjustments.*

- (a) *Are There Charges or Adjustments 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 Contract value is removed from an Investment 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 to the extent that an investor’s participation in Index gains is limited by the Insurance Company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor’s returns may be lower than the Index’s returns; (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses; and (4) this implicit ongoing fee is not reflected in the tables below.

(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	Assumes: - Investment of \$100,000 5% annual appreciation - Most expensive combination of

Lowest Annual Cost: \$[]	Highest Annual Cost: \$[]
Contract Classes and Portfolio Company fees and expenses - No optional benefits - No sales charges - No additional purchase payments, transfers or withdrawals	Contract Classes, optional benefits, and Portfolio Company fees and expenses - 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 to the extent that an investor’s participation in index gains is limited by the Insurance Company through the use of a cap, participation rate, or some other rate or measure; (2) this means that the investor’s returns may be lower than the Index’s returns; 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 current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract

offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested.

- (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 Investment 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 Investment Options that mature at the end of a specified period, state that Contract value will be reallocated at the end of the 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;

(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

(C) If applicable, the Index is a "price return index," not a "total return index," and therefore does not reflect dividends paid on the securities composing the Index, and/or the Index deducts fees and costs when calculating Index performance. In these cases, state that this will reduce the Index return and will cause the Index to underperform a direct investment in the securities composing the Index.

- (d) *What Are the Risks Related to the Insurance Company?* 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 any 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, expenses, and adjustments 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	___%

The next table describes the adjustments, in addition to any transaction expenses, that apply if all or a portion of the Contract value is removed from an Investment Option or from the Contract before the expiration of a specified period.

Adjustments

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))	___%

Annual Contract Expenses

In addition to the fees described above, we limit the amount you can earn on [certain of] the Index-Linked Options. This means your returns may be lower than the Index’s returns. 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.

<u>Annual Portfolio Company Expenses</u>	<u>Minimum</u>	<u>Maximum</u>
(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:	\$__	\$__	\$__	\$__

	1 year	3 years	5 years	10 years
If you surrender your Contract at the end of the applicable time period:	\$ ____	\$ ____	\$ ____	\$ ____
If you do <i>not</i> surrender your Contract:	1 year	3 years	5 years	10 years
	\$ ____	\$ ____	\$ ____	\$ ____

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, Adjustments, 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. 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.

Adjustments

12. “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.

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) *Market Risk*. Explain the principal risks of investing in an Investment Option, including the risks of

negative investment performance and, 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 current limits on Index loss provided under the Contract. The Insurance Company may provide a range of the maximum amount of loss if the Contract offers different limits on Index loss. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses, which would mean risk of loss of the entire amount invested.

- (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, as applicable:

- (1) The principal risks relating to 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 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) An investor could lose a significant amount of money if the Index declines in value.
 - (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.
 - (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 any 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 current limit on Index loss, and (vi) its 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 state that the current limit on Index losses will not change during an Index-Linked Option’s Crediting Period. Prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses.
- (C) Describe the factors the Insurance Company considers in determining the current limit on Index losses 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) State the current limit on Index gains for each Index-Linked Option, and state that the current limit on Index gains will not change during an Index-Linked Option’s Crediting Period. Prominently state, for each type of limit offered (*e.g.*, cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

Instructions.

1. An insurer may post the current limit on Index gains for each Index-Linked Option on

a website that is publicly accessible, free of charge, and incorporate this information by reference into the prospectus. An insurer that relies on this approach must state in the prospectus at the place where the information required by this Item would normally appear that the information about current limits on Index gains is incorporated by reference from [provide website address].

2. The website address must be specific enough to lead investors directly to the current limits on Index gains, rather than to the home page or other section of the website on which the limits are posted. Include on the website current limits that are available for all Contract investors, including variations in limits (*e.g.*, due to distribution channel, state requirements, optional benefits, date of Contract purchase, etc.). Only include those limits that are currently available for the Index-Linked Options offered under the Contract.

- (C) Describe the factors the Insurance Company considers in determining the current limit on Index gains 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 Insurance 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 Insurance 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 is a “price return index,” not a “total return index,” and therefore does not reflect the dividends paid on the assets composing the Index, which will reduce the Index return and cause the Index to underperform a direct investment in the securities composing 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, which will reduce the Index return and will cause the Index to underperform a direct investment in the securities composing the Index.
 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 is a “price return index,” not a “total return index,” and therefore does not reflect dividends paid on the securities composing the Index. If applicable, state that the Index deducts fees and costs when calculating Index performance. In these cases, state that this will reduce the Index return and cause the Index to underperform a direct investment in the securities composing the Index.

(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) *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 a Fixed Option prior to the end of its term. Describe the transactions subject to a Contract Adjustment. Provide cross references to related disclosure in the prospectus.
- (ii) *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 how current rates may be obtained and any changes to currently offered Fixed Options, and the discontinuance or addition of Fixed Options.

- (iii) *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 and Adjustments

- (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 Investment 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(d). 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, fees, or adjustments applied under the Contract, including, for example, the sequence in which charges, fees, 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 <i>(as of 12/31/)</i>		
			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.
 - (f) Registrants may include additional rows to the table to group Portfolio Companies belonging to the same fund complex, or otherwise modify the tabular presentation, provided that the presentation does not obscure or impede understanding of the information that is required to be included, or substantially alter the required format of the table.
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.*

- (1) 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 making any changes other than changes to current limits on Index gains. Information about current limits on Index gains is available at [website address].

Note: If amounts are removed from an Index-Linked Option before the end of its Crediting Period, we [may/will] 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	Current Limit on Index Loss (if held until end of Crediting Period)	Minimum Limit on Index Gain (for the life of the Index-Linked Option)
[Name of Index]	[Insert]	[] Year	[]	[]%	[]%

- (2) Immediately below the table required by paragraph (b)(1) of Item 17, prominently disclose any minimum limits on Index losses that will always be available under the Contract or, alternatively, prominently state that the Insurance Company does not guarantee that the Contract will always offer Index-Linked Options that limit Index losses. Prominently state, for each type of limit offered (e.g., cap, participation rate, etc.), the lowest limit on Index gains that may be established under the Contract.

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 a footnote to the table stating that the Index is a “price return index,” not a “total return index,” and therefore does not reflect dividends paid on the securities composing the Index, and/or the Index deducts fees and costs when calculating Index performance, as applicable. In these cases, state that this will reduce the Index return and cause the Index to underperform a direct investment in the securities composing the Index.
 - (e) A website address should be provided in the legend only if the Insurance Company incorporates current limits on Index gains by reference as provided in Instruction 1 to Item 6(d)(2)(ii)(B). This website address in the legend must be the website provided in response to Instruction 1 to Item 6(d)(2)(ii)(B).
 - (f) If the Insurance Company does not incorporate current limits on Index gains by reference, the legend should provide (in lieu of the website address) a cross-reference to the current limits on Index gains disclosed elsewhere in the prospectus pursuant to Item 6(d)(2)(ii)(B).
- 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. *Current 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. *Minimum Limit on Index Gain (for the life of the Index-Linked Option)*. State the 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.

Note: If amounts are withdrawn from a Fixed Option before the end of its term, we [may/will] apply a Contract Adjustment. This may result in a significant reduction in your Contract value.

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 as well as the Contract Adjustment.
- (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]	[Benefit #1]	[Benefit #2]	[Benefit #3]	[Benefit #4]
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;
- (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; and
- (v) When the anticipated effective date of a registration statement falls within 90 days subsequent to the end of the fiscal year of the Registered Separate Account, the registration statement need not include financial statements of the Registered Separate Account more current than as of the end of the third fiscal quarter of the most recently completed fiscal year of the Registered Separate Account unless the audited financial statements for such fiscal year are available. The exception contained in this Instruction does not apply when the financial statements of the Registered Separate Account have never been included in an effective registration statement for annuity contracts or life insurance contracts under the Securities Act.

(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.

3. 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 for annuity contracts or life insurance contracts under the Securities Act; 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 and/or Fixed Options subject to a Contract Adjustment, 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 and/or Fixed Options subject to a Contract Adjustment, 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.
- (r) *Historical Current Limits on Index Gains*. Any exhibit that contains the information called for in Item 31A(b).

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 and Fixed Options Subject to a Contract Adjustment

(a) For any Contract with Index-Linked Options and/or Fixed Options subject to a Contract Adjustment offered through this registration statement, provide the information required by the following table as of December 31 of the prior calendar year:

Name of the Contract	Number of Contracts outstanding	Total value attributable to the Index-Linked Option and/or Fixed Option subject to a Contract Adjustment	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 and/or Fixed Option subject to a Contract Adjustment” means the sum of the Contract value in the Index-Linked Options and/or Fixed Options subject to a Contract Adjustment 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 and/or Fixed Options subject to a Contract Adjustment, exclude amounts allocated to the Registered Separate Account.

(b) For any Contract with Index-Linked Options offered through this registration statement that posts current limits on Index gains on a website in accordance with Instruction 1 to Item 6(d)(2)(ii)(B), provide the current limits on Index gains in effect for each Index-Linked Option during the twelve months ending on December 31 of the prior year.

Instruction. The information called for in this paragraph may be provided in an exhibit to the registration statement.

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 and/or Fixed Options subject to a Contract Adjustment, 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
BILLING CODE: 8011-01-C Appendix B—Form N-3 Form N-3 * * * * * GENERAL INSTRUCTIONS A. Definitions * * * * *	“Summary Prospectus” has the meaning provided by paragraph (a) of rule 498A under the Securities Act [17 CFR 230.498A(a)]. Appendix C—Form N-6 Form N-6 * * * * *	GENERAL INSTRUCTIONS A. Definitions * * * * * “Summary Prospectus” has the meaning provided by paragraph (a) of rule 498A under the Securities Act [17 CFR 230.498A(a)]. * * * * * 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 D—Form 24F-2

BILLING CODE: 8011-01-P

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 non-variable 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.

6. This Form may be used to pay registration fees for multiple offerings with different Securities Act numbers, provided that those Securities Act numbers are under the same Central Index Key (“CIK”) number.

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 non-variable annuities should check this box if the Form is being filed for all of the issuer’s registered non-variable annuities 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 non-variable annuities should use the most recent registered non-variable 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 Non-Variable 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, September 23, 2024 for issuers of registered non-variable 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.



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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Hilcorp Alaska, LLC Production Drilling Support in Cook Inlet, Alaska; Notice

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XD960]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Hilcorp Alaska, LLC Production Drilling Support in Cook Inlet, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Hilcorp Alaska, LLC (Hilcorp) for authorization to take marine mammals incidental to production drilling support activities in Cook Inlet, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 23, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.tyson.moore@noaa.gov. 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/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all

attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, 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 monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an

IHA) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the proposed IHA. NMFS’ draft EA will be made available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas> at the time of publication of this notice. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 2, 2023, NMFS received a request from Hilcorp for an IHA to take marine mammals incidental to production drilling support activities in Cook Inlet, Alaska. Following NMFS’ review of the application, Hilcorp submitted revised versions on September 29, 2023, December 27, 2023, February 29, 2024, and April 8, 2024. The application was deemed adequate and complete on April 12, 2024. Hilcorp’s request is for take of 12 species of marine mammals, by Level B harassment. Neither Hilcorp nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Hilcorp for similar work (87 FR 62364, October 1, 2022). Hilcorp complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA, and information regarding their monitoring results may be found in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of this notice.

Description of Proposed Activity**Overview**

Hilcorp plans to use three tug boats to tow and hold, and up to four tug boats to position, a jack-up rig to support production drilling at existing platforms in middle Cook Inlet and Trading Bay, Alaska, on 6 non-consecutive days between September 14, 2024, and September 13, 2025. Noise produced by tugs under load with a jack-up rig may result in take, by Level B harassment, of twelve marine mammal species.

Dates and Duration

The IHA would be effective from September 14, 2024, through September 13, 2025. As noted above, Hilcorp proposes to conduct the jack-up rig towing, holding, and positioning activities on 6 non-consecutive days

during the authorization period. Hilcorp would only conduct tug towing rig activities at night if necessary to accommodate a favorable tide.

Specific Geographic Region

Hilcorp's proposed activities would take place in middle Cook Inlet and Trading Bay, Alaska, extending north from Rig Tenders Dock on the eastern side of Cook Inlet near Nikiski to an area

approximately 32 kilometers (km) south of Point Possession, west to the Tyonek platform in middle Cook Inlet, south to the Dolly Varden platform in Trading Bay, and across Cook Inlet to the Rig Tenders Dock. For the purposes of this project, lower Cook Inlet refers to waters south of the East and West Forelands; middle Cook Inlet refers to waters north of the East and West Forelands and south of Threemile River on the west

and Point Possession on the east; Trading Bay refers to waters from approximately the Granite Point Tank Farm on the north to the West Foreland on the south; and upper Cook Inlet refers to waters north and east of Beluga River on the west and Point Possession on the east. A map of the specific area in which Hilcorp plans to operate is provided in figure 1 below.

BILLING CODE 3510-22-P

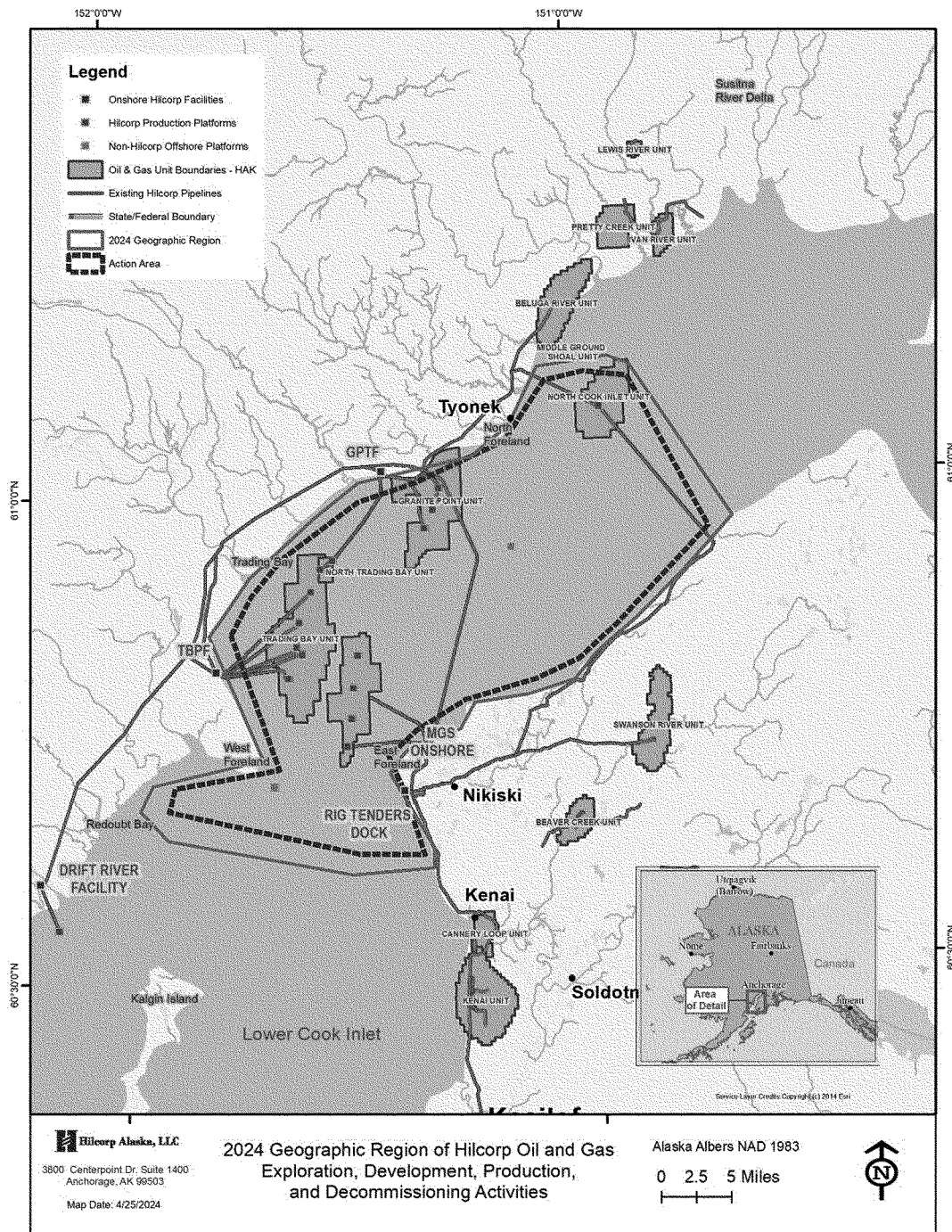


Figure 1-- Hilcorp's Proposed Activity Location

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Detailed Description of the Specified Activity

Hilcorp proposes to conduct production drilling activities from existing platforms in middle Cook Inlet and Trading Bay between September 14, 2024, and September 13, 2025, during

which period there would be a need for an estimated six days of tug activity. For the preceding months (September 2023 to September 2024), Hilcorp is operating under an existing IHA (See 87 FR 62364, October 14, 2022). In 2024, the Spartan 151 jack-up rig (or an equivalent rig) will be mobilized for production drilling from the Rig Tenders Dock in

Nikiski and towed to an existing platform under the aforementioned 2023-2024 IHA. Tug activities associated with the current IHA request would include one demobilization effort of a jack-up rig (Spartan 151 or equivalent rig) from an existing platform to Rig Tenders Dock in Nikiski, one jack-up rig relocation between existing

platforms, and one remobilization effort of the jack-up rig from Rig Tenders Dock in Nikiski to middle Cook Inlet. A jack-up rig is a type of mobile offshore drill unit used in offshore oil and gas drilling activities. It is comprised of a buoyant mobile platform or hull with moveable legs that are adjusted to raise and lower the hull over the surface of the water. Three tugs are needed to safely and effectively tow the jack-up rig during moves and to hold it into the correct position where it can be temporarily secured to the seafloor. A fourth tug may be needed to assist with the positioning of the jack-up rig on location.

Development drilling activities occur from existing platforms within Cook Inlet through either well slots or existing wellbores in existing platform legs, and no well construction occurs during production drilling. All Hilcorp platforms have potential for

development drilling activities. Drilling activities from platforms within Cook Inlet are accomplished by using conventional drilling equipment from a variety of rig configurations.

Some platforms in Cook Inlet have permanent drilling rigs installed that operate using power provided by the platform power generation systems; other platforms do not have drill rigs, and the use of a mobile drill rig is required. Mobile offshore drill rigs may be powered by the platform power generation system (if compatible with the platform power generation system) or may self-generate power with the use of diesel-powered generators.

While traveling with the jack-up rig during the proposed moves, the most common configuration is two tugs positioned side by side (approximately 30 to 60 m apart), pulling from the front of the jack-up rig, and one tug approximately 200 m behind the front

tugs positioned behind the jack-up rig, applying tension on the line as needed for steering and straightening. While positioning the jack-up rig on a platform, the tugs may be fanned out around the jack-up rig to provide the finer control of movement necessary to safely position the jack-up rig on the platform.

Upon arrival and readiness to position the rig adjacent to a platform, a fourth tug would be on standby to provide assistance. The fourth tug would not be expected to extend assistance beyond one hour. The horsepower of each of the tugs used during the proposed activities may range between 4,000 and 8,000. Specifications of the tugs anticipated for use are provided in table 1 below. If these specific tugs are not available, the tugs contracted would be of similar size and power to those listed in table 1.

TABLE 1—DESCRIPTION OF TUGS (OR SIMILAR) USED FOR TOWING, HOLDING, AND POSITIONING THE JACK-UP RIG

Vessel	Activity	Length (m)	Width (m)	Gross tonnage
Bering Wind	Towing, holding, and positioning the jack-up rig	22	10	144
Stellar Wind	Towing, holding, and positioning the jack-up rig	32	11	160
Glacial Wind	Towing, holding, and positioning the jack-up rig	37	11	196
Dr. Hank Kaplan	Standby tug used only for positioning the jack-up rig, if needed.	23	11	196

Note: m = meters.

The amount of time the tugs are under load transiting, holding, and positioning the jack-up rig in Cook Inlet would be tide-dependent. The amount of operational effort (*i.e.*, power output) the tugs use for transiting would depend on whether the tugs are towing with or against the tide and could vary across a tidal cycle as the current increases or decreases in speed over time. Hilcorp would make every effort to transit with the tide (which requires lower power output) and minimize transit against the tide (which requires higher power output).

A high slack tide would be preferred to position the jack-up rig on an existing platform or well site. The relatively slow current and calm conditions at a slack tide would enable the tugs to perform the fine movements necessary to safely position the jack-up rig within several feet of the platform. Additionally, positioning and securing the jack-up rig at high slack tide rather than low slack tide would allow for the legs to be pinned down (jack the legs down onto the sea floor) at an adequate height to ensure that the hull of the jack-up rig remains above the water level of the subsequent incoming high tide.

Because 12 hours elapse between each high slack tide, tugs are generally under load for those 12 hours, even if the towed distance is small, as high slack tides are preferred to both attach and detach the jack-up rig from the tugs. Once the tugs are on location with the jack-up rig at high slack tide (12 hours from the previous departure), there is a 1 to 2-hour window when the tide is slow enough for the tugs to initiate positioning the jack-up rig and pin the legs to the seafloor on location. The tugs are estimated to be under load, generally at half-power conditions or less, for up to 14 hours from the time of departure through the initial positioning attempt of the jack-up rig. One additional tug may engage during positioning activities to assist with fine movements necessary to place the jack-up rig. The fourth tug is estimated to engage with the three tugs during a positioning attempt for up to 1 hour at half power.

If the first positioning attempt takes longer than anticipated, the increasing current speed would prevent the tugs from safely positioning the jack-up rig on location. If the first positioning attempt is not successful, the jack-up rig would be pinned down at a nearby

location and the tugs would be released from the jack-up rig and no longer under load. The tugs would remain nearby, generally floating with the current. Approximately an hour before the next high slack tide, the tugs would re-attach to the jack-up rig and reattempt positioning over a period of 2 to 3 hours. Positioning activities would generally be at half power. If a second attempt is needed, the tugs would be under load holding or positioning the jack-up rig on a second day for up to 5 hours. Typically, the jack-up rig can be successfully positioned over the platform in one or two attempts.

During a location-to-location transport (*e.g.*, platform-to-platform), the tugs would transport the jack-up rig traveling with the tide in nearly all circumstances except in situations that threaten the safety of humans and/or infrastructure integrity. In a north-to-south transit, the tugs would tow the jack-up rig with the outgoing tide and would typically arrive at their next location to position the jack-up rig on the low slack tide, requiring half power or a lower power output during the transport. In a south-to-north transit, Hilcorp would prefer to pull the jack-up rig from the platform on

a low slack tide to begin transiting north following the incoming tide. This would maximize their control over the jack-up rig and would require half power or a lower power output. There may be a situation wherein the tugs pulling the jack-up rig begin transiting with the tide to their next location, miss the tide window to safely set the jack-up rig on the platform or pin it nearby, and so have to transport the jack-up rig against the tide to a safe harbor. Tugs may also need to transport the jack-up rig against the tide if large pieces of ice or extreme wind events threaten the stability of the jack-up rig on the platform. All tug towing, holding, or positioning would be done in a manner implementing best management practices to preserve water quality, and no work would occur around creek mouths or river systems leading to prey abundance reductions.

Although the variability in power output from the tugs can range from an estimated 20 percent to 90 percent throughout the hours under load with the jack-up rig, as described above, the majority of the hours (spent transiting, holding, and positioning) occur at half power or less. See the Estimated Take of Marine Mammals section of this proposed notice of issuance for more detail on assumptions related to power output.

Proposed mitigation, monitoring, and reporting measures are described in

detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of 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; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be 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 proposed to be 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. 2022 SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—SPECIES¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Eschrichtiidae:</i> Gray Whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
<i>Family Balaenidae</i> <i>Family Balaenopteridae</i> (rorquals):						
Fin Whale	<i>Balaenoptera physalus</i>	Northeast Pacific	E, D, Y	UND ⁵ (UND, UND, 2013).	UND	0.6
Humpback Whale	<i>Megaptera novaeangliae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
		Mexico-North Pacific	T, D, Y	N/A ⁶ (N/A, N/A, 2006)	UND	0.57
		Western North Pacific	E, D, Y	1,084 (0.088, 1,007, 2006).	3.4	5.82
Minke Whale	<i>Balaenoptera acutorostrata</i>	Alaska	-, -, N	N/A ⁷ (N/A, N/A, N/A)	UND	0
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i> Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
		Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
Pacific White-Sided Dolphin	<i>Lagenorhynchus obliquidens</i>	North Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
<i>Family Monodontidae (white whales):</i> Beluga Whale	<i>Delphinapterus leucas</i>	Cook Inlet	E, D, Y	279 ⁸ (0.061, 267, 2018)	0.53	0
<i>Family Phocoenidae (por- poises):</i>						

TABLE 2—SPECIES¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Dall's Porpoise	<i>Phocoenoides dalli</i>	Alaska	-, -, N	UND ⁹ (UND, UND, 2015).	UND	37
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						
CA Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Western	E, D, Y	49,837 ¹⁰ (N/A, 49,837, 2020).	299	267
<i>Family Phocidae (earless seals):</i>						
Harbor Seal	<i>Phoca vitulina</i>	Cook Inlet/Shelikof Strait	-, -, N	28,411 (N/A, 26,907, 2018).	807	107

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

² Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ 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.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range. Based upon this estimate and the N_{min}, the PBR value is likely negatively biased for the entire stock.

⁶ Abundance estimates are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown.

⁷ Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

⁸ On June 15, 2023, NMFS released an updated abundance estimate for endangered CIBWs in Alaska (Goetz *et al.*, 2023). Data collected during NOAA Fisheries' 2022 aerial survey suggest that the whale population is stable or may be increasing slightly. Scientists estimated that the population size is between 290 and 386, with a median best estimate of 331. In accordance with the MMPA, this population estimate will be incorporated into the CIBW SAR, which will be reviewed by an independent panel of experts, the Alaska Scientific Review Group. After this review, the SAR will be made available as a draft for public review before being finalized.

⁹ The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

¹⁰ Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

As indicated above, all 12 species (with 15 managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. In addition, the northern sea otter may be found in Cook Inlet, Alaska. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

The stock structure for gray whales in the Pacific has been studied for a number of years and remains uncertain as of the most recent (2022) Pacific SARs (Carretta *et al.*, 2023). Gray whale population structure is not determined by simple geography and may be in flux due to evolving migratory dynamics (Carretta *et al.*, 2023). Currently, the SARs delineate a western North Pacific (WNP) gray whale stock and an eastern North Pacific (ENP) stock based on genetic differentiation (Carretta *et al.*, 2023). WNP gray whales are not known to feed in or travel to upper Cook Inlet (Conant and Lohe, 2023; Weller *et al.*, 2023). Therefore, we assume that gray whales near the project area are members of the ENP stock.

An Unusual Mortality Event (UME) for gray whales along the West Coast and in Alaska occurred from December 17, 2018 through November 9, 2023. During that time, 146 gray whales stranded off the coast of Alaska. The investigative team concluded that the preliminary cause of the UME was localized ecosystem changes in the whale's Subarctic and Arctic feeding areas that led to changes in food, malnutrition, decreased birth rates, and increased mortality (see <https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2023-gray-whale-unusual-mortality-event-along-west-coast-and> for more information).

Gray whales are infrequent visitors to Cook Inlet, but may be seasonally present during spring and fall in the lower inlet (Bureau of Ocean Energy Management (BOEM), 2021). Migrating gray whales pass through the lower inlet during their spring and fall migrations to and from their primary summer feeding areas in the Bering, Chukchi, and Beaufort seas (Swartz, 2018; Silber *et al.*, 2021; BOEM, 2021). Several surveys and monitoring programs have sighted gray whales in lower Cook Inlet (Shelden *et al.*, 2013; Owl Ridge, 2014;

Lomac-MacNair *et al.*, 2013, 2014; Kendall *et al.*, 2015, as cited in Weston and SLR, 2022). Gray whales are occasionally seen in mid- and upper Cook Inlet, Alaska, but they are not common. During NMFS aerial surveys conducted in June 1994, 2000, 2001, 2005, and 2009 gray whales were observed in Cook Inlet near Port Graham and Elizabeth Island as well as near Kamishak Bay, with one gray whale observed as far north as the Beluga River (Shelden *et al.*, 2013). Gray whales were also observed offshore of Cape Starichkof in 2013 by marine mammal observers monitoring Buccaneer's Cosmopolitan drilling project (Owl Ridge, 2014) and in middle Cook Inlet in 2014 during the 2014 Apache 2D seismic survey (Lomac-MacNair *et al.*, 2015). Several projects performed in Cook Inlet in recent years reported no observations of gray whales. These project activities included the SAExploration seismic survey in 2015 (Kendall and Cornick, 2015), the 2018 Cook Inlet Pipeline (CIPL) Extension Project (Sitkiewicz *et al.*, 2018), the 2019 Hilcorp seismic survey in lower Cook Inlet (Fairweather Science, 2020),

and Hilcorp's 2023 aerial and rig-based monitoring efforts.

In 2020, a young male gray whale was stranded in the Twentymile River near Girdwood for over a week before swimming back into Turnagain Arm. The whale did not survive and was found dead in west Cook Inlet later that month (NMFS, 2020). One gray whale was sighted in Knik Arm near the Port of Alaska (POA) in Anchorage in upper Cook Inlet in May of 2020 during observations conducted during construction of the Petroleum and Cement Terminal project (61N Environmental, 2021). The sighting occurred less than a week before the reports of the gray whale stranding in the Twentymile River and was likely the same animal. In 2021, one small gray whale was sighted in Knik Arm near Ship Creek, south of the POA (61N Environmental, 2022a). Although some sightings have been documented in the middle and upper Inlet, the gray whale range typically only extends into the lower Cook Inlet region.

Humpback Whale

The 2022 NMFS Alaska and Pacific SARs described a revised stock structure for humpback whales which modifies the previous designated stocks to align more closely with the ESA-designated Distinct Population Segments (DPSs) (Carretta *et al.*, 2023; Young *et al.*, 2023). Specifically, the three previous North Pacific humpback whale stocks (Central and Western North Pacific stocks and a CA/OR/WA stock) were replaced by five stocks, largely corresponding with the ESA-designated DPSs. These include Western North Pacific and Hawaii stocks and a Central America/Southern Mexico-California (CA)/Oregon (OR)/Washington (WA) stock (which corresponds with the Central America DPS). The remaining two stocks, corresponding with the Mexico DPS, are the Mainland Mexico-CA/OR/WA and Mexico-North Pacific stocks (Carretta *et al.*, 2023; Young *et al.*, 2023). The former stock is expected to occur along the west coast from California to southern British Columbia, while the latter stock may occur across the Pacific, from northern British Columbia through the Gulf of Alaska and Aleutian Islands/Bering Sea region to Russia.

The Hawaii stock consists of one demographically independent population (DIP) (Hawaii—Southeast Alaska/Northern British Columbia DIP) and the Hawaii—North Pacific unit, which may or may not be composed of multiple DIPs (Wade *et al.*, 2021). The DIP and unit are managed as a single stock at this time, due to the lack of data

available to separately assess them and lack of compelling conservation benefit to managing them separately (NMFS 2019, 2022c, 2023a). The DIP is delineated based on two strong lines of evidence: genetics and movement data (Wade *et al.*, 2021). Whales in the Hawaii—Southeast Alaska/Northern British Columbia DIP winter off Hawaii and largely summer in Southeast Alaska and Northern British Columbia (Wade *et al.*, 2021). The group of whales that migrate from Russia, western Alaska (Bering Sea and Aleutian Islands), and central Alaska (Gulf of Alaska excluding Southeast Alaska) to Hawaii have been delineated as the Hawaii—North Pacific unit (Wade *et al.*, 2021). There are a small number of whales that migrate between Hawaii and southern British Columbia/Washington, but current data and analyses do not provide a clear understanding of which unit these whales belong to (Wade *et al.*, 2021; Carretta *et al.*, 2023; Young *et al.*, 2023).

The Mexico—North Pacific stock is likely composed of multiple DIPs, based on movement data (Martien *et al.*, 2021, Wade, 2021, Wade *et al.*, 2021). However, because currently available data and analyses are not sufficient to delineate or assess DIPs within the unit, it was designated as a single stock (NMFS, 2019, 2022d, 2023a). Whales in this stock winter off Mexico and the Revillagigedo Archipelago and summer primarily in Alaska waters (Martien *et al.*, 2021; Carretta *et al.*, 2023; Young *et al.*, 2023).

The Western North Pacific stock consists of two units—the Philippines/Okinawa—North Pacific unit and the Marianas/Ogasawara—North Pacific unit. The units are managed as a single stock at this time, due to a lack of data available to separately assess them (NMFS, 2019, 2022d, 2023a). Recognition of these units is based on movements and genetic data (Oleson *et al.*, 2022). Whales in the Philippines/Okinawa—North Pacific unit winter near the Philippines and in the Ryukyu Archipelago and migrate to summer feeding areas primarily off the Russian mainland (Oleson *et al.*, 2022). Whales that winter off the Mariana Archipelago, Ogasawara, and other areas not yet identified and then migrate to summer feeding areas off the Commander Islands, and to the Bering Sea and Aleutian Islands comprise the Marianas/Ogasawara—North Pacific unit.

The most comprehensive photo-identification data available suggest that approximately 89 percent of all humpback whales in the Gulf of Alaska are from the Hawaii stock, 11 percent are from the Mexico stock, and less than 1 percent are from the Western North

Pacific stock (Wade, 2021). Individuals from different stocks are known to intermix in feeding grounds. There is no designated critical habitat for humpback whales in or near the Project area (86 FR 21082, April 21, 2021), nor does the project overlap with any known biologically important areas.

Humpback whales are encountered regularly in lower Cook Inlet and occasionally in mid-Cook Inlet; sightings are rare in upper Cook Inlet. Eighty-three groups containing an estimated 187 humpbacks were sighted during the Cook Inlet beluga whale aerial surveys conducted by NMFS from 1994 to 2012 (Shelden *et al.*, 2013). Surveys conducted north of the forelands have documented small numbers in middle Cook Inlet. During the 2014 Apache seismic surveys in Cook Inlet, five groups (six individuals) were reported, with three groups north of the forelands on the east side of the inlet (Lomac-MacNair *et al.*, 2014). In 2015, during the construction of the Furie Operating Alaska, LLC (Furie) platform and pipeline, four groups of humpback whales were documented. Another group of 6 to 10 unidentified whales, thought to be either humpback or gray whales, was sighted approximately 15 km northeast of the Julius R. Platform. Large cetaceans were visible near the project (*i.e.*, whales or blows were visible) for 2 hours out of the 1,275 hours of observation conducted (Jacobs, 2015). During SAExploration's 2015 seismic program, three humpback whales were observed in Cook Inlet, including two near the Forelands and one in lower Cook Inlet (Kendall *et al.*, 2015 as cited in Weston and SLR, 2022). Hilcorp did not record any sightings of humpback whales from their aerial or rig-based monitoring efforts in 2023 (Horsley and Larson, 2023).

Minke Whale

Two stocks of minke whales occur within U.S. waters: Alaska and California/Oregon/Washington (Muto *et al.*, 2022). The Alaskan stock of minke whales is considered migratory, as they are speculated to migrate seasonally from the Bering and Chukchi Seas in fall to areas of the central North Pacific Ocean (Delarue *et al.*, 2013). Although they are likely migratory in Alaska, minke whales have been observed off Cape Starichkof and Anchor Point year-round (Muto *et al.*, 2017).

Minke whales are most abundant in the Gulf of Alaska during summer and occupy localized feeding areas (Zerbini *et al.*, 2006). During the NMFS annual and semiannual surveys of Cook Inlet, minke whales were observed near

Anchor Point in 1998, 1999, 2006, and 2021 (Shelden *et al.*, 2013, 2015b, 2017, 2022; Shelden and Wade, 2019) and near Ninilchik and the middle of lower Cook Inlet in 2021 (Shelden *et al.*, 2022). Minke whales were sighted southeast of Kalgin Island and near Homer during Apache's 2014 survey (Lomac-MacNair *et al.*, 2014), and one was observed near Tuxedni Bay in 2015 (Kendall *et al.*, 2015, as cited in Weston and SLR, 2022). During Hilcorp's seismic survey in lower Cook Inlet in the fall of 2019, eight minke whales were observed (Fairweather Science, 2020). In 2018, no minke whales were observed during observations conducted for the CIPL project near Tyonek (Sitkiewicz *et al.*, 2018). Minke whales were also not recorded during Hilcorp's aerial or rig-based monitoring efforts in 2023 (Horsley and Larson, 2023).

Fin Whale

In U.S. Pacific waters, fin whales are seasonally found in the Gulf of Alaska, and Bering Sea and as far north as the northern Chukchi Sea (Muto *et al.*, 2021). Several surveys have been conducted to assess the distribution and habitat preferences of fin whales within parts of their range in the North Pacific. In coastal waters of the Aleutians and the Alaska Peninsula, they were found primarily from the Kenai Peninsula to the Shumagin Islands, with a higher abundance near the Semidi Islands and Kodiak Island (Zerbini *et al.*, 2006). An opportunistic survey in the Gulf of Alaska revealed that fin whales were concentrated west of Kodiak Island, in Shelikof Strait, and in the southern Cook Inlet region, with smaller numbers observed over the shelf east of Kodiak to Prince William Sound (Alaska Fisheries Science Center [AFSC], 2003). Muto *et al.* (2021) reported visual sightings and acoustic detections in the northeastern Chukchi Sea have been increasing, suggesting that the stock may be re-occupying habitat used prior to large-scale commercial whaling. Delarue *et al.* (2013) also detected fin whale calls in the northeastern Chukchi Sea from July through October in a 3-year acoustic study.

Fin whales' range extends into lower Cook Inlet; however, their sightings are infrequent, and they are mostly spotted near the inlet's entrance. Fin whales are usually observed as individuals traveling alone, although they are sometimes observed in small groups. Rarely, large groups of 50 to 300 fin whales can travel together during migrations (NMFS, 2010). Fin whales in Cook Inlet have only been observed as individuals or in small groups. From 2000 to 2022, 10 sightings of 26

estimated individual fin whales in lower Cook Inlet were observed during NMFS aerial surveys (Shelden *et al.*, 2013, 2015b, 2017, 2022; Shelden and Wade, 2019). No fin whales were observed during the 2018 Harvest's CIPL Extension Project Acoustic Monitoring Program in middle Cook Inlet (Sitkiewicz *et al.*, 2018). In September and October 2019, Castellote *et al.* (2020) detected fin whales acoustically in lower Cook Inlet during three-dimensional (3D) seismic surveys, which coincided with the Hilcorp lower Cook Inlet seismic survey. During this period, 8 sightings of 23 individual fin whales were reported, indicating the offshore waters of lower Cook Inlet may be more heavily used than previously believed, especially during the fall season (Fairweather Science, 2020). Hilcorp did not record any sightings of fin whales from their aerial or rig-based monitoring efforts in 2023 (Horsley and Larson, 2023).

Beluga Whale

Five stocks of beluga whales are recognized in Alaska: the Beaufort Sea stock, eastern Chukchi Sea stock, eastern Bering Sea stock, Bristol Bay stock, and Cook Inlet stock (Young *et al.*, 2023). The Cook Inlet stock is geographically and genetically isolated from the other stocks (O'Corry-Crowe *et al.*, 1997; Laidre *et al.*, 2000) and resides year-round in Cook Inlet (Laidre *et al.*, 2000; Castellote *et al.*, 2020). Only the Cook Inlet stock inhabits the proposed project area. Cook Inlet beluga whales (CIBWs) were designated as depleted under the MMPA in 2000 (65 FR 34950, May 31, 2000), and as a DPS and listed as endangered under the ESA in October 2008 (73 FR 62919, October 10, 2008) when the species failed to recover following a moratorium on subsistence harvest. Between 2008 and 2018, CIBWs experienced a decline of about 2.3 percent per year (Wade *et al.*, 2019). The decline overlapped with the northeast Pacific marine heatwave that occurred from 2014 to 2016 in the Gulf of Alaska, significantly impacting the marine ecosystem (Suryan *et al.*, 2021, as cited in Goetz *et al.*, 2023).

In June 2023, NMFS released an updated abundance estimate for CIBWs in Alaska that incorporates aerial survey data from June 2021 and 2022 and accounted for visibility bias (Goetz *et al.*, 2023). This report estimated that CIBW abundance is between 290 and 386, with a median best estimate of 331. Goetz *et al.* (2023) also present an analysis of population trends for the most recent 10-year period (2012–2022). The addition of data from the 2021 and 2022 survey years in the analysis

resulted in a 65.1 percent probability that the CIBW population is now increasing at 0.9 percent per year (95 percent prediction interval of -3 to 5.7 percent). This increase drops slightly to 0.2 percent per year (95 percent prediction interval of -1.8 to 2.6 percent) with a 60 percent probability that the CIBW population is increasing more than 1 percent per year when data from 2021, which had limited survey coverage due to poor weather, are excluded from the analysis. Median group size estimates in 2021 and 2022 were 34 and 15, respectively (Goetz *et al.*, 2023). For management purposes, NMFS has determined that the carrying capacity of Cook Inlet is 1,300 CIBWs (65 FR 34590, May 31, 2000) based on historical CIBW abundance estimated by Calkins (1989).

Threats that have the potential to impact this stock and its habitat include the following: changes in prey availability due to natural environmental variability, ocean acidification, and commercial fisheries; climatic changes affecting habitat; predation by killer whales; contaminants; noise; ship strikes; waste management; urban runoff; construction projects; and physical habitat modifications that may occur as Cook Inlet becomes increasingly urbanized (Moore *et al.*, 2000; Hobbs *et al.*, 2015; NMFS, 2016b). Another source of CIBW mortality in Cook Inlet is predation by transient-type (mammal-eating) killer whales (NMFS, 2016b; Shelden *et al.*, 2003). No human-caused mortality or serious injury of CIBWs through interactions with commercial, recreational, and subsistence fisheries, takes by subsistence hunters, and/or human-caused events (e.g., entanglement in marine debris, ship strikes) has been recently documented and harvesting of CIBWs has not occurred since 2008 (NMFS, 2008b).

Recovery Plan. In 2010, a Recovery Team, consisting of a Science Panel and Stakeholder Panel, began meeting to develop a Recovery Plan for the CIBW. The Final Recovery Plan was published in the **Federal Register** on January 5, 2017 (82 FR 1325). In September 2022, NMFS completed the ESA 5-year review for the CIBW DPS and determined that the CIBW DPS should remain listed as endangered (NMFS, 2022d).

In its Recovery Plan (82 FR 1325, January 5, 2017), NMFS identified several potential threats to CIBWs, including: (1) high concern: catastrophic events (e.g., natural disasters, spills, mass strandings), cumulative effects of multiple stressors, and noise; (2) medium concern: disease agents (e.g., pathogens, parasites, and harmful algal

blooms), habitat loss or degradation, reduction in prey, and unauthorized take; and (3) low concern: pollution, predation, and subsistence harvest. The recovery plan did not treat climate change as a distinct threat but rather as a consideration in the threats of high and medium concern. Other potential threats most likely to result in direct human-caused mortality or serious injury of this stock include vessel strikes.

Critical Habitat. On April 11, 2011, NMFS designated two areas of critical habitat for CIBW (76 FR 20179). The designation includes 7,800 square kilometers (km²) of marine and estuarine habitat within Cook Inlet, encompassing approximately 1,909 km² in Area 1 and 5,891 km² in Area 2 (see figure 1 in 76 FR 20179). Area 1 of the CIBW critical habitat encompasses all marine waters of Cook Inlet north of a line connecting Point Possession (lat. 61.04° N, long. 150.37° W) and the mouth of Three Mile Creek (lat. 61.08.55° N, long. 151.04.40° W), including waters of the Susitna, Little Susitna, and Chickaloon Rivers below mean higher high water (MHHW). From spring through fall, Area 1 critical habitat has the highest concentration of CIBWs due to its important foraging and calving habitat. Critical Habitat Area 2 encompasses some of the fall and winter feeding grounds in middle Cook Inlet. This area has a lower concentration of CIBWs in spring and summer but is used by CIBWs in fall and winter. More information on CIBW critical habitat can be found at <https://www.fisheries.noaa.gov/action/critical-habitat-cook-inlet-beluga-whale>.

The designation identified the following Primary Constituent Elements, essential features important to the conservation of the CIBW:

(1) Intertidal and subtidal waters of Cook Inlet with depths of less than 9 m mean lower-low water (MLLW) and within 8 km of high- and medium-flow anadromous fish streams;

(2) Primary prey species, including four of the five species of Pacific salmon (chum (*Oncorhynchus keta*), sockeye (*Oncorhynchus nerka*), Chinook (*Oncorhynchus tshawytscha*), and coho (*Oncorhynchus kisutch*)), Pacific eulachon (*Thaleichthys pacificus*), Pacific cod (*Gadus macrocephalus*), walleye Pollock (*Gadus chalcogrammus*), saffron cod (*Eleginus gracilis*), and yellowfin sole (*Limanda aspera*);

(3) The absence of toxins or other agents of a type or amount harmful to CIBWs;

(4) Unrestricted passage within or between the critical habitat areas; and

(5) The absence of in-water noise at levels resulting in the abandonment of habitat by CIBWs.

Biologically Important Areas. Wild *et al.* (2023) delineated a Small and Resident Population Biologically Important Area (BIA) in Cook Inlet that is active year-round and overlaps Hilcorp's proposed project area. The authors assigned the BIA an importance score of 2, an intensity score of 2, a data support score of 3, and a boundary certainty score of 2 (scores range from 1 to 3, with a higher score representing an area of more concentrated or focused use and higher confidence in the data supporting the BIA; Harrison *et al.*, 2023). These scores indicate that the BIA is of moderate importance and intensity, the authors have high confidence that the population is small and resident and in the abundance and range estimates of the population, and the boundary certainty is medium (see Harrison *et al.* (2023) for additional information about the scoring process used to identify BIAs). The boundary of the CIBW BIA is consistent with NMFS' critical habitat designation (Wild *et al.*, 2023).

Ecology. Generally, female beluga whales reach sexual maturity at 9 to 12 years old, while males reach maturity later (O'Corry-Crowe, 2009); however, this can vary between populations. For example, in Greenland, males in a population of beluga whales were found to reach sexual maturity at 6 to 7 years of age and females at 4 to 7 years (Heide-Jørgensen and Teilmann, 1994). Suydam (2009) estimated that 50 percent of females were sexually mature at age 8.25 and the average age at first birth was 8.27 years for belugas sampled near Point Lay. Mating behavior in beluga whales typically occurs between February and June, peaking in March (Burns and Seaman, 1986; Suydam, 2009). In the Chukchi Sea, the gestation period of beluga whales was determined to be 14.9 months, with a calving interval of 2 to 3 years and a pregnancy rate of 0.41, declining after 25 years of age (Suydam, 2009). Calves are born between mid-June and mid-July and typically remain with the mother for up to 2 years of age (Suydam, 2009).

CIBWs feed on a wide variety of prey species, particularly those that are seasonally abundant. From late spring through summer, most CIBW stomachs sampled contained salmon, which corresponded to the timing of fish runs in the area. Anadromous smolt and adult fish aggregate at river mouths and adjacent intertidal mudflats (Calkins, 1989). All five Pacific salmon species (*i.e.*, Chinook, pink (*Oncorhynchus gorbuscha*), coho, sockeye, and chum)

spawn in rivers throughout Cook Inlet (Moulton, 1997; Moore *et al.*, 2000). Overall, Pacific salmon represent the highest percent frequency of occurrence of prey species in CIBW stomachs. This suggests that their spring feeding in upper Cook Inlet, principally on fat-rich fish such as salmon and eulachon, is important to the energetics of these animals (NMFS, 2016b).

The nutritional quality of Chinook salmon in particular is unparalleled, with an energy content four times greater than that of a Coho salmon. It is suggested the decline of the Chinook salmon population has left a nutritional void in the diet of the CIBWs that no other prey species can fill in terms of quality or quantity (Norman *et al.*, 2020, 2022).

In fall, as anadromous fish runs begin to decline, CIBWs return to consume fish species (cod and bottom fish) found in nearshore bays and estuaries. Stomach samples from CIBWs are not available for winter (December through March), although dive data from CIBWs tagged with satellite transmitters suggest that they feed in deeper waters during winter (Hobbs *et al.*, 2005), possibly on such prey species as flatfish, cod, sculpin, and pollock.

Distribution in Cook Inlet. The CIBW stock remains within Cook Inlet throughout the year, showing only small seasonal shifts in distribution (Goetz *et al.*, 2012a; Lammers *et al.*, 2013; Castellotte *et al.*, 2015; Shelden *et al.*, 2015a, 2018; Lowry *et al.*, 2019). The ecological range of CIBWs has contracted significantly since the 1970s. From late spring to fall, nearly the entire population is now found in the upper inlet north of the forelands, with a range reduced to approximately 39 percent of the size documented in the late 1970s (Goetz *et al.*, 2023). The recent annual and semiannual aerial surveys (since 2008) found that approximately 83 percent of the population inhabits the area between the Beluga River and Little Susitna River during the survey period, typically conducted in early June. Some aerial survey counts were performed in August, September, and October, finding minor differences in the numbers of belugas in the upper inlet compared to June, reinforcing the importance of the upper inlet habitat area (Young *et al.*, 2023).

During spring and summer, CIBWs generally aggregate near the warmer waters of river mouths along the northern shores of middle and upper Cook Inlet where prey availability is high and predator occurrence is low (Moore *et al.*, 2000; Shelden and Wade, 2019; McGuire *et al.*, 2020). In particular, CIBW groups are seen in the

Susitna River Delta, the Beluga River and along the shore to the Little Susitna River, Knik Arm, and along the shores of Chickaloon Bay. Small groups were recorded farther south in Kachemak Bay, Redoubt Bay (Big River), and Trading Bay (McArthur River) prior to 1996, but rarely thereafter. Since the mid-1990s, most CIBWs (96 to 100 percent) aggregate in shallow areas near river mouths in upper Cook Inlet, and they are only occasionally sighted in the central or southern portions of Cook Inlet during summer (Hobbs *et al.*, 2008). Almost the entire population can be found in northern Cook Inlet from late spring through the summer and into the fall (Muto *et al.*, 2020), shifting into deeper waters in middle Cook Inlet in winter (Hobbs *et al.*, 2008).

Data from tagged whales (14 tags deployed July 2000 through March 2003) show that CIBWs use upper Cook Inlet intensively between summer and late autumn (Hobbs *et al.*, 2005). CIBWs tagged with satellite transmitters continue to use Knik Arm, Turnagain Arm, and Chickaloon Bay as late as October, but some range into lower Cook Inlet to Chinitna Bay, Tuxedni Bay, and Trading Bay (McArthur River) in fall (Hobbs *et al.*, 2005, 2012). From September through November, CIBWs move between Knik Arm, Turnagain Arm, and Chickaloon Bay (Hobbs *et al.*, 2005; Goetz *et al.*, 2012b). By December, CIBWs are distributed throughout the upper to mid-inlet. From January into March, they move as far south as Kalgin Island and slightly beyond in central offshore waters. CIBWs make occasional excursions into Knik Arm and Turnagain Arm in February and March in spite of ice cover (Hobbs *et al.*, 2005). Although tagged CIBWs move widely around Cook Inlet throughout the year, there is no indication of seasonal migration in and out of Cook Inlet (Hobbs *et al.*, 2005). Data from NMFS aerial surveys, opportunistic sighting reports, and corrected satellite-tagged CIBWs confirm that they are more widely dispersed throughout Cook Inlet during winter (November–April), with animals found between Kalgin Island and Point Possession. Generally fewer observations of CIBWs are reported from the Anchorage and Knik Arm area from November through April (76 FR 20179, April 11, 2011; Rugh *et al.*, 2000, 2004). Later in winter (January into March), belugas were sighted near Kalgin Island and in deeper waters offshore. However, even when ice cover exceeds 90 percent in February and March, belugas travel into Knik Arm and Turnagain Arm (Hobbs *et al.*, 2005).

The NMFS Marine Mammal Lab has conducted long-term passive acoustic

monitoring demonstrating seasonal shifts in CIBW concentrations throughout Cook Inlet. Castellote *et al.* (2015) conducted long-term acoustic monitoring at 13 locations throughout Cook Inlet between 2008 and 2015: North Eagle Bay, Eagle River Mouth, South Eagle Bay, Six Mile, Point MacKenzie, Cairn Point, Fire Island, Little Susitna, Beluga River, Trading Bay, Kenai River, Tuxedni Bay, and Homer Spit; the former 6 stations being located within Knik Arm. In general, the observed seasonal distribution is in accordance with descriptions based on aerial surveys and satellite telemetry: CIBW detections are higher in the upper inlet during summer, peaking at Little Susitna, Beluga River, and Eagle Bay, followed by fewer detections at those locations during winter. Higher detections in winter at Trading Bay, Kenai River, and Tuxedni Bay suggest a broader CIBW distribution in the lower inlet during winter.

Goetz *et al.* (2012b) modeled habitat preferences using NMFS' 1994–2008 June abundance survey data. In large areas, such as the Susitna Delta (Beluga to Little Susitna Rivers) and Knik Arm, there was a high probability that CIBWs were in larger groups. CIBW presence and acoustic foraging behavior also increased closer to rivers with Chinook salmon runs, such as the Susitna River (*e.g.*, Castellote *et al.*, 2021). Movement has been correlated with the peak discharge of seven major rivers emptying into Cook Inlet. Boat-based surveys from 2005 to the present (McGuire and Stephens, 2017) and results from passive acoustic monitoring across the entire inlet (Castellote *et al.*, 2015) also support seasonal patterns observed with other methods. Based on long-term passive acoustic monitoring, foraging behavior was more prevalent during summer, particularly at upper inlet rivers, than during winter. The foraging index was highest at Little Susitna, with a peak in July–August and a secondary peak in May, followed by Beluga River and then Eagle Bay; monthly variation in the foraging index indicates CIBWs shift their foraging behavior among these three locations from April through September. The location of the towing routes are areas of predicted low density in the summer months.

CIBWs are believed to mostly calve in the summer, and breed between late spring and early summer (NMFS, 2016b), primarily in upper Cook Inlet. The only known observed occurrence of calving occurred on July 20, 2015, in the Susitna Delta area (T. McGuire, personal communication, March 27, 2017). The first neonates encountered during each

field season from 2005 through 2015 were always seen in the Susitna River Delta in July. The photographic identification team's documentation of the dates of the first neonate of each year indicate that calving begins in mid-late July/early August, generally coinciding with the observed timing of annual maximum group size. Probable mating behavior of CIBWs was observed in April and May of 2014, in Trading Bay. Young CIBWs are nursed for 2 years and may continue to associate with their mothers for a considerable time thereafter (Colbeck *et al.*, 2013). Important calving grounds are thought to be located near the river mouths of upper Cook Inlet.

During Apache's seismic test program in 2011 along the west coast of Redoubt Bay, lower Cook Inlet, a total of 33 CIBWs were sighted during the survey (Lomac-MacNair *et al.*, 2013). During Apache's 2012 seismic program in mid-inlet, a total of 151 groups consisting of an estimated 1,463 CIBWs were observed (note individuals were likely observed more than once) (Lomac-MacNair *et al.*, 2014). During SAExploration's 2015 seismic program, a total of eight groups of 33 estimated individual CIBWs were visually observed during this time period and there were two acoustic detections of CIBWs (Kendall *et al.*, 2015). During Harvest Alaska's recent CIPL project on the west side of Cook Inlet in between Ladd Landing and Tyonek Platform, a total of 143 CIBW groups (814 individuals) were observed almost daily from May 31 to July 11, even though observations spanned from May 9 through September 15 (Sitkiewicz *et al.*, 2018). There were two CIBW carcasses observed by the project vessels in the 2019 Hilcorp lower Cook Inlet seismic survey in the fall which were reported to the NMFS Marine Mammal Stranding Network (Fairweather Science, 2020). Both carcasses were moderately decomposed when they were sighted by the Protected Species Observers (PSO). Daily aerial surveys specifically for CIBWs were flown over the lower Cook Inlet region, but no beluga whales were observed. In 2023, Hilcorp recorded 21 groups of more than 125 beluga whales during aerial surveys in middle Cook Inlet, and an additional 21 opportunistic groups which included approximately 81 CIBWs (Horsley and Larson, 2023). Hilcorp did not record any sightings of CIBWs from their rig-based monitoring efforts (Horsley and Larson, 2023).

Killer Whale

Along the west coast of North America, seasonal and year-round occurrence of killer whales has been

noted along the entire Alaska coast (Braham and Dahlheim, 1982), in British Columbia and Washington inland waterways (Bigg *et al.*, 1990), and along the outer coasts of Washington, Oregon, and California (Green *et al.*, 1992; Barlow 1995, 1997; Forney *et al.*, 1995). Killer whales from these areas have been labeled as “resident,” “transient,” and “offshore” type killer whales (Bigg *et al.*, 1990; Ford *et al.*, 2000; Dahlheim *et al.*, 2008) based on aspects of morphology, ecology, genetics, and behavior (Ford and Fisher, 1982; Baird and Stacey, 1988; Baird *et al.*, 1992; Hoelzel *et al.*, 1998, 2002; Barrett-Lennard, 2000; Dahlheim *et al.*, 2008). Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized within the U.S. Pacific, two of which have the potential to be found in the proposed project area: the Eastern North Pacific Alaska Resident stock and the Gulf of Alaska, Aleutian Islands, and the Bering Sea Transient stock. Both stocks occur in lower Cook Inlet, but rarely in middle and upper Cook Inlet (Shelden *et al.*, 2013). While stocks overlap the same geographic area, they maintain social and reproductive isolation and feed on different prey species. Resident killer whales are primarily fish-eaters, while transients primarily hunt and consume marine mammals, such as harbor seals, Dall’s porpoises, harbor porpoises, beluga whales and sea lions. Killer whales are not harvested for subsistence in Alaska. Potential threats most likely to result in direct human-caused mortality or serious injury of killer whales in this region include oil spills, vessel strikes, and interactions with fisheries.

Killer whales have been sighted near Homer and Port Graham in lower Cook Inlet (Shelden *et al.*, 2003, 2022; Rugh *et al.*, 2005). Resident killer whales from pods often sighted near Kenai Fjords and Prince William Sound have been occasionally photographed in lower Cook Inlet (Shelden *et al.*, 2003). The availability of salmon influences when resident killer whales are more likely to be sighted in Cook Inlet. Killer whales were observed in the Kachemak and English Bay three times during aerial surveys conducted between 1993 and 2004 (Rugh *et al.*, 2005). Passive acoustic monitoring efforts throughout Cook Inlet documented killer whales at the Beluga River, Kenai River, and Homer Spit, although they were not encountered within Knik Arm (Castellote *et al.*, 2016). These detections were likely resident killer whales. Transient killer whales likely

have not been acoustically detected due to their propensity to move quietly through waters to track prey (Small, 2010; Lammers *et al.*, 2013). Transient killer whales were increasingly reported to feed on belugas in the middle and upper Cook Inlet in the 1990s.

During the 2015 SAExploration seismic program near the North Foreland, two killer whales were observed (Kendall *et al.*, 2015, as cited in Weston and SLR, 2022). Killer whales were observed in lower Cook Inlet in 1994, 1997, 2001, 2005, 2010, 2012, and 2022 during the NMFS aerial surveys (Shelden *et al.*, 2013, 2022). Eleven killer whale strandings have been reported in Turnagain Arm: 6 in May 1991 and 5 in August 1993. During the Hilcorp lower Cook Inlet seismic survey in the fall of 2019, 21 killer whales were documented (Fairweather Science, 2020). Throughout 4 months of observation in 2018 during the CIPL project in middle Cook Inlet, no killer whales were observed (Sitkiewicz *et al.*, 2018). In September 2021, two killer whales were documented in Knik Arm in upper Cook Inlet, near the POA (61N Environmental, 2022a). Hilcorp did not record any sightings of killer whales from their aerial or rig-based monitoring efforts in 2023 (Horsley and Larson, 2023).

Pacific White-Sided Dolphin

The Pacific white-sided dolphin is divided into three stocks within U.S. waters. The North Pacific stock includes the coast of Alaska, including the project area. Pacific white-sided dolphins are common in the Gulf of Alaska’s pelagic waters and Alaska’s nearshore areas, British Columbia, and Washington (Ferrero and Walker, 1996, as cited in Muto *et al.*, 2022). They do not typically occur in Cook Inlet, but in 2019, Castellote *et al.* (2020) documented short durations of Pacific white-sided dolphin presence using passive acoustic recorders near Iniskin Bay (6 minutes) and at an offshore mooring located approximately midway between Port Graham and Iniskin Bay (51 minutes). Detections of vocalizations typically lasted on the order of minutes, suggesting the animals did not remain in the area and/or continue vocalizing for extended durations. Visual monitoring conducted during the same period by marine mammal observers on seismic vessels near the offshore recorder did not detect any Pacific white-sided dolphins (Fairweather Science, 2020). These observational data, combined with anecdotal information, indicate that there is a small potential for Pacific white-sided dolphins to occur in the Project area. On

May 7, 2014, Apache Alaska observed three Pacific white-sided dolphins during an aerial survey near Kenai. This is one of the only recorded visual observations of Pacific white-sided dolphins in Cook Inlet; they have not been reported in groups as large as those estimated in other parts of Alaska (Muto *et al.*, 2022).

Harbor Porpoise

In the eastern North Pacific Ocean, harbor porpoise range from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. The 2022 Alaska SARs describe a revised stock structure for harbor porpoises (Young *et al.*, 2023). Previously, NMFS had designated three stocks of harbor porpoises: the Bering Sea stock, the Gulf of Alaska stock, and the Southeast Alaska stock (Muto *et al.*, 2022; Zerbini *et al.*, 2022). The 2022 Alaska SARs splits the Southeast Alaska stock into three separate stocks, resulting in five separate stocks in Alaskan waters for this species. This update better aligns harbor porpoise stock structure with genetics, trends in abundance, and information regarding discontinuous distribution trends (Young *et al.*, 2023). Harbor porpoises found in Cook Inlet are assumed to be members of the Gulf of Alaska stock (Young *et al.*, 2023).

Harbor porpoises occur most frequently in waters less than 100 m deep (Hobbs and Waite, 2010) and are common in nearshore areas of the Gulf of Alaska, Shelikof Strait, and lower Cook Inlet (Dahlheim *et al.*, 2000). Harbor porpoises are often observed in lower Cook Inlet in Kachemak Bay and from Cape Douglas to the West Foreland (Rugh *et al.*, 2005). They can be opportunistic foragers but consume primarily schooling forage fish (Bowen and Siniff, 1999). Given their shallow water distribution, harbor porpoise are vulnerable to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff) and activities such as construction of docks and other over-water structures, filling of shallow areas, dredging, and noise (Linnenschmidt *et al.*, 2013). Subsistence users have not reported any harvest from the Gulf of Alaska harbor porpoise stock since the early 1900s (Shelden *et al.*, 2014). Calving occurs from May to August; however, this can vary by region. Harbor porpoises are often found traveling alone, or in small groups of less than 10 individuals (Schmale, 2008).

Harbor porpoises occur throughout Cook Inlet, with passive acoustic detections being more prevalent in

lower Cook Inlet. Although harbor porpoises have been frequently observed during aerial surveys in Cook Inlet (Shelden *et al.*, 2014), most sightings are of single animals and are concentrated at Chinitna and Tuxedni bays on the west side of lower Cook Inlet (Rugh *et al.*, 2005), with smaller numbers observed in upper Cook Inlet between April and October. The occurrence of larger numbers of porpoise in the lower Cook Inlet may be driven by greater availability of preferred prey and possibly less competition with CIBWs, as CIBWs move into upper inlet waters to forage on Pacific salmon during the summer months (Shelden *et al.*, 2014).

An increase in harbor porpoise sightings in upper Cook Inlet was observed over recent decades (*e.g.*, 61N Environmental, 2021, 2022a; Shelden *et al.*, 2014). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October (Prevel-Ramos *et al.*, 2008). The overall increase in the number of harbor porpoise sightings in upper Cook Inlet is unknown, although it may be an artifact of increased studies and marine mammal monitoring programs in upper Cook Inlet. It is also possible that the contraction in the CIBW's range has opened up previously occupied CIBW range to harbor porpoises (Shelden *et al.*, 2014).

During Apache's 2012 seismic program in middle Cook Inlet, 137 groups of harbor porpoises comprising 190 individuals were documented between May and August (Lomac-MacNair *et al.*, 2013). In June 2012, Shelden *et al.* (2015b) documented 65 groups of 129 individual harbor porpoises during an aerial survey, none of which were in upper Cook Inlet. Kendall *et al.* (2015, as cited in Weston and SLR, 2022) documented 52 groups comprising 65 individuals north of the Forelands during SAExploration's 2015 seismic survey. Shelden *et al.* (2017, 2019, and 2022) also conducted aerial surveys in June and July over Cook Inlet in 2016, 2018, 2021, and 2022 and recorded 65 individuals. Observations occurred in middle and lower Cook Inlet with a majority in Kachemak Bay. There were two sightings of three harbor porpoises observed during the 2019 Hilcorp lower Cook Inlet seismic survey in the fall (Fairweather Science, 2020). A total of 29 groups (44 individuals) were observed north of the Forelands from May to September during the CIPL Extension Project (Sitkiewicz *et al.*, 2018). During jack-up rig moves in 2021, a PSO observed two individual harbor porpoises in middle Cook Inlet: one in July and one in October. Four

monitoring events were conducted at the POA in Anchorage between April 2020 and August 2022, during which 42 groups of harbor porpoises comprising 50 individual porpoises were documented over 285 days of observation (61N Environmental 2021, 2022a, 2022b, and 2022c). One harbor porpoise was observed during Hilcorp's boat-based monitoring efforts in June 2023 (Horsley and Larson, 2023).

Dall's Porpoise

Dall's porpoises are found throughout the North Pacific, from southern Japan to southern California north to the Bering Sea. All Dall's porpoises in Alaska are of the Alaska stock. This species can be found in offshore, inshore, and nearshore habitat. The Dall's porpoise range in Alaska includes lower Cook Inlet, but very few sightings have been reported in upper Cook Inlet. Observations have been documented near Kachemak Bay and Anchor Point (Owl Ridge, 2014; BOEM, 2015). Shelden *et al.* (2013) and Rugh *et al.* (2005) collated data from aerial surveys conducted between 1994 and 2012 and documented 9 sightings of 25 individuals in the lower Cook Inlet during June and/or July 1997, 1999, and 2000. No Dall's porpoise were observed on subsequent surveys in June and/or July 2014, 2016, 2018, 2021, and 2022 (Shelden *et al.*, 2015b, 2017, and 2022; Shelden and Wade, 2019). During Apache's 2014 seismic survey, two groups of three Dall's porpoises were observed in Upper and middle Cook Inlet (Lomac-MacNair *et al.*, 2014). In August 2015, one Dall's porpoise was reported in the mid-inlet north of Nikiski in middle Cook Inlet during SAExploration's seismic program (Kendall *et al.*, 2015 as cited in Weston and SLR, 2022). During aerial surveys in Cook Inlet, they were observed in Iniskin Bay, Barren Island, Elizabeth Island, and Kamishak Bay (Shelden *et al.*, 2013). No Dall's porpoises were observed during the 2018 CIPL Extension Project Acoustic Monitoring Program in middle Cook Inlet (Sitkiewicz *et al.*, 2018); however, 30 individuals in 10 groups were sighted during a lower Cook Inlet seismic project in the fall 2019 (Fairweather Science, 2020). Hilcorp recorded three sightings of Dall's porpoises in 2021 and one sighting of a Dall's porpoise in 2023 from their rig-based monitoring efforts in the project area (Korsmo *et al.*, 2022; Horsley and Larson, 2023). This higher number of sightings suggests Dall's porpoise may use portions of middle Cook Inlet in greater numbers than previously expected but would still be

considered infrequent in middle and upper Cook Inlet.

Steller Sea Lion

Two DPSs of Steller sea lion occur in Alaska: the western DPS and the eastern DPS. The western DPS includes animals that occur west of Cape Suckling, Alaska, and therefore includes individuals within the Project area. The western DPS was listed under the ESA as threatened in 1990 (55 FR 49204, November 26, 1990), and its continued population decline resulted in a change in listing status to endangered in 1997 (62 FR 24345, May 5, 1997). Since 2000, studies indicate that the population east of Samalga Pass (*i.e.*, east of the Aleutian Islands) has increased and is potentially stable (Young *et al.*, 2023).

There is uncertainty regarding threats currently impeding the recovery of Steller sea lions, particularly in the Aleutian Islands. Many factors have been suggested as causes of the steep decline in abundance of western Steller sea lions observed in the 1980s, including competitive effects of fishing, environmental change, disease, contaminants, killer whale predation, incidental take, and illegal and legal shooting (Atkinson *et al.*, 2008; NMFS, 2008a). A number of management actions have been implemented since 1990 to promote the recovery of the Western U.S. stock of Steller sea lions, including 5.6-km (3-nautical mile) no-entry zones around rookeries, prohibition of shooting at or near sea lions, and regulation of fisheries for sea lion prey species (*e.g.*, walleye pollock, Pacific cod, and Atka mackerel (*Pleurogrammus monopterygius*)) (Sinclair *et al.*, 2013; Tollit *et al.*, 2017). Additionally, potentially deleterious events, such as harmful algal blooms (Lefebvre *et al.*, 2016) and disease transmission across the Arctic (VanWormer *et al.*, 2019) that have been associated with warming waters, could lead to potentially negative population-level impacts on Steller sea lions.

NMFS designated critical habitat for Steller sea lions on August 27, 1993 (58 FR 45269), including portions of the southern reaches of lower Cook Inlet. The critical habitat designation for the Western DPS of was determined to include a 37-km (20-nautical mile) buffer around all major haul-outs and rookeries, and associated terrestrial, atmospheric, and aquatic zones, plus three large offshore foraging areas, none of which occurs in the project area. There is no designated critical habitat for Steller sea lions in the mid- or upper inlet, nor are there any known BIAs for Steller sea lions within the project area. Rookeries and haul out sites in lower

Cook Inlet include those near the mouth of the inlet, which are approximately 56 km or more south of the closest action area.

Steller sea lions are opportunistic predators, feeding primarily on a wide variety of seasonally abundant fishes and cephalopods, including Pacific herring (*Clupea pallasii*), walleye pollock, capelin (*Mallotus villosus*), Pacific sand lance (*Ammodytes hexapterus*), Pacific cod, salmon (*Oncorhynchus spp.*), and squid (*Teuthida spp.*) (Jefferson *et al.*, 2008; Wynne *et al.*, 2011). Steller sea lions do not generally eat every day, but tend to forage every 1–2 days and return to haulouts to rest between foraging trips (Merrick and Loughlin, 1997; Rehberg *et al.*, 2009). Steller sea lions feed largely on walleye pollock, salmon, and arrowtooth flounder during the summer, and walleye pollock and Pacific cod during the winter (Sinclair and Zeppelin, 2002).

Most Steller sea lions in Cook Inlet occur south of Anchor Point on the east side of lower Cook Inlet, with concentrations near haulout sites at Shaw Island and Elizabeth Island and by Chinitna Bay and Iniskin Bay on the west side (Rugh *et al.*, 2005). Steller sea lions are rarely seen in upper Cook Inlet (Nemeth *et al.*, 2007). About 3,600 sea lions use haulout sites in the lower Cook Inlet area (Sweeney *et al.*, 2017), with additional individuals venturing into the area to forage.

Several surveys and monitoring programs have documented Steller sea lions throughout Cook Inlet, including in upper Cook Inlet in 2012 (Lomac-MacNair *et al.*, 2013), near Cape Starichkof in 2013 (Owl Ridge, 2014), in middle and lower Cook Inlet in 2015 (Kendall *et al.*, 2015, as cited in Weston and SLR, 2022), in middle Cook Inlet in 2018 (Sitkiewicz *et al.*, 2018), in lower Cook Inlet in 2019 (Fairweather Science, 2020), and near the POA in Anchorage in 2020, 2021, and 2022 (61N Environmental, 2021, 2022a, 2022b, and 2022c). During NMFS Cook Inlet beluga whale aerial surveys from 2000 to 2016, 39 sightings of 769 estimated individual Steller sea lions in lower Cook Inlet were recorded (Shelden *et al.*, 2017). Sightings of large congregations of Steller sea lions during NMFS aerial surveys occurred outside the specific geographic region, on land in the mouth of Cook Inlet (e.g., Elizabeth and Shaw Islands). In 2012, during Apache's 3D Seismic surveys, three sightings of approximately four individuals in upper Cook Inlet were recorded (Lomac-MacNair *et al.*, 2013). PSOs associated with Buccaneer's drilling project off Cape Starichkof observed seven Steller

sea lions in summer 2013 (Owl Ridge, 2014), and another four Steller sea lions were observed in 2015 in Cook Inlet during SAExploration's 3D Seismic Program. Of the three 2015 sightings, one sighting occurred between the West and East Forelands, one occurred near Nikiski, and one occurred northeast of the North Foreland in the center of Cook Inlet (Kendall and Cornick, 2015). Five sightings of five Steller sea lions were recorded during Hilcorp's lower Cook Inlet seismic survey in the fall of 2019 (Fairweather Science, 2020). Additionally, one sighting of two individuals occurred during the CIPL Extension Project in 2018 in middle Cook Inlet (Sitkiewicz *et al.*, 2018). At the end of July 2022, while conducting a waterfowl survey an estimated 25 Steller sea lions were observed hauled-out at low tide in the Lewis River, on the west side of Cook Inlet. (K. Lindberg, personal communication, August 15, 2022). Steller sea lions have also been reported near the POA in Anchorage in 2020, 2021, and 2022 (61N 2021, 2022a, 2022b, and 2022c). Hilcorp did not record any sightings of Steller sea lions from their aerial or rig-based monitoring efforts in 2023 (Horsley and Larson, 2023).

Harbor Seal

Harbor seals inhabit waters all along the western coast of the United States, British Columbia, and north through Alaska waters to the Pribilof Islands and Cape Newenham. NMFS currently identifies 12 stocks of harbor seals in Alaska based largely on genetic structure (Young *et al.*, 2023). Harbor seals in the proposed project area are members of the Cook Inlet/Shelikof stock, which ranges from the southwest tip of Unimak Island east along the southern coast of the Alaska Peninsula to Elizabeth Island off the southwest tip of the Kenai Peninsula, including Cook Inlet, Knik Arm, and Turnagain Arm. Distribution of the Cook Inlet/Shelikof stock extends from Unimak Island, in the Aleutian Islands archipelago, north through all of upper and lower Cook Inlet (Young *et al.*, 2023).

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet and are observed in both upper and lower Cook Inlet throughout most of the year (Boveng *et al.*, 2012; Shelden *et al.*, 2013). High-density areas include Kachemak Bay, Iniskin Bay, Iliamna Bay, Kamishak Bay, Cape Douglas, and Shelikof Strait. Up to a few hundred seals seasonally occur in middle and upper Cook Inlet (Rugh *et al.*, 2005), with the highest concentrations found near the Susitna River and other tributaries within upper Cook Inlet

during eulachon and salmon runs (Nemeth *et al.*, 2007; Boveng *et al.*, 2012), but most remain south of the forelands (Boveng *et al.*, 2012).

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice (Young *et al.*, 2023). Their movements are influenced by tides, weather, season, food availability, and reproduction, as well as individual sex and age class (Lowry *et al.*, 2001; Small *et al.*, 2003; Boveng *et al.*, 2012). The results of past and recent satellite tagging studies in Southeast Alaska, Prince William Sound, Kodiak Island, and Cook Inlet are also consistent with the conclusion that harbor seals are non-migratory (Lowry *et al.*, 2001; Small *et al.*, 2003; Boveng *et al.*, 2012). However, some long-distance movements of tagged animals in Alaska have been recorded (Pitcher and McAllister, 1981; Lowry *et al.*, 2001; Small *et al.*, 2003; Womble, 2012; Womble and Gende, 2013). Strong fidelity of individuals for haulout sites during the breeding season has been documented in several populations (Härkönen and Harding, 2001), including in Cook Inlet (Pitcher and McAllister, 1981; Small *et al.*, 2005; Boveng *et al.*, 2012; Womble, 2012; Womble and Gende, 2013). Harbor seals usually give birth to a single pup between May and mid-July; birthing locations are dispersed over several haulout sites and not confined to major rookeries (Klinkhart *et al.*, 2008). More than 200 haulout sites are documented in lower Cook Inlet (Montgomery *et al.*, 2007) and 18 in middle and upper Cook Inlet (London *et al.*, 2015). Of the 18 in middle and upper Cook Inlet, nine are considered "key haulout" locations where aggregations of 50 or more harbor seals have been documented. Seven key haulouts are in the Susitna River delta, and two are near the Chickaloon River.

Recent research on satellite-tagged harbor seals observed several movement patterns within Cook Inlet (Boveng *et al.*, 2012), including a strong seasonal pattern of more coastal and restricted spatial use during the spring and summer (breeding, pupping, molting) and more wide-ranging movements within and outside of Cook Inlet during the winter months, with some seals ranging as far as Shumagin Islands. During summer months, movements and distribution were mostly confined to the west side of Cook Inlet and Kachemak Bay, and seals captured in lower Cook Inlet generally exhibited site fidelity by remaining south of the Forelands in lower Cook Inlet after release (Boveng *et al.*, 2012). In the fall, a portion of the harbor seals appeared to move out of Cook Inlet and into Shelikof Strait, northern Kodiak Island, and

coastal habitats of the Alaska Peninsula. The western coast of Cook Inlet had higher usage by harbor seals than eastern coast habitats, and seals captured in lower Cook Inlet generally exhibited site fidelity by remaining south of the Forelands in lower Cook Inlet after release (south of Nikiski; Boveng *et al.*, 2012).

Harbor seals have been sighted in Cook Inlet during every year of the aerial surveys conducted by NMFS and during all recent mitigation and monitoring programs in lower, middle, and upper Cook Inlet (61N Environmental, 2021, 2022a, 2022b, and 2022c; Fairweather Science, 2020; Kendall *et al.*, 2015 as cited in Weston and SLR, 2022; Lomac-MacNair *et al.*, 2013, 2014; Sitkiewicz *et al.*, 2018). In addition, Hilcorp recorded one sighting of a harbor seal in 2021 and three sightings of harbor seals in 2023 from their aerial and rig-based monitoring efforts in the project area (Korsmo *et al.* 2022; Horsley and Larson, 2023).

California Sea Lion

California sea lions live along the Pacific coastline spanning an area from central Mexico to Southeast Alaska and typically breed on islands located in southern California, western Baja California, and the Gulf of California (Carretta *et al.*, 2020). Five genetically distinct geographic populations are known to exist: Pacific Temperate, Pacific Subtropical, Southern Gulf of California, Central Gulf of California,

and Northern Gulf of California (Schramm *et al.*, 2009).

Few observations of California sea lions have been reported in Alaska and most observations have been limited to solitary individuals, typically males that are known to migrate long distances. Occasionally, California sea lions can be found in small groups of two or more and are usually associated with Steller sea lions at their haul outs and rookeries (Maniscalco *et al.*, 2004). The few California sea lions observed in Alaska typically do not travel further north than Southeast Alaska. They are often associated with Steller sea lion haulouts and rookeries (Maniscalco *et al.*, 2004). Sightings in Cook Inlet are rare, with two documented during the Apache 2012 seismic survey (Lomac-MacNair *et al.*, 2013) and anecdotal sightings in Kachemak Bay. None were sighted during the 2019 Hilcorp lower Cook Inlet seismic survey (Fairweather Science, 2020), the CIPL project in 2018 (Sitkiewicz *et al.*, 2018), or the 2023 Hilcorp aerial or rig-based monitoring efforts (Horsley and Larson, 2023).

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.*). 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 3. Specific to this action, gray whales, fin whales, minke whales, and humpback whales are considered low-frequency (LF) cetaceans, beluga whales, pacific white-sided dolphins, and killer whales are considered mid-frequency (MF) cetaceans, harbor porpoises and Dall's porpoises are considered high-frequency (HF) cetaceans, Steller sea lions and California sea lions are otariid pinnipeds (OW), and harbor seals are phocid pinnipeds (PW).

TABLE 3—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). This division between phocid and otariid pinnipeds is now reflected in the updated hearing groups proposed in Southall *et al.* (2019).

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

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes

a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival.

Effects on marine mammals during the specified activity are expected to potentially occur from three to four tugs towing, holding, and or positioning a jack-up rig. Underwater noise from Hilcorp's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

Background on Sound

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see: Erbe and Thomas (2022); Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983); as well as the Discovery of Sound in the Sea website at <https://dosits.org/>.

Sound is a vibration that travels as an acoustic wave through a medium such as a gas, liquid or solid. Sound waves alternately compress and decompress the medium as the wave travels. In water, sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam (narrow beam or directional sources) or sound may radiate in all directions (omnidirectional sources), as is the case for sound produced by tugs under load with a jack-up rig considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by marine mammals and human-made sound receptors such as hydrophones.

Sound travels more efficiently in water than almost any other form of energy, making the use of sound as a primary sensory modality ideal for inhabitants of the aquatic environment. In seawater, sound travels at roughly 1,500 meters per second (m/s). In air, sound waves travel much more slowly at about 340 m/s. However, the speed of sound in water can vary by a small amount based on characteristics of the transmission medium such as temperature and salinity.

The basic characteristics of a sound wave are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have

shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly with distance, except in certain cases in shallower water. The amplitude of a sound pressure wave is related to the subjective "loudness" of a sound and is typically expressed in dB, which are a relative unit of measurement that is used to express the ratio of one value of a power or pressure to another. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure, and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. For example, a 10-dB increase is a 10-fold increase in acoustic power. A 20-dB increase is then a 100-fold increase in power and a 30-dB increase is a 1000-fold increase in power. However, a 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder. The dB is a relative unit comparing two pressures; therefore, a reference pressure must always be indicated. For underwater sound, this is 1 microPascal (μPa). For in-air sound, the reference pressure is 20 microPascal (μPa). The amplitude of a sound can be presented in various ways; however, NMFS typically considers three metrics: sound exposure level (SEL), root-mean-square (RMS) SPL, and peak SPL (defined below). The source level represents the SPL referenced at a standard distance from the source, typically 1 m (Richardson *et al.*, 1995; American National Standards Institute (ANSI), 2013), while the received level is the SPL at the receiver's position. For tugging activities, the SPL is typically referenced at 1 m.

SEL (represented as dB referenced to 1 micropascal squared second (re $1 \mu\text{Pa}^2\text{-s}$)) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. SEL can also be a cumulative metric; it can be accumulated over a single pulse (*i.e.*, during activities such as impact pile driving) or calculated over periods containing multiple pulses (SEL_{cum}). Cumulative SEL (SEL_{cum}) represents the total energy accumulated by a receiver over a defined time window or during an event. The SEL metric is useful because it allows sound exposures of different durations to be related to one another in terms of total acoustic energy. The duration of a sound event and the number of pulses, however, should be specified as there is no

accepted standard duration over which the summation of energy is measured.

RMS SPL is equal to 10 times the logarithm (base 10) of the ratio of the mean-square sound pressure to the specified reference value, and given in units of dB (International Organization for Standardization (ISO), 2017). RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak SPL. For impulsive sounds, RMS is calculated by the portion of the waveform containing 90 percent of the sound energy from the impulsive event (Madsen, 2005).

Peak SPL (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water, which can arise from a positive or negative sound pressure, during a specified time, for a specific frequency range at a specified distance from the source, and is represented in the same units as the RMS sound pressure (ISO, 2017). Along with SEL, this metric is used in evaluating the potential for permanent threshold shift (PTS) and temporary threshold shift (TTS) associated with impulsive sound sources.

Sounds are also characterized by their temporal components. Continuous sounds are those whose sound pressure level remains above that of the ambient or background sound with negligibly small fluctuations in level (ANSI, 2005) while intermittent sounds are defined as sounds with interrupted levels of low or no sound (National Institute for Occupational Safety and Health (NIOSH), 1998). A key distinction between continuous and intermittent sound sources is that intermittent sounds have a more regular (predictable) pattern of bursts of sounds and silent periods (*i.e.*, duty cycle), which continuous sounds do not. Tugs under load are considered sources of continuous sound.

Sounds may be either impulsive or non-impulsive (defined below). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to noise-induced hearing loss (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see

NMFS (2018) and Southall *et al.* (2007, 2019) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.*, explosions, gunshots, sonic booms, seismic airgun shots, impact pile driving) produce signals that are brief (typically considered to be less than 1 second), broadband, atonal transients (ANSI, 1986, 2005; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. Impulsive sounds are intermittent in nature. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of impulses (*e.g.*, rapid rise time). Examples of non-impulsive sounds include those produced by vessels (including tugs under load), aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems.

Even in the absence of sound from the specified activity, the underwater environment is characterized by sounds from both natural and anthropogenic sound sources. Ambient sound is defined as a composite of naturally-occurring (*i.e.*, non-anthropogenic) sound from many sources both near and far (ANSI, 1995). Background sound is similar, but includes all sounds, including anthropogenic sounds, minus the sound produced by the proposed activities (NMFS, 2012, 2016a). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound.

A number of sources contribute to background and ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between

200 Hz and 50 kilohertz (kHz) (Mitson, 1995). In general, background and ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to background and ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of background sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total background sound for frequencies between 20 and 300 Hz. In general, the frequencies of many anthropogenic sounds, particularly those produced by construction activities, are below 1 kHz (Richardson *et al.*, 1995). When sounds at frequencies greater than 1 kHz are produced, they generally attenuate relatively rapidly (Richardson *et al.*, 1995), particularly above 20 kHz due to propagation losses and absorption (Urick, 1983).

Transmission loss (*TL*) defines the degree to which underwater sound has spread in space and lost energy after having moved through the environment and reached a receiver. It is defined as the reduction in a specified level between two specified points that are within an underwater acoustic field (ISO, 2017). Careful consideration of transmission loss and appropriate propagation modeling is a crucial step in determining the impacts of underwater sound, as it helps to define the ranges (isopleths) to which impacts are expected and depends significantly on local environmental parameters such as seabed type, water depth (bathymetry), and the local speed of sound. Geometric spreading laws are powerful tools which provide a simple means of estimating *TL*, based on the shape of the sound wave front in the water column. For a sound source that is equally loud in all directions and in deep water, the sound field takes the form of a sphere, as the sound extends in every direction uniformly. In this case, the intensity of the sound is spread across the surface of the sphere, and thus we can relate intensity loss to the square of the range (as area = $4\pi r^2$). When expressing logarithmically in dB as *TL*, we find that $TL = 20 \log_{10}(\text{range})$, this situation is known as spherical spreading. In shallow

water, the sea surface and seafloor will bound the shape of the sound, leading to a more cylindrical shape, as the top and bottom of the sphere is truncated by the largely reflective boundaries. This situation is termed cylindrical spreading, and is given by $TL = 10 \log_{10}(\text{range})$ (Urick, 1983). An intermediate scenario may be defined by the equation $TL = 15 \log_{10}(\text{range})$, and is referred to as practical spreading. Though these geometric spreading laws do not capture many often important details (scattering, absorption, *etc.*), they offer a reasonable and simple approximation of how sound decreases in intensity as it is transmitted. Cook Inlet is a particularly complex acoustic environment with strong currents, large tides, variable sea floor and generally changing conditions.

The sum of the various natural and anthropogenic sound sources at any given location and time depends not only on the source levels, but also on the propagation of sound through the environment. Sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, background and ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from a specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Description of Sound Sources for the Specified Activities

In-water activities associated with the project that have the potential to incidentally take marine mammals through exposure to sound would be tugs towing, holding, and positioning the jack-up rig. Unlike discrete noise sources with known potential to harass marine mammals (*e.g.*, pile driving, seismic surveys), both the noise sources and impacts from the tugs towing the jack-up rig are less well documented. Sound energy associated with the specified activity is produced by vessel propeller cavitation. Bow thrusters would be occasionally used for a short duration (20 to 30 seconds) to either push or pull a vessel in or away from a dock or platform. Other sound sources include onboard diesel generators and sound from the main engine, but both are subordinate to the thruster and main

propeller blade rate harmonics (Gray and Greeley, 1980). The various scenarios that may occur during this project include tugs in a stationary mode positioning the drill rig and pulling the jack-up rig at nearly full power against strong tides. Our assessments of the likelihood for harassment of marine mammals incidental to Hilcorp's tug activities specified here are conservative in light of the general Level B harassment exposure thresholds, the fact that NMFS is still in the process of developing analyses of the impact that non-quantitative contextual factors have on the likelihood of Level B harassment occurring, and the nature and duration of the particular tug activities analyzed here.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from tugs under load is the primary means by which marine mammals may be harassed from Hilcorp's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2019). Exposure to anthropogenic noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of noise on marine mammals are dependent on several factors, including but not limited to sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mom with calf), duration of exposure, the distance between the vessel and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or

temporary. As described in NMFS (2018) there are numerous factors to consider when examining the consequence of TS, including but not limited to the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Permanent Threshold Shift (PTS). NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has incurred some level of hearing loss at the relevant frequencies; typically animals with PTS are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates PTS onset (see Ward *et al.*, 1958, 1959; Ward 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS). TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from marine mammal TTS measurements (see Southall *et al.*, 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.*, 2000, 2002; Schlundt *et al.*, 2000). As described in Finneran (2015), marine mammal studies have shown the amount of TTS

increases with SEL_{cum} in an accelerating fashion: at low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocaena asiaeorientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (Kastak *et al.*, 1999, 2007; Kastelein *et al.*, 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.*, 2019; Sills *et al.*, 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels

matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014, 2015). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.*, 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018). Additionally, the existing marine

mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates PTS onset (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.*, 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur. Given the nature of tugging, a transient activity, and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for threshold shift is low.

Non-acoustic Stressors. Hillcorp's proposed activities on marine mammals could also involve non-acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment (*e.g.*, tug configuration) and personnel; however, given there are no known pinniped haul-out sites in the vicinity of the project site, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Behavioral Harassment. Exposure to noise also has the potential to behaviorally disturb marine mammals to a level that rises to the definition of Level B harassment under the MMPA. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain

behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located (Erbe *et al.*, 2019). In addition, pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007, 2019; Weilgart, 2007; Archer *et al.*, 2010; Erbe *et al.* 2019). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; National Research Council (NRC), 2005). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal (e.g., Erbe *et al.* 2019). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (e.g., Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b, Blair *et al.*, 2016). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior from anthropogenic sound exposure is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. Acoustic and movement bio-logging tools also have been used in some cases to infer responses to anthropogenic noise. For example, Blair *et al.* (2016) reported significant effects on humpback whale foraging behavior in Stellwagen Bank in response to ship noise including slower descent rates, and fewer side-rolling events per dive with increasing ship noise. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking, interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel

passes. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001, 2005, 2006; Gailey *et al.*, 2007).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Harbor porpoises, Atlantic white-sided dolphins (*Lagenorhynchus actus*), and minke whales have demonstrated avoidance in response to vessels during line transect surveys (Palka and Hammond, 2001). In addition, beluga whales in the St. Lawrence Estuary in Canada have been reported to increase levels of avoidance with increased boat presence by way of increased dive durations and swim speeds, decreased surfacing intervals, and by bunching together into groups (Blane and Jaakson, 1994). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.*, 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.*, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day

substantive (*i.e.*, meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress responses. An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals

(*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2005), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Norman (2011) reviewed environmental and anthropogenic stressors for CIBWs. Lyamin *et al.* (2011) determined that the heart rate of a beluga whale increases in response to noise, depending on the frequency and intensity. Acceleration of heart rate in the beluga whale is the first component of the “acoustic startle response.” Romano *et al.* (2004) demonstrated that captive beluga whales exposed to high-level impulsive sounds (*i.e.*, seismic airgun and/or single pure tones up to 201 dB RMS) resembling sonar pings showed increased stress hormone levels of norepinephrine, epinephrine, and dopamine when TTS was reached. Thomas *et al.* (1990) exposed beluga whales to playbacks of an oil-drilling platform in operation (“Sedco 708,” 40 Hz–20 kHz; source level 153 dB). Ambient SPL at ambient conditions in the pool before playbacks was 106 dB and 134 to 137 dB RMS during playbacks at the monitoring hydrophone across the pool. All cell and platelet counts and 21 different blood chemicals, including epinephrine and norepinephrine, were within normal limits throughout baseline and playback periods, and stress response hormone levels did not increase immediately after playbacks. The difference between the Romano *et al.* (2004) and Thomas *et al.* (1990) studies could be the

differences in the type of sound (seismic airgun and/or tone versus oil drilling), the intensity and duration of the sound, the individual's response, and the surrounding circumstances of the individual's environment. The sounds in the Thomas *et al.* (1990) study would be more similar to those anticipated by Hilcorp's tugs under load with a jack-up rig; therefore, no more than short-term, low-hormone stress responses, if any, of CIBWs or other marine mammals are expected as a result of exposure to noise during tugs under load with a jack-up rig during Hilcorp's planned activities.

Auditory Masking. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et al.*, 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness for survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkiss and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle

response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Frstrup *et al.*, 2003) or vocalizations (Foote *et al.*, 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Fin whales have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.*, 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994; Wisniewska *et al.*, 2018).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (e.g., Clark *et al.*, 2009) and may result in energetic or other costs as animals change their

vocalization behavior (e.g., Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2010; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Hotchkiss and Parks, 2013).

Marine mammals at or near the proposed project site may be exposed to anthropogenic noise which may be a source of masking. Vocalization changes may result from a need to compete with an increase in background noise and include increasing the source level, modifying the frequency, increasing the call repetition rate of vocalizations, or ceasing to vocalize in the presence of increased noise (Hotchkiss and Parks, 2013). For example, in response to vessel noise, CIBWs may shift the frequency of their echolocation clicks and communication signals, reduce their overall calling rates, and or increase the emission of certain call signals to prevent masking by anthropogenic noise (Lesage *et al.*, 1999; Tyack, 2000; Eickmeier and Vallarta, 2022).

Masking occurs in the frequency band that the animals utilize, and is more likely to occur in the presence of broadband, relatively continuous noise sources such as tugging. Since noises generated from tugs towing and positioning are mostly concentrated at low frequency ranges, with a small concentration in high frequencies as well, these activities likely have less effect on mid-frequency echolocation sounds by odontocetes (toothed whales) such as CIBWs. However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the frequency band for noise and thus reduce the communication space of animals (e.g., Clark *et al.*, 2009) and cause increased stress levels (e.g., Holt *et al.*, 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of the signals, and at higher levels for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by the tugs will not be concentrated in one location or for more than 5 hours per positioning attempt, and up to two positioning attempts at

the same site. Thus, while Hilcorp's activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

In consideration of the range of potential effects (PTS to behavioral disturbance), we consider the potential exposure scenarios and context in which species would be exposed to tugs under load with a jack-up rig during Hilcorp's planned activities. CIBWs may be present in low numbers during the work; therefore, some individuals may be reasonably expected to be exposed to elevated sound levels. However, CIBWs are expected to be transiting through the area, given this work is proposed primarily in middle Cook Inlet (as described in the Description of Marine Mammals in the Area of Specified Activities section), thereby limiting exposure duration, as CIBWs in the area are expected to be headed to or from the concentrated foraging areas farther north near the Beluga River, Susitna Delta, and Knik and Turnigan Arms. Similarly, humpback whales, fin whales, minke whales, gray whales, killer whales, California sea lion, and Steller sea lions are not expected to remain in the area of the tugs. Dall's porpoise, harbor porpoise, and harbor seal have been sighted with more regularity than many other species during oil and gas activities in Cook Inlet but due to the transitory nature of these species, they are unlikely to remain close to a tug under load for the full duration of the noise-producing activity. In fact, during Hilcorp's jack-up rig-based monitoring efforts in 2023, only one Dall's porpoise, two harbor seals, and one harbor porpoise were observed across four different sightings, and observations only lasted 1 to 5 minutes (Horsley and Larson, 2023). Because of this and the relatively low-level sources, the likelihood of PTS and TTS over the course of the tug activities is discountable. Harbor seals may linger or haul-out in the area but they are not known to do so in any large number or for extended periods of time (there are no known major haul-outs or rookeries coinciding with the anticipated transit routes). Here we find there is small potential for TTS over the course of tug activities but again, PTS is not likely due to the nature of tugging. Potential for PTS and TTS due to pile driving is discussed further in the Estimated Take section.

Given most marine mammals are likely transiting through the area, exposure is expected to be brief but the

actual presence of the tug and jack-up rig may result in animals shifting pathways around the work site (e.g., avoidance), increasing speed or dive times, changing their group formations, or altering their acoustic signals. The likelihood of no more than a short-term, localized disturbance response is supported by data from Hilcorp's previous jack-up rig-based monitoring efforts in 2023, which reported no observable reactions to the towing activities outside of two harbor seals diving. Further other data indicate CIBWs and other marine mammals regularly pass by industrialized areas such as the POA (61N Environmental, 2021, 2022a, 2022b, 2022c; Easley-Appleyard and Leonard, 2022); therefore, we do not expect abandonment of their transiting route or other disruptions of their behavioral patterns. We also anticipate some animals may respond with such mild reactions to the project that the response would not be detectable. For example, during low levels of tug power output (e.g., while tugs may be operating at low power because of favorable conditions), the animals may be able to hear the work but any resulting reactions, if any, are not expected to rise to the level of take.

While in some cases marine mammals have exhibited little to no obviously detectable response to certain common or routine industrialized activity (Cornick *et al.*, 2011; Horley and Larson, 2023), it is possible some animals may at times be exposed to received levels of sound above the Level B harassment threshold. This potential exposure in combination with the nature of the tug and jack-up rig configuration (e.g., difficult to maneuver, potential need to operate at night) means it is possible that take by Level B harassment could occur over the total estimated period of activities; therefore, NMFS in response to Hilcorp's IHA application proposes to authorize take by Level B harassment from Hilcorp's use of tugs towing a jack-up rig for both positioning and straight-line tug activities.

Potential Effects on Marine Mammal Habitat

Hilcorp's proposed activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success.

Additionally, marine mammals may avoid the area during rig towing, holding, and or positioning; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

The total area likely impacted by Hilcorp's activities is relatively small compared to the available habitat in Cook Inlet. Avoidance by potential prey (*i.e.*, fish) of the immediate area due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after tugging stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Increased turbidity near the seafloor is not anticipated.

Potential Effects on Prey. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (e.g., Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Reactions also depend on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.*, 2014).

However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders.

Fish have been observed to react when engine and propeller sounds exceed a certain level (Olsen *et al.*, 1983; Ona, 1988; Ona and Godo, 1990). Avoidance reactions have been observed in fish, including cod and herring, when vessel sound levels were 110 to 130 dB re 1 μ Pa rms (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). Vessel sound source levels in the audible range for fish are typically 150 to 170 dB re 1 μ Pa per Hz (Richardson *et al.*, 1995). The tugs used during the specified activity could be expected to produce levels in this range when in transit. Based upon the reports in the literature and the predicted sound levels from these vessels, some temporary avoidance by fish in the immediate area may occur. Overall, no more than negligible impacts on fish are expected as a result of the specified activity.

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could have indirect effects on marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly sound from ship traffic and construction (Erbe *et al.*, 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether the sound levels from pile driving, seismic activity, or any human-made sound would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 m) the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected to occur from the specified activity due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any

mortalities or impacts that might occur would be negligible.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the tugging, any adverse effects from Hilcorp’s activities on any prey habitat or prey populations are expected to be minor and temporary. The most likely impact to fishes at the project site would be temporary avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS’ consideration of “small numbers,” the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines “harassment” as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of behavioral reactions and or TTS for individual marine mammals resulting from exposure to Hilcorp’s acoustic sources (i.e., tugs towing, holding, and positioning). Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed 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 proposed 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 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., Richardson *et al.*, 1995; 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 (i.e., Level B harassment). NMFS generally predicts that marine mammals are likely to be behaviorally disturbed 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 µPa)) for continuous (e.g., tugging, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa 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 thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source smaller 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.

Hilcorp’s proposed activity includes the use of continuous sources (tugs towing, holding, and positioning a jack-up rig), and therefore the RMS SPL threshold of 120 is applicable.

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). Hilcorp’s proposed activity includes the use of non-impulsive sources (i.e., tugs towing, holding, and positioning a jack-up rig).

These thresholds are provided in table 4 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: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—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.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
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.

The sound field in the project area is the existing background noise plus additional noise resulting from tugs under load with a jack-up rig. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, tugs towing, holding, and positioning a jack-up rig). Calculation of the area ensonified by the proposed action is dependent on the background sound levels at the project site, the source levels of the proposed activities, and the estimated transmission loss coefficients for the proposed activities at the site. These factors are addressed below.

Sound Source Levels of Proposed Activities. The project includes 3 to 4 tugs under load with a jack-up rig. Hilcorp conducted a literature review of underwater sound emissions of tugs under various loading efforts. The sound source levels for tugs of various horsepower (2,000 to 8,200) under load can range from approximately 164 dB RMS to 202 dB RMS. This range largely relates to the level of operational effort, with full power output and higher speeds generating more propeller cavitation and hence greater sound source levels than lower power output and lower speeds. Tugs under tow produce higher source levels than tugs transiting with no load because of the higher power output necessary to pull the load. The amount of power the tugs expend while operating is the best predictor of relative sound source level. Several factors would determine the duration that the tugboats are towing the jack-up rig, including the origin and

destination of the towing route (*e.g.*, Rig Tenders Dock, an existing platform) and the tidal conditions. The power output would be variable and influenced by the prevailing wind direction and velocity, the current velocity, and the tidal stage. To the extent feasible, transport would be timed with the tide to minimize towing duration and power output.

Hilcorp’s literature review identified no existing data on sound source levels of tugs towing jack-up rigs. Accordingly, for this analysis, Hilcorp considered data from tug-under-load activities, including berthing and towing activities. Austin and Warner (2013) measured 167 dB RMS for tug towing barge activity in Cook Inlet. Blackwell and Greene (2002) reported berthing activities in the POA with a source level of 179 dB RMS. Laurinoli *et al.* (2005) measured a source level of 200 dB RMS for anchor towing activities by a tugboat in the Strait of Juan de Fuca, WA. The Roberts Bank Terminal 2 study (2014) repeated measurements of the same tug operating under different speeds and loading conditions. Broadband measurements from this study ranged from approximately 162 dB RMS up to 200 dB RMS.

The rig manager for Hilcorp, who is experienced with towing jack-up rigs in Cook Inlet, described operational conditions wherein the tugs generally operate at half power or less for the majority of the time they are under load (*pers. Comm.*, Durham, 2021). Transits with the tide (lower power output) are preferred for safety reasons, and effort is made to reduce or eliminate traveling against the tide (higher power output). The Roberts Bank Terminal 2 study (2014) allowed for a comparison of source levels from the same vessel (Seaspan Resolution tug) at half power versus full power. Seaspan Resolution’s half-power (*i.e.*, 50 percent) berthing

scenario had a sound source level of 180 dB RMS. In addition, the Roberts Bank Terminal 2 Study (2014) reported a mean tug source level of 179.3 dB RMS from 650 tug transits under varying load and speed conditions.

The 50 percent (or less) power output scenario occurs during the vast majority of tug towing jack-up rig activity, as described in the *Detailed Description of the Specific Activity* section. Therefore, based on Hilcorp’s literature review, a source level of 180 dB RMS was found to be an appropriate proxy source level for a single tug under load based on the Roberts Bank Terminal 2 study. If all three tugs were operating simultaneously at 180 dB RMS, the overall source emission levels would be expected to increase by approximately 5 dB when logarithmically adding the sources (*i.e.*, to 185 dB RMS). To further support this level as an appropriate proxy, a sound source verification (SSV) study performed by JASCO Applied Sciences (JASCO) in Cook Inlet in October 2021 (Lawrence *et al.*, 2022) measured the sound source level from three tugs pulling a jack-up rig in Cook Inlet at various power outputs. Lawrence *et al.* (2022) reported a source level of 167.3 dB RMS for the 20 percent-power scenario and a source level of 205.9 dB RMS for the 85 percent-power scenario. Assuming a linear scaling of tug power, a source level of 185 dB RMS was calculated as a single point source level for three tugs operating at 50 percent power output. Because the 2021 Cook Inlet SSV measurements by JASCO represent the most recent best available data, and because multiple tugs may be operating simultaneously, the analyses presented below use a mean tug sound source level scenario of 185 dB RMS to calculate the Level B harassment estimates for three tugs operating at 50

percent power output. In practice, the load condition of the three tugs is unlikely to be identical at all times, so sound emissions would be dominated by the single tug in the group that is working hardest at any point in time.

Further modeling was done to account for one additional tug working for one hour at 50 percent power during jack-up rig positioning, a stationary activity. This is equivalent in terms of acoustic energy to three tugs operating at 180.0 dB RMS (each of them) for 4 hours, joined by a fourth tug for 1 hour, increasing the source level to 186.0 dB RMS only during the 1-hour period (the logarithmic sum of four tugs working together at 180.0 dB RMS). An SEL of 185.1 dB was used to account for the cumulative sound exposure when calculating Level A harassment by adding a 4th tug operating at 50 percent power for 20 percent of the 5-hour period. This is equivalent in terms of acoustic energy to 3 tugs operating at 185.0 dB for 4 hours, joined by a fourth tug for 1 hour, increasing the source level to 186.0 dB only during the 1-hour period. The use of the 20 percent duty cycle was a computational requirement and, although equal in terms of overall energy and determination of impacts, should not be confused with the actual instantaneous SPL (see section 6.2.1.1 of Hilcorp's application for additional computational details).

In summary, Hilcorp has proposed to use a source level of 185.0 dB RMS to calculate the stationary Level B harassment isopleth where three tugs were under load for 4 hours with a 50 percent power output and a source level of 186.0 dB RMS to calculate the stationary Level B harassment isopleth where four tugs were under load for 1 hour with a 50 percent power output. Further, Hilcorp has proposed to use a source level of 185.1 dB SEL to calculate the stationary Level A harassment isopleths where three tugs were underload for 4 hours and then one tug joined for 1 additional hour. Lastly, Hilcorp proposed to use the 185.0 dB RMS level to model the mobile Level A harassment isopleths for three tugs under load with a 50 percent power output. NMFS concurs that Hilcorp's proposed source levels are appropriate.

Underwater Sound Propagation Modeling. Hilcorp contracted SLR Consulting to model the extent of the Level A and Level B harassment isopleths for tugs under load with a jack-up rig during their proposed activities. Cook Inlet is a particularly complex acoustic environment with strong currents, large tides, variable sea floor and generally changing conditions. Accordingly, Hilcorp applied a more

detailed propagation model than the "practical spreading loss" approach that uses a factor of 15. The objective of a more detailed propagation calculation is to improve the representation of the influence of some environmental variables, in particular, by accounting for bathymetry and specific sound source locations and frequency-dependent propagation effects.

Modeling was conducted using the dBSea software package. The fluid parabolic equation modeling algorithm was used with 5 Padé terms to calculate the TL between the source and the receiver at low frequencies ($\frac{1}{3}$ -octave bands, 31.5 Hz up to 1 kHz). For higher frequencies (1 kHz up to 8 kHz) the ray tracing model was used with 1,000 reflections for each ray. Sound sources were assumed to be omnidirectional and modeled as points. The received sound levels for the project were calculated as follows: (1) One-third octave source spectral levels were obtained via reference spectral curves with subsequent corrections based on their corresponding overall source levels; (2) TL was modeled at one-third octave band central frequencies along 100 radial paths at regular increments around each source location, out to the maximum range of the bathymetry data set or until constrained by land; (3) The bathymetry variation of the vertical plane along each modeling path was obtained via interpolation of the bathymetry dataset which has 83 m grid resolution; (4) The one-third octave source levels and transmission loss were combined to obtain the received levels as a function of range, depth, and frequency; and (5) The overall received levels were calculated at a 1-m depth resolution along each propagation path by summing all frequency band spectral levels.

Model Inputs. Bathymetry data used in the model was collected from the NOAA National Centers for Environmental Information (AFSC, 2019). Using NOAA's temperature and salinity data, sound speed profiles were computed for depths from 0 to 100 m for May, July, and October to capture the range of possible sound speed depending on the time of year Hilcorp's work could be conducted. These sound speed profiles were compiled using the Mackenzie Equation (1981) and are presented in table 8 of Hilcorp's application (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>). Geoacoustic parameters were also incorporated into the model. The parameters were based on substrate type and their relation to depth. These

parameters are presented in table 9 of Hilcorp's application (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>).

Detailed broadband sound transmission loss modeling in dBSea used the source level of 185 dB RMS calculated in one-third octave band levels (31.5 Hz to 64,000 Hz) for frequency dependent solutions. The frequencies associated with tug sound sources occur within the hearing range of marine mammals in Cook Inlet. Received levels for each hearing marine mammal group based on one-third octave auditory weighting functions were also calculated and integrated into the modeling scenarios of dBSea. For modeling the distances to relevant PTS thresholds, a weighting factor adjustment was not used; instead, the data on the spectrum associated with their source was used and incorporated the full auditory weighting function for each marine mammal hearing group.

The tugs towing the jack-up rig represent a mobile sound source, and tugs holding and positioning the jack-up rig on a platform are more akin to a stationary sound source. In addition, three tugs would be used for towing (mobile) and holding and positioning (stationary) and up to four tugs could be used for positioning (stationary). Consequently, sound TL modeling was undertaken for the various stationary and mobile scenarios for three and four tugs to generate Level A and Level B harassment threshold distances.

For acoustic modeling purposes of the stationary Level A harassment thresholds, two locations representative of where tugs will be stationary while they position the jack-up rig were selected in middle Cook Inlet near the Tyonek platform and in lower Trading Bay where the production platforms are located. To account for the mobile scenarios, the acoustic model generated Levels A and Level B harassment distances along a representative route from the Rig Tenders dock in Nikiski to the Tyonek platform, the northernmost platform in Cook Inlet (representing middle Cook Inlet), as well as from the Tyonek Platform to the Dolly Varden platform in lower Trading Bay, then from the Dolly Varden platform back to the Rig Tenders Dock in Nikiski. Note that this route is representative of a typical route the tugs may take; the specific route is not yet known, as the order in which platforms will be drilled with the jack-up rig is not yet known. These results were used to calculate Level A and Level B harassment exposure estimates from mobile tugs

towing a jack-up rig. The Level B harassment results were also used to calculate Level B harassment exposure estimates from stationary tugs holding or positioning a jack-up rig, as the mobile route encompassed the stationary modeling points. The locations represent a range of water depths from 18 to 77 m found throughout the project area.

For mobile Level B harassment and stationary Level B harassment with three tugs, the average distance to the

120 dB RMS threshold was based on the assessment of 100 radials at 25 locations across seasons (May, July, and October) and represents the average Level B harassment zone for each season and location (table 5). The result is a mobile and stationary Level B harassment zone of 3,850 m when three tugs are used (table 5). For stationary Level B harassment with four tugs, the average distance to the 120 dB RMS threshold was based on 100 radials at two locations, one in Trading Bay and one

in middle Cook Inlet, across seasons (May, July, and October) and represents the average Level B harassment zone for each season and location. The result is a stationary Level B harassment zone of 4,453 m when four tugs are in use (table 6). NMFS concurs that 3,850 m and 4,453 m are appropriate estimates for the extent of the Level B harassment zones for Hilcorp's towing, holding, and positioning activities when using three and four tugs, respectively.

TABLE 5—AVERAGE DISTANCES TO THE LEVEL B HARASSMENT THRESHOLD (120 dB) FOR THREE TUGS TOWING (MOBILE) AND HOLDING AND POSITIONING FOR 4 HOURS (STATIONARY)

Location	Average distance to 120 dB threshold (m)			Season average distance to threshold (m)
	May	July	October	
M1	4,215	3,911	4,352	4,159
M2	3,946	3,841	4,350	4,046
M3	4,156	3,971	4,458	4,195
M4	4,040	3,844	4,364	4,083
M5	4,053	3,676	4,304	4,011
M6	3,716	3,445	3,554	3,572
M7	2,947	2,753	2,898	2,866
M8	3,270	3,008	3,247	3,175
M9	3,567	3,359	3,727	3,551
M10	3,600	3,487	3,691	3,593
M11	3,746	3,579	4,214	3,846
M12	3,815	3,600	3,995	3,803
M13	4,010	3,831	4,338	4,060
M14	3,837	3,647	4,217	3,900
M15	3,966	3,798	4,455	4,073
M16	3,873	3,676	4,504	4,018
M18	5,562	3,893	4,626	4,694
M20	5,044	3,692	4,320	4,352
M22	4,717	3,553	4,067	4,112
M24	4,456	3,384	4,182	4,007
M25	3,842	3,686	4,218	3,915
M26	3,690	3,400	3,801	3,630
M27	3,707	3,497	3,711	3,638
M28	3,546	3,271	3,480	3,432
M29	3,618	3,279	3,646	3,514
Average	3,958	3,563	4,029	3,850

TABLE 6—AVERAGE DISTANCES TO THE LEVEL B HARASSMENT THRESHOLD (120 dB) FOR FOUR TUGS POSITIONING (STATIONARY) FOR 1 HOUR

Location	Average distance to Level B harassment threshold (m)			Season average distance to threshold (m)
	May	July	October	
Trading Bay	4,610	3,850	4,810	4,423
Middle CI	4,820	4,130	4,500	4,483
Average	4,715	3,990	4,655	4,453

The average Level A harassment distances for the stationary, four tug scenario were calculated assuming a SEL of 185.1 dB for a 5-hour exposure duration (table 7). For the mobile, three tug scenario, the average Level A

harassment distances were calculated assuming a SEL of 185.0 dB with an 18-second exposure period (table 8). This 18-second exposure was derived using the standard TL equation (Source Level – TL = Received Level) for

determining threshold distance (R [m]), where $TL = 15\log_{10}$. In this case, the equation was $185.0 \text{ dB} - 15\log_{10} = 173 \text{ dB}$. Solving for threshold distance (R) yields a distance of approximately 6 m, which was then used as the preliminary

ensonified radius to determine the duration of time it would take for the ensonified area of the sound source traveling at a speed of 2.06 m/s (4 knots) to pass a marine mammal. The duration (twice the radius divided by speed of

the source) that the ensonified area of a single tug would take to pass a marine mammal under these conditions is 6 seconds. An 18-second exposure was used in the model to reflect the time it would take for three ensonified areas

(from three consecutive individual tugs) to pass a single point that represents a marine mammal (6 seconds + 6 seconds + 6 seconds = 18 seconds).

TABLE 7—AVERAGE DISTANCES TO THE LEVEL A HARASSMENT THRESHOLDS FOR FOUR STATIONARY TUGS UNDER LOAD WITH A JACK-UP RIG FOR 5 HOURS

Location	Season	Average distance (m) to Level A harassment threshold by functional hearing group				
		LF	MF	HF	PW	OW ¹
Trading Bay	May	107	77	792	64	.....
Trading Bay	July	132	80	758	66	.....
Trading Bay	October	105	75	784	79	.....
Middle Cook Inlet	May	86	85	712	78	.....
Middle Cook Inlet	July	95	89	718	80	.....
Middle Cook Inlet	October	82	86	730	80	.....
Average .....	.....	102	82	749	75	0

¹ The Level A harassment distances are smaller than the footprint of the tugs.

TABLE 8—AVERAGE DISTANCES TO THE LEVEL A HARASSMENT THRESHOLDS FOR THREE MOBILE TUGS UNDER LOAD WITH A JACK-UP RIG ASSUMING A 18-SECOND EXPOSURE DURATION

Location	Season	Average distance (m) to Level A threshold by functional hearing group				
		LF ¹	MF ¹	HF	PW ¹	OW ¹
M2	May .....	.....	.....	10	.....	.....
M2	July .....	.....	.....	5	.....	.....
M2	October .....	.....	.....	10	.....	.....
M11	May .....	.....	.....	10	.....	.....
M11	July .....	.....	.....	5	.....	.....
M11	October .....	.....	.....	10	.....	.....
M22	May .....	.....	.....	10	.....	.....
M22	July .....	.....	.....	5	.....	.....
M22	October .....	.....	.....	10	.....	.....
Average .....	.....	0	0	8	0	0

¹ The Level A harassment distances are smaller than the footprint of the tugs.

Tugs are anticipated to be towing the jack-up rig between platforms and considered a mobile sound source for 6 hours in a single day per jack-up rig move. Tugs are anticipated to be towing the jack-up rig and considered a mobile source during demobilization and mobilization to/from Rig Tenders Dock in Nikiski for 9 hours. One jack-up rig move between platforms is planned during the IHA period. Tugs are anticipated to be holding or positioning the jack-up rig at the platforms or Rig Tenders Dock during demobilization and mobilization and are considered a stationary sound source for 5 hours in the first day and 5 hours in the second day if a second attempt to pin the jack-up rig is required. A second attempt was

built into the exposure estimate for each pinning event; three total pinning events are anticipated during the IHA period for production drilling.

The ensonified area for a location-to-location transport for production drilling represents a rig move between two production platforms in middle Cook Inlet and/or Trading Bay and includes 6 mobile hours over an average distance of 16.77 km in a single day and 5 stationary hours on the first day and 5 stationary hours on a second day. The 5 stationary hours are further broken into 4 hours with three tugs under load and 1 hour with four tugs under load. One location-to-location jack-up rig move is planned for the IHA period.

The ensonified area for production drilling demobilization and mobilization represents a rig move from a production platform in middle Cook Inlet to Rig Tenders Dock in Nikiski and reverse for mobilization and includes 9 mobile hours over a distance of up to 64.34 km in a single day and 5 stationary hours on the first day and 5 stationary hours on a second day, which are further broken into the same three tugs working for 4 hours and four tugs working for 1 hour as mentioned above. A summary of the estimated Level A and Level B harassment distances and areas for the various tugging scenarios is provided in table 9.

TABLE 9—AVERAGE DISTANCES AND AREAS TO THE ESTIMATED LEVEL A AND BEVEL B HARASSMENT THRESHOLDS FOR THE VARIOUS TUGGING SCENARIOS

Activity	Level A harassment distance (m)/area (km ²)					Level B harassment distance (m)/area (km ²)
	LF	MF	HF	PW	OW	
Demobilization/Mobilization						
3 Tugs Towing a Jack-Up Rig—Mobile	¹	¹	8/1.07	¹	¹	3,850/541.96
3 Tugs Towing a Jack-Up Rig—Stationary for up to 4 hours	102/0.03	82/0.02	749/1.76	75/0.02	¹	3,850/46.56
4 Tugs Towing a Jack-Up Rig—Stationary for up to 1 hour	102/0.03	82/0.02	749/1.76	75/0.02	¹	4,453/62.30
Location-to-Location						
3 Tugs Towing a Jack-Up Rig—Mobile	¹	¹	8/0.28	¹	¹	3,850/175.6
3 Tugs Towing a Jack-Up Rig—Stationary for up to 4 hours	102/0.03	82/0.02	749/1.76	75/0.02	¹	3,850/46.56
4 Tugs Towing a Jack-Up Rig—Stationary for up to 1 hour	102/0.03	82/0.02	749/1.76	75/0.02	¹	4,453/62.30

¹ The Level A harassment distances are smaller than the footprint of the tugs.

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.

Densities for marine mammals in Cook Inlet were derived from NMFS' Marine Mammal Laboratory (MML) aerial surveys, typically flown in June,

from 2000 to 2022 (Rugh *et al.*, 2005; Sheldon *et al.*, 2013, 2015b, 2017, 2019, 2022; Goetz, *et al.* 2023). While the surveys are concentrated for a few days in summer annually, which may skew densities for seasonally present species, they represent the best available long-term dataset of marine mammal sightings available in Cook Inlet. Density was calculated by summing the total number of animals observed and

dividing the number sighted by the area surveyed. The total number of animals observed accounts for both lower and upper Cook Inlet. There are no density estimates available for California sea lions and Pacific white-sided dolphins in Cook Inlet, as they were so infrequently sighted. Average densities across survey years are presented in table 10.

TABLE 10—AVERAGE DENSITIES OF MARINE MAMMAL SPECIES IN COOK INLET

Species	Density (individuals per km ²)
Humpback whale	0.00185
Minke whale	0.00004
Gray whale	0.00007
Fin whale	0.00028
Killer whale	0.00061
Beluga whale (MML—Entire Cook Inlet)	0.07166
Beluga whale (MML—Middle Cook Inlet)	0.00658
Beluga whale (MML—Lower Cook Inlet)	0.00003
Beluga whale (Goetz—North Cook Inlet)	0.00166
Beluga whale (Goetz—Lower Cook Inlet)	0.00000
Beluga whale (Goetz—Trading Bay)	0.01505
Dall's porpoise	0.00014
Harbor porpoise	0.00380
Pacific white-sided dolphin	N/A ¹
Harbor seal	0.26819
Steller sea lion	0.00669
California sea lion	N/A ¹

¹ Density estimates are not available in Cook Inlet for this species.

For CIBWs, two densities were considered as a comparison of available data. The first source considered was directly from the MML aerial surveys, as described above. Sighting data collected during aerial surveys was collected and then several correction factors were applied to address perception, availability, and proximity bias. These corrected sightings totals were then divided by the total area covered during the survey to arrive at a density value. Densities were derived for the entirety of Cook Inlet as well as for middle and

lower Cook Inlet. Densities across all three regions are low and there is a known effect of seasonality on the distribution of the whales. Thus, densities derived directly from surveys flown in the summer might underestimate the density of CIBWs in lower Cook Inlet at other ice-free times of the year.

The other mechanism for arriving at CIBW density considered here is the Goetz *et al.* (2012a) habitat-based model. This model is derived from sightings and incorporates depth soundings,

coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict densities throughout Cook Inlet. The output of this model is a density map of Cook Inlet, which predicts spatially explicit density estimates for CIBW. Using the resulting grid densities, average densities were calculated for two regions applicable to Hilcorp's operations (table 10). The densities applicable to the area of activity (*i.e.*, the North Cook Inlet Unit density for middle Cook Inlet activities

The ensnifed Level B harassment areas calculated per activity scenario (three tug stationary, four tug stationary, and three tug mobile for the location-to-location move and the demobilization and mobilization efforts) for a single day (see table 9) were multiplied by marine mammal densities to get an estimate of exposures per day. This was then multiplied by the number of days per move and the number of moves of that type of activity scenario to arrive at the number of estimated exposures per activity type. These exposures by activity scenario were then summed to result in a number of exposures per year for all Hilcorp's proposed tug under load activities (table 11). As exposure estimates were calculated based on specific potential rig moves or well locations, the density value for CIBWs that was carried through the estimate was the higher density value for that particular location (table 10). There are no estimated exposures based on this method of calculation for California sea lions and pacific white-sided dolphins because the assumed density of these species in the project area is 0.00 animals per km². Table 11 also indicates the number of takes, by Level B harassment, proposed to be authorized. For species where the total calculated take by Level B harassment is less than the estimated group size for that species, NMFS adjusted the take proposed for authorization to the anticipated group size. Explanations for species for which take proposed for authorization is greater than the calculated take are included below.

[illegible]

During annual aerial surveys conducted in Cook Inlet from 2000 to 2016, humpback group sizes ranged from one to 12 individuals, with most groups comprised of 1 to 3 individuals (Shelden *et al.*, 2013). Three humpback whales were observed in Cook Inlet during SAExploration's seismic study in 2015: two near the Forelands and one in Kachemak Bay (Kendall and Cornick, 2015). In total, 14 sightings of 38 humpback whales (ranging in group size from 1 to 14) were recorded in the 2019 Hilcorp lower Cook Inlet seismic survey in the fall (Fairweather Science, 2020). Two sightings totaling three individual humpback whales were recorded near Ladd Landing north of the Forelands on the recent Harvest Alaska CIPL Extension Project (Sitkiewicz *et al.*, 2018). Based on documented observations from the CIPL Extension Project, which is the data closest to the specific geographic region, NMFS is proposing to authorize, three takes by Level B harassment for humpback whales, which is slightly greater than the take estimated using the methods described above (0.2440 takes by Level B harassment, table 11).

Minke whales usually travel in groups of two to three individuals (NMFS, 2023b). During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered three times (1998, 1999, and 2006), all were observed off Anchor Point (Shelden *et al.*, 2013, 2015b, and 2017). Several minke whales were recorded off Cape Starichkof in early summer 2013 during exploratory drilling (Owl Ridge, 2014), suggesting this location is regularly used by minke whales year-round. During Apache's 2014 survey, a total of two minke whale groups (three individuals) were observed. One sighting occurred southeast of Kalgin Island while the other sighting occurred near Homer (Lomac-MacNair *et al.*, 2014). SAExploration noted one minke whale near Tuxedni Bay in 2015 (Kendall and Cornick, 2015). Eight sightings of eight minke whales were recorded in the 2019 Hilcorp lower Cook Inlet seismic survey (Fairweather Science, 2020). Based on these observations of group size and consistency of sightings in Cook Inlet, NMFS is proposing to authorize three takes by Level B harassment for minke whales (table 11). This is higher than the exposure estimate (*i.e.*, 0.037, table 11) to allow for the potential occurrence of a group, or several individuals, during the project period.

During Apache's 2012 seismic program, nine sightings of a total of nine gray whales were observed in June and July (Lomac-MacNair *et al.*, 2013). In 2014, one gray whale was observed

during Apache's seismic program (Lomac-MacNair *et al.*, 2014) and in 2015, no gray whales were observed during SAExploration's seismic survey (Kendall and Cornick, 2015). No gray whales were observed during the 2018 CIPL Extension Project (Sitkiewicz *et al.*, 2018) or during the 2019 Hilcorp seismic survey in lower Cook Inlet (Fairweather Science, 2020). The greatest densities of gray whales in Cook Inlet occur from November through January and March through May; the former are southbound, the latter are northbound (Ferguson *et al.*, 2015). Based on this information, NMFS is proposing to authorize three takes by Level B harassment for gray whales. This is higher than the exposure estimate (*i.e.*, 0.088, table 11) to allow for the potential occurrence of a group, or several individuals, particularly during the fall shoulder season during the higher density periods mentioned above.

Fin whales most often travel alone, although they are sometimes seen in groups of two to seven individuals. During migration they may be in groups of 50 to 300 individuals (NMFS, 2010). During the NMFS aerial surveys in Cook Inlet from 2000 to 2018, 10 sightings of 26 estimated individual fin whales were recorded in lower Cook Inlet (Shelden *et al.*, 2013, 2015b, and 2017; Shelden and Wade, 2019). Wild *et al.* (2023) identified areas south of the mouth of Cook Inlet as a fin whale feeding BIA from June to September with an importance score of 1 and an intensity score of 1 (see Harrison *et al.* 2023 for more details regarding BIA scoring). As such, the potential for fin whales to occupy waters adjacent to the BIA during that time period and near the specified area may be higher. Acoustic detections of fin whales were recorded during passive acoustic monitoring in the fall of 2019 (Castellote *et al.*, 2020). Additionally, during seismic surveys conducted in 2019 by Hilcorp in lower Cook Inlet, 8 sightings of 23 fin whales were recorded in groups ranging in size from 1 to 15 individuals (Fairweather Science, 2020). The higher number of sightings in a single year relative to the multi-year NMFS aerial surveys flown earlier in season each year suggests fin whales may be present in greater numbers in the fall. Given the possible presence of fin whales in the project area, NMFS proposes to authorize two takes by Level B harassment for fin whales during tugs Hilcorp's planned activities.

Killer whale pods typically consist of a few to 20 or more animals (NMFS, 2023c). During seismic surveys conducted in 2019 by Hilcorp in lower

Cook Inlet, 21 killer whales were observed. Although also observed as single individuals, killer whales were recorded during this survey in groups ranging in size from two to five individuals (Fairweather Science, 2020). One killer whale group of two individuals was observed during the 2015 SAExploration seismic program near the North Foreland (Kendall and Cornick, 2015). Based on recent documented sightings, observed group sizes, and the established presence of killer whales in Cook Inlet, NMFS is proposing to authorize 10 takes by Level B harassment for killer whales. This would facilitate two sightings with a group size of five individuals, which represents the upper end of recorded group size in recent surveys conducted in Cook Inlet.

The total estimated take for CIWB was calculated to be 9.529 individuals based on recorded densities and estimated durations that tugs would be under load with a jack-up rig (table 11). The 2018 MML aerial survey (Shelden and Wade, 2019) reported a median beluga group size estimate of approximately 11 whales, although estimated group sizes were highly variable (ranging from 2 to 147 whales) as was the case in previous survey years (Boyd *et al.*, 2019). The median group size during 2021 and 2022 MML aerial surveys was 34 and 15, respectively, with variability between 1 and 174 between the years (Goetz *et al.*, 2023). Additionally, vessel-based surveys in 2019 found CIBW groups in the Susitna River Delta (roughly 24 km north of the Tyonek Platform) that ranged from 5 to 200 animals (McGuire *et al.*, 2022). Based on these observations, NMFS proposes to increase the estimated take calculated above and authorize 15 takes by Level B harassment for CIBWs to account for 1 group of 15 individuals, the lower end of the 2022 median group size, or 2 observations of smaller-sized groups. While large groups of CIBWs have been seen in the Susitna River Delta region, they are not expected near Hilcorp's specified activity because groups of this size have not been observed or documented outside river deltas in upper Cook Inlet; however, smaller groups (*i.e.*, around the 2022 median group size) could be traveling through to access the Susitna River Delta and other nearby coastal locations.

Dall's porpoises are usually found in groups averaging between 2 and 12 individuals (NMFS, 2023d). During seismic surveys conducted in 2019 by Hilcorp in lower Cook Inlet, Dall's porpoises were recorded in groups ranging from two to seven individuals (Fairweather Science, 2020). The 2012

Apache survey recorded two groups of three individual Dall's porpoises (Lomac-MacNair *et al.*, 2014). NMFS proposes to authorize six takes by Level B harassment for Dall's porpoises. This is greater than the estimated exposure estimate for this species (0.180, table 11), but would allow for at least one group at the higher end of documented group size or a combination of small groups plus individuals.

Harbor porpoises are most often seen in groups of two to three (NMFS, 2023e); however, based on observations during project-based marine mammal monitoring, they can also occur in larger group sizes. Sheldon *et al.* (2014) compiled historical sightings of harbor porpoises from lower to upper Cook Inlet that spanned from a few animals to 92 individuals. The 2018 CIPL Extension Project that occurred in middle Cook Inlet reported 29 sightings of 44 individuals (Sitkiewicz *et al.*, 2018). NMFS proposes to authorize 12 takes by Level B harassment for harbor porpoises to allow for multiple group sightings during the specified activity. This authorization is greater than the exposure estimate calculated (5.020, table 11) but would account for the possibility of a couple sightings of small groups of harbor porpoises during Hilcorp's 6 days of tugging activity.

Recent data specific to Pacific white-sided dolphins within Cook Inlet is lacking, and the calculated exposure estimate is zero based on the paucity of sightings of this species in this region (table 11). However, Pacific-white sided dolphins have been observed in Cook Inlet. During an aerial survey in May 2014, Apache observed three Pacific white-sided dolphins near Kenai. No large groups of Pacific white-sided dolphins have been reported within Cook Inlet, although acoustic detections of several Pacific white-sided dolphins were recorded near Iniskin Bay during Hilcorp's 3D seismic survey in 2020. Prior to this, only one other survey in the last 20 years noted the presence of Pacific white-sided dolphins (three animals) within Cook Inlet. As a result of the dearth of current data on this species, an accurate density for Pacific white-sided dolphins in the specific project region has not been generated. However, based on the possibility of this species in the project area, NMFS proposes to authorize three takes by Level B harassment for Pacific white-sided dolphins, the maximum number of Pacific white-sided dolphins that have been recorded in the somewhat recent past are present in Cook Inlet. This is consistent with NMFS' IHA for Hilcorp's previous tugging activities (87 FR 62364, October 14, 2022).

Harbor seals are often solitary in water but can haul out in groups of a few to thousands (Alaska Department of Fish and Game (ADF&G), 2022). Given their presence in the study region, NMFS proposes to authorize 355 takes by Level B harassment for harbor seals, which is commensurate with the calculated exposure estimate based on harbor seal densities and Hilcorp's estimated durations for tugs under load with a jack-up rig (table 11).

Steller sea lions tend to forage individually or in small groups (Fiscus and Baines, 1966) but have been documented feeding in larger groups when schooling fish were present (Gende *et al.*, 2001). Steller sea lions have been observed during marine mammal surveys conducted in Cook Inlet. In 2012, during Apache's 3D Seismic survey, three sightings of approximately four individuals in upper Cook Inlet were reported (Lomac-MacNair *et al.*, 2013). Marine mammal observers associated with Buccaneer's drilling project off Cape Starichkof observed seven Steller sea lions during the summer of 2013 (Owl Ridge, 2014). During SAExploration's 3D Seismic Program in 2015, four Steller sea lions were observed in Cook Inlet. One sighting occurred between the West and East Forelands, one occurred near Nikiski, and one occurred northeast of the North Foreland in the center of Cook Inlet (Kendall and Cornick, 2015). During NMFS Cook Inlet beluga whale aerial surveys from 2000 to 2016, 39 sightings of 769 estimated individual Steller sea lions in lower Cook Inlet were reported (Sheldon *et al.*, 2017). During a waterfowl survey in upper Cook Inlet, an observer documented an estimated 25 Steller sea lions hauled-out at low tide in the Lewis River on the west side of Cook Inlet (K. Lindberg, pers. comm., August 15, 2022). Hilcorp reported one sighting of two Steller sea lions while conducting pipeline work in upper Cook Inlet (Sitkiewicz *et al.*, 2018). Commensurate with exposure estimates shown in table 11, NMFS is proposing to authorize nine takes by Level B harassment for Steller sea lions.

While California sea lions are uncommon in the specific geographic region, two were seen during the 2012 Apache seismic survey in Cook Inlet (Lomac-MacNair *et al.*, 2013). California sea lions in Alaska are typically alone but may be seen in small groups usually associated with Steller sea lions at their haul outs and rookeries (Maniscalco *et al.*, 2004). Despite the estimated exposure estimate being zero due to the lack of sightings during aerial surveys, NMFS proposes to authorize two takes by Level B harassment for California sea

lions to account for the potential to see up to two animals over the course of the season. This is consistent with NMFS authorization for Hilcorp's previous tugging activities (87 FR 62364, October 14, 2022).

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. 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, as well as subsistence uses. 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.

There is a discountable potential for marine mammals to incur PTS from the project, as source levels are relatively low, non-impulsive, and animals would have to remain at very close distances for multiple hours to accumulate acoustic energy at levels that could damage hearing. Therefore, we do not believe there is reasonable potential for Level A harassment and we are not proposing to authorize it. However, Hilcorp will implement a number of

mitigation measures designed to reduce the potential for and severity of Level B harassment and minimize the impacts of the project.

The tugs towing a jack-up rig are not able to shut down while transiting, holding, or positioning the rig. Hilcorp would maneuver the tugs towing the jack-up rig such that they maintain a consistent speed (approximately 4 knots [7 km/hr]) and avoid multiple changes of speed and direction to make the course of the vessels as predictable as possible to marine mammals in the surrounding environment, characteristics that are expected to be associated with a lower likelihood of disturbance.

During activities involving tugs under load with a jack-up rig, Hilcorp would implement a clearance zone of 1,500 m centered around the jack-up rig for non-CIBW species and a clearance zone that extends as far as PSOs can feasibly observe for CIBWs. The 1,500 m proposed clearance zone is consistent with previous authorizations for tugging activities (87 FR 62364, October 14, 2022), and was determined to be appropriate as it is approximately twice as large as largest Level A harassment zone (table 10) and is a reasonable distance within which cryptic species (*e.g.*, porpoises, pinnipeds) could be observed. The larger clearance zone for CIBWs is a new measure aimed to further minimize any potential impacts from tugs under load with a jack-up rig on this species.

Hilcorp would employ two NMFS-approved PSOs to conduct marine mammal monitoring to a distance out to the greatest extent possible for all mobile and stationary tugging activity. Prior to new commencing activities during daylight hours or if there is a 30-minute lapse in operational activities, the PSOs would observe the clearance zones described above for 30 minutes (*i.e.*, pre-clearance monitoring) (transitioning from towing to positioning without shutting down would not be considered commencing a new operational activity). If no marine mammals are observed within the relevant clearance zone during this pre-clearance monitoring period, tugs may commence their towing, positioning, or holding of a jack-up rig. If a non-CIBW marine mammal(s) is observed within the relevant clearance zone during the pre-clearance monitoring period towing, positioning, or holding of a jack-up rig would be delayed, unless the delay interferes with the safety of working conditions. Operations would not commence until the PSO(s) observe that the non-CIBW animal(s) is outside of and on a path away from the clearance

zone, or 30 minutes have elapsed without observing the non-CIBW marine mammal. If a CIBW(s) is observed within the relevant clearance zone during those 30 minutes, operations may not commence until the CIBW(s) is no longer detected at any range and 30 minutes have elapsed without any observations of CIBWs. Once the PSOs have determined one of those conditions are met, operations may commence. PSOs would also conduct monitoring for marine mammals through 30 minutes post-completion of any tugging activity each day, and after each stoppage of 30 minutes or greater.

During nighttime hours or low/no-light conditions, night-vision devices (NVDs) shown to be effective at detecting marine mammals in low-light conditions (*e.g.*, Portable Visual Search-7 model, or similar) would be provided to PSOs to aid in their monitoring of marine mammals. Every effort would be made to observe that the relevant clearance zone is free of marine mammals by using night-vision devices and or the naked eye, however it may not always be possible to see and clear the entire clearance zones prior to nighttime transport. Prior to commencing new operational activities during nighttime hours or if there is a 30-minute lapse in operational activities in low/no-light conditions, the PSOs would observe out to the greatest extent feasible while using NVDs for 30 minutes (*i.e.*, pre-clearance monitoring); if no marine mammals are observed during this pre-clearance monitoring period, tugs may commence towing, positioning, or holding a jack-up rig. If a marine mammal(s) is observed during the pre-clearance monitoring period, tugs towing, positioning, or holding a jack-up rig would be delayed, unless the delay interferes with the safety of working conditions. Operations would not commence until the PSO(s) observe that: (1) the animal(s) is outside of the observable area; or (2) 30 minutes have elapsed. Once the PSOs have determined one of those conditions are met, operations may commence.

Hilcorp would operate with the tide, resulting in a low power output from the tugs towing the jack-up rig, unless human safety or equipment integrity are at risk. Due to the nature of tidal cycles in Cook Inlet, it is possible that the most favorable tide for the towing operation would occur during nighttime hours. Hilcorp would operate the tugs towing the jack-up rigs at night if the nighttime operations result in a lower power output from the tugs by operating with a favorable tide.

Out of concern for potential disturbance to CIBWs in sensitive and

essential habitat, Hilcorp would maintain a distance of 2.4 km from the MLLW line of the Susitna River Delta (Beluga River to the Little Susitna River) between April 15 and November 15. The dates of applicability of this exclusion area have been expanded based on new available science, including visual surveys and acoustic studies, which indicate that substantial numbers of CIBWs continue to occur in the Susitna Delta area through at least mid-November (M. Castellote, pers. comm., T. McGuire, pers. comm.). In addition, Hilcorp would coordinate with local Tribes as described in its Stakeholder Engagement Plan (see Appendix C in Hilcorp's application), notify the communities of any changes in the operation, and take action to avoid or mitigate impacts to subsistence harvests.

For transportation of a jack-up rig to or from the Tyonek platform, in addition to the two PSOs stationed on the rig during towing, one additional PSO would be stationed on the Tyonek platform to monitor for marine mammals. The PSO would be on-watch for at least 1 hour before tugs are expected to arrive (scheduled to approach the Level B harassment threshold).

Based on our evaluation of Hilcorp's proposed measures, NMFS has preliminarily determined that the proposed 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, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present 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.

Hilcorp would abide by all monitoring and reporting measures contained within the IHA, if issued, and their Marine Mammal Monitoring and Mitigation Plan (see appendix D of Hilcorp's application). A summary of those measures and additional requirements proposed by NMFS is provided below.

A minimum of two NMFS-approved PSOs must be stationed on the tug or jack-up rig for monitoring purposes for the entirety of jack-up rig towing, holding, and positioning operations. PSOs would be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued Incidental Take Authorization or Letter of Concurrence. Other PSOs may substitute other relevant experience (including relevant Alaska Native traditional knowledge), education (degree in biological science or related field), or training for prior experience performing the duties of a PSO.

PSOs would also have the following additional qualifications:

- (a) The ability to conduct field observations and collect data according to assigned protocols;
- (b) Experience or training in the field identification of marine mammals, including the identification of behaviors;
- (c) Sufficient training, orientation, or experience with the tugging operation to provide for personal safety during observations;
- (d) Sufficient writing skills to record required information including but not limited to the number and species of marine mammals observed; dates and times when tugs were under load with the jack-up rig; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- (e) The ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs would be positioned aboard the tug or the jack-up-rig at the best practical vantage points that are determined to be safe, ideally an elevated stable platform from which a single PSO would have an unobstructed 360-degree view of the water or a total 360-degree view between all PSOs on-watch. Generally, one PSO would be on the port side and one PSO would be on the starboard side. Additionally, when towing the jack-up rig to the Tyonek platform, an additional PSO would be stationed on the Tyonek platform 1 hour before tugs are expected to arrive (*i.e.*, scheduled to approach the Level B threshold) to monitor for marine mammals out to the maximum extent possible. PSOs may use a combination of equipment to scan the monitoring area and to verify the required monitoring distance from the project site, including the naked eye, 7 by 50 binoculars, and NMFS approved NVDs for low light and nighttime operations. PSOs would be in communication with all vessel captains via VHF radio and/or cell phones at all times and alert vessel captains to all marine mammal sightings relative to the vessel location.

Hilcorp would submit interim monthly reports for all months in which tug towing, holding, or positioning of the jack-up rig occurs. Monthly reports would be due 14 days after the conclusion of each calendar month, and would include a summary of marine mammal species and behavioral observations, delays, and tugging activities completed (*i.e.*, tugs towing, holding, or positioning the jack-up rig). They also must include an assessment of the amount of tugging remaining to be

completed, in addition to the number of CIBWs observed within estimated harassment zones to date.

A draft final summary marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of the tug towing jack-up rig activities for the year or 60 calendar days prior to the requested issuance of any subsequent IHA for similar activity at the same location, whichever comes first. The draft summary report would include an overall description of all work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets (data must be submitted electronically in a format that can be queried such as a spreadsheet or database). Specifically, the summary report would include:

- Date and time that monitored activity begins or ends;
- Activities occurring during each observation period, including (a) the type of activity (towing, holding, positioning), (b) the total duration of each type of activity, (c) the number of attempts required for positioning, (d) when nighttime operations were required, and (e) whether towing against the tide was required;
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at the beginning and end of the PSO shift and whenever conditions change significantly), including Beaufort sea state, tidal state, and any other relevant weather conditions including cloud cover, fog, sun glare, overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
 - Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - Time of sighting;
 - Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
 - Distance and location of each observed marine mammal relative to the tug boats for each sighting;
 - Estimated number of animals (min/max/best estimate);
 - Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
 - Animal's closest point of approach and estimated time spent within the harassment zone;
 - Description of any marine mammal behavioral observations (*e.g.*, observed

behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (e.g., delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft summary report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in Hilcorp's tugging activities discover an injured or dead marine mammal, Hilcorp would report the incident to the Office of Protected Resources, NMFS (PR.ITP.MonitoringReports@noaa.gov, itp.tyson.moore@noaa.gov), and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, Hilcorp would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the IHA. Hilcorp would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude and 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.

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 11, except CIBWs, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For CIBWs, there are meaningful differences in anticipated individual responses to activities, impact of expected take on the population, or impacts on habitat; therefore, we provide a separate independent detailed analysis for CIBWs following the analysis for other species for which we propose take authorization.

NMFS has identified several key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the individuals, and the status of the species or stock. The potential effects of the specified activity on humpback whales, minke whales, gray whales, fin whales, killer whales, Dall's porpoises, harbor porpoises, Pacific white-sided dolphins, Steller sea lions, harbor seals, and California sea lions are discussed below. These factors also apply to CIBWs; however, an additional analysis

for CIBWs is provided in a separate subsection below.

Tugs under load with the jack-up rig, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated by tugs towing, holding, and positioning a jack-up rig. Potential takes could occur if marine mammals are present in zones ensounded above the thresholds for Level B harassment, identified above, while activities are underway.

Hilcorp's planned activities and associated impacts would occur within a limited, confined area of the affected species or stocks' range over a total of 6 days between September 14, 2024, and September 13, 2025. The intensity and duration of take by Level B harassment would be minimized through use of mitigation measures described herein. Further the amount of take proposed to be authorized is small when compared to stock abundance (see tables 2 and 11). In addition, NMFS does not anticipate that serious injury or mortality would occur as a result of Hilcorp's planned activity given the nature of the activity, even in the absence of required mitigation.

Exposures to elevated sound levels produced during tugs under load with the jack-up rig may cause behavioral disturbance of some individuals within the vicinity of the sound source. Behavioral responses of marine mammals to tugs under load with the jack-up rig are expected to be mild, short term, and temporary. Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities conducted by Hilcorp (Horsley and Larson, 2023), would likely be limited to behavioral response such as increased swimming speeds, changing in directions of travel and diving and surfacing behaviors, increased respiration rates, or decreased foraging (if such activity were occurring) (Ridgway *et al.*, 1997; Nowacek *et al.*, 2007; Thorson and Reyff, 2006; Kendall and Cornick, 2015; Goldbogen *et al.*, 2013b; Blair *et al.*, 2016; Wisniewska *et al.*, 2018; Piwetz *et al.*, 2021). Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or have other mild responses that are not observable such as increased stress levels (e.g., Rolland *et al.* 2012; Bejder *et al.*, 2006; Rako *et al.*, 2013; Pirota *et al.*

al., 2015; Pérez-Jorge *et al.*, 2016). They may also exhibit increased vocalization rates (*e.g.*, Dahlheim, 1987; Dahlheim and Castellote, 2016), louder vocalizations (*e.g.*, Frankel and Gabriele, 2017; Fournet *et al.*, 2018), alterations in the spectral features of vocalizations (*e.g.*, Castellote *et al.*, 2012), or a cessation of communication signals (*e.g.*, Tsujii *et al.*, 2018). However, as described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, marine mammals observed near Hilcorp's planned activities have shown little to no observable reactions to tugs under load with a jack-up rig (Horsley and Larson, 2023).

Tugs pulling, holding, and positioning a jack-up rig are slow-moving as compared to typical recreational and commercial vessel traffic. Assuming an animal was stationary, exposure from the moving tug configuration (which comprises most of the tug activity being considered) would be on the order of minutes in any particular location. The slow, predictable, and generally straight path of this activity is expected to further lessen the likelihood that sound exposures at the expected levels would result in the harassment of marine mammals. Also, this slow transit along a predictable path is planned in an area of routine vessel traffic where many large vessels move in slow straight-line paths, and some individuals are expected to be habituated to these sorts of sounds. While it is possible that animals may swim around the project area, avoiding closer approaches to the boats, we do not expect them to abandon any intended path. Further, most animals present in the region would likely be transiting through the area; therefore, any potential exposure is expected to be brief. Based on the characteristics of the sound source and the other activities regularly encountered in the area, it is unlikely Hilcorp's planned activities would be of a duration or intensity expected to result in impacts on reproduction or survival.

Further, most of the species present in the region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even shorter periods of noise-generating activity, further decreasing the impacts. Most likely, individual animals would simply move away from the sound source and be temporarily displaced from the area. Takes may also occur during important feeding times. The project area though represents a small portion of available

foraging habitat and impacts on marine mammal feeding for all species should be minimal.

We anticipate that any potential reactions and behavioral changes are expected to subside quickly when the exposures cease and, therefore, we do not expect long-term adverse consequences from Hilcorp's proposed activities for individuals of any species. The intensity of Level B harassment events would be minimized through use of mitigation measures described herein, which were not quantitatively factored into the take estimates. Hilcorp would use PSOs to monitor for marine mammals before commencing any tugging activity, which would minimize the potential for marine mammals to be present within Level B harassment zones when tugs are under load. Further, given the absence of any major rookeries or areas of known biological significance for marine mammals (*e.g.*, foraging hot spots) within the estimated harassment zones (other than critical habitat and a BIA for CIBWs as described below), we assume that potential takes by Level B harassment would have an inconsequential short-term effect on individuals and would not result in population-level impacts.

Theoretically, repeated, sequential exposure to elevated noise from tugs under load with a jack-up rig over a long duration could result in more severe impacts to individuals that could affect a population (via sustained or repeated disruption of important behaviors such as feeding, resting, traveling, and socializing; Southall *et al.*, 2007). Alternatively, marine mammals exposed to repetitious sounds may become habituated, desensitized, or tolerant after initial exposure to these sounds (reviewed by Richardson *et al.*, 1995; Southall *et al.*, 2007). Cook Inlet is a regional hub of marine transportation, and is used by various classes of vessels, including containerships, bulk cargo freighters, tankers, commercial and sport-fishing vessels, and recreational vessels. Off-shore vessels, tug vessels, and tour boats represent 86 percent of the total operating days for vessels in Cook Inlet (BOEM, 2016). Given that marine mammals still frequent and use Cook Inlet despite being exposed to anthropogenic sounds such as those produced by tug boats and other vessels across many years, these severe population level impacts resulting from the additional noise produced by tugs under load with a jack-up rig are not anticipated. The absence of any pinniped haulouts or other known home-ranges in the planned action area further decreases the likelihood of severe population level impacts.

Hilcorp's tugs under load with a jack-up rig are also not expected to have significant adverse effects on any marine mammal habitat as no physical impacts to habitat are anticipated to results from the specified activities and any impacts to marine mammal habitat (*i.e.*, elevated sound levels) would be temporary. In addition to being temporary and short in overall duration, the acoustic footprint of the proposed activity is small relative to the overall distribution of the animals in the area and their use of the area. Additionally, the habitat within the estimated acoustic footprint is not known to be heavily used by marine mammals.

Impacts to marine mammal prey species are also expected to be minor and temporary and to have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Overall, as described above, the area anticipated to be impacted by Hilcorp's planned activities is very small compared to the available surrounding habitat, and does not include habitat of particular importance. The most likely impact to prey would be temporary behavioral avoidance of the immediate area. When tugs are under load with the jack-up rig, it is expected that some fish would temporarily leave the area of disturbance (*e.g.*, Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988), thus impacting marine mammals' foraging opportunities in a limited portion of their foraging range. But, because of the relatively small area of the habitat that may be affected, and lack of any foraging habitat of particular importance, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Finally, Hilcorp will minimize potential exposure of marine mammals to elevated noise levels by delaying tugs being under load with the jack-up rig if marine mammals are observed during the pre-clearance monitoring period. Hilcorp would also implement vessel maneuvering measures to reduce the likelihood of disturbing marine mammals during any periods when marine mammals may be present near the vessels. Lastly, Hilcorp would also reduce the impact of their activity by conducting tugging operations with favorable tides whenever feasible.

In summary and as described above, the following factors (with additional analyses for CIBWs included below) primarily support our preliminary determinations that the impacts resulting from the activities described for this proposed IHA are not expected

to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No takes by mortality, serious injury, or Level A harassment are anticipated or proposed to be authorized;
- Exposure would likely be brief given the short duration of the specified activity and the transiting behavior of marine mammals in the action area;
- Marine mammal densities are low in the project area; therefore, there will not be substantial numbers of marine mammals exposed to the noise from the project compared to the affected population sizes;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, BIAs (other than for CIBWs as described below), or other habitats critical to recruitment or survival (*e.g.*, rookery);
- The project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species;
- Take would only occur within middle Cook Inlet and Trading Bay—a limited, confined area of any given stock's home range;
- Monitoring reports from previous projects where tugs were under load with a jack-up rig in Cook Inlet have documented little to no observable effect on individuals of the same species impacted by the specified activities;
- The required mitigation measures (*i.e.*, pre-clearance monitoring, vessel maneuver) are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to sound and the intensity of the exposures; and
- The intensity of anticipated takes by Level B harassment is low for all stocks consisting of, at worst, temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Cook Inlet Beluga Whales. For CIBWs, we further discuss our negligible impact findings in addition to the findings discussed above for all species in the context of potential impacts to this endangered stock based on our evaluation of the take proposed to be authorized (table 11).

All tug towing, holding, or positioning would be done in a manner implementing best management practices to preserve water quality, and no work would occur around creek mouths or river systems leading to prey abundance reductions. In addition, no

physical structures would restrict passage, though impacts to the acoustic habitat are relevant and discussed here. While the specified activity would occur within CIBW Critical Habitat Area 2, and the CIBW small and resident BIA, monitoring data from Hilcorp's activities suggest that the presence of tugs under load with a jack-up rig do not discourage CIBWs from transiting throughout Cook Inlet and between critical habitat areas and that the whales do not abandon critical habitat areas (Horsley and Larson, 2023). In addition, large numbers of CIBWs have continued to use Cook Inlet and pass through the area, likely traveling to critical foraging grounds found in upper Cook Inlet, while noise-producing anthropogenic activities, including vessel use, have taken place during the past 2 decades (*e.g.*, Sheldon *et al.*, 2013, 2015b, 2017, 2022; Sheldon and Wade, 2019; Geotz *et al.*, 2023). These findings are not surprising as food is a strong motivation for marine mammals. As described in Forney *et al.* (2017), animals typically favor particular areas because of their importance for survival (*e.g.*, feeding or breeding), and leaving may have significant costs to fitness (reduced foraging success, increased predation risk, increased exposure to other anthropogenic threats). Consequently, animals may be highly motivated to maintain foraging behavior in historical foraging areas despite negative impacts (*e.g.*, Rolland *et al.*, 2012).

Generation of sound may result in avoidance behaviors that would be limited in time and space relative to the larger availability of important habitat areas in Cook Inlet; however, the area ensounded by sound from the specified activity is anticipated to be small compared to the overall available critical habitat for CIBWs to feed and travel. Therefore, the specified activity would not create a barrier to movement through or within important areas. We anticipate that disturbance to CIBWs would manifest in the same manner as other marine mammals described above (*i.e.*, increased swimming speeds, changes in the direction of travel and dive behaviors, increased respiration rates, decreased foraging (if such activity were occurring), or alterations to communication signals). We do not believe exposure to elevated noise levels during transit past tugging activity would have adverse effects on individuals' fitness for reproduction or survival.

Although data demonstrate that CIBWs are not abandoning the planned project area during anthropogenic activities, results of an expert elicitation (EE) at a 2016 workshop, which

predicted the impacts of noise on CIBW survival and reproduction given lost foraging opportunities, helped to inform our assessment of impacts on this stock. The 2016 EE workshop used conceptual models of an interim population consequences of disturbance (PCoD) for marine mammals (NRC, 2005; New *et al.*, 2014; Tollit *et al.*, 2016) to help in understanding how noise-related stressors might affect vital rates (survival, birth rate and growth) for CIBW (King *et al.*, 2015). NMFS (2016b) suggests that the main direct effects of noise on CIBWs are likely to be through masking of vocalizations used for communication and prey location and habitat degradation. The 2016 workshop on CIBWs was specifically designed to provide regulators with a tool to help understand whether chronic and acute anthropogenic noise from various sources and projects are likely to be limiting recovery of the CIBW population. The full report can be found at <https://www.smruconsulting.com/publications/> with a summary of the expert elicitation portion of the workshop below.

For each of the noise effect mechanisms chosen for EE, the experts provided a set of parameters and values that determined the forms of a relationship between the number of days of disturbance a female CIBW experiences in a particular period and the effect of that disturbance on her energy reserves. Examples included the number of days of disturbance during the period April, May, and June that would be predicted to reduce the energy reserves of a pregnant CIBW to such a level that she is certain to terminate the pregnancy or abandon the calf soon after birth, the number of days of disturbance in the period April–September required to reduce the energy reserves of a lactating CIBW to a level where she is certain to abandon her calf, and the number of days of disturbance where a female fails to gain sufficient energy by the end of summer to maintain themselves and their calves during the subsequent winter. Overall, median values ranged from 16 to 69 days of disturbance depending on the question. However, for this elicitation, a “day of disturbance” was defined as any day on which an animal loses the ability to forage for at least one tidal cycle (*i.e.*, it forgoes 50–100 percent of its energy intake on that day). The day of disturbance considered in the context of the report is notably more severe than the Level B harassment expected to result from these activities, which as described is expected to be comprised predominantly of temporary

modifications in the behavior of individual CIBWs (e.g., faster swim speeds, longer dives, decreased sighting durations, alterations in communication). Also, NMFS proposes to authorize 15 instances of takes, with the instances representing disturbance events within a day—this means that either 15 different individual CIBWs are disturbed on no more than 1 day each, or some lesser number of individuals may be disturbed on more than 1 day, but with the product of individuals and days not exceeding 15. Given the overall anticipated take, and the short duration of the specified activities (*i.e.*, 6 days), it is unlikely that any one CIBW will be disturbed on more than a couple days. Lastly, even if a CIBW was exposed every day of Hilcorp's planned activities, these activities are only planned for 6 days, and thus do not fall into the expected range of days of disturbance expected to elicit an effect on energy reserves as determined by the experts as described above (*i.e.*, 16 to 19 days). Further, Hilcorp has proposed mitigation measures specific to CIBWs whereby they would not begin towing, holding, or positioning of the jack-up rig should a CIBW be observed at any distance. While Level B harassment (behavioral disturbance) would be authorized, this measure, along with other mitigation measures described herein, would limit the severity of the effects of that Level B harassment to behavioral changes such as increased swim speeds, changes in diving and surfacing behaviors, and alterations to

communication signals, not the loss of foraging capabilities. Finally, take by mortality, serious injury, or Level A harassment of CIBWs is not anticipated or proposed to be authorized.

In summary and as described above, the additional following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the CIBWs through effects on annual rates of recruitment or survival:

- The area of exposure would be limited to habitat primarily used for transiting, and not areas known to be of particular importance for feeding or reproduction;
- The activities are not expected to result in CIBWs abandoning critical habitat nor are they expected to restrict passage of CIBWs within or between critical habitat areas; and
- Any disturbance to CIBWs is expected to be limited to temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed 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 (86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks whose abundance estimate is known, the amount of taking is less than one-third of the best available population abundance estimate (in fact it is less than 2 percent for all stocks, except for CIBWs whose proposed take is 5.38 percent of the stock; table 12). The number of animals proposed for authorization to be taken from these stocks therefore, would be considered small relative to the relevant stocks abundances even if each estimated take occurred to a new individual.

TABLE 12—PROPOSED TAKE TO BE AUTHORIZED AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Proposed total amount of take to be authorized	Stock	Abundance (Nbest)	Percent of stock
Humpback whale	3	Hawaii (Hawaii DPS)	11,278	0.03
		Mexico-North Pacific (Mexico DPS)	¹ N/A	N/A
		Western North Pacific	1,084	0.28
Minke whale	3	Alaska	² N/A	N/A
Gray whale	3	Eastern Pacific	26,960	0.01
Fin whale	2	Northeast Pacific	³ UND	N/A
Killer whale	10	Eastern North Pacific Alaska Resident	1,920	0.52
		Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient	587	1.7
Beluga whale	15	Cook Inlet	⁴ 279	5.38
Dall's porpoise	6	Alaska	⁵ UND	N/A
Harbor porpoise	12	Gulf of Alaska	31,046	0.04
Pacific white-sided dolphin	3	North Pacific	26,880	0.01
Harbor seal	365	Cook Inlet/Shelikof	28,411	1.29
Steller sea lion	9	Western U.S	⁶ 49,932	0.02
California sea lion	2	U.S	257,606	<0.01

¹ Abundance estimates are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown.

² Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

³ The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range.

⁴On June 15, 2023, NMFS released an updated abundance estimate for endangered CIBWs in Alaska (Goetz *et al.*, 2023). Data collected during NOAA Fisheries' 2022 aerial survey suggest that the whale population is stable or may be increasing slightly. Scientists estimated that the population size is between 290 and 386, with a median best estimate of 331. In accordance with the MMPA, this population estimate will be incorporated into the CIBW SAR, which will be reviewed by an independent panel of experts, the Alaska Scientific Review Group. After this review, the SAR will be made available as a draft for public review before being finalized. When the number of instances of takes is compared to this median abundance, the percent of the stock proposed for authorization is 4.53%.

⁵The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

⁶Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

Abundance estimates for the Mexico-North Pacific stock of humpback whales are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown (Young *et al.*, 2023). The most recent minimum population estimates (N_{MIN}) for this population include an estimate of 2,241 individuals between 2003 and 2006 (Martinez-Aguilar, 2011) and 766 individuals between 2004 and 2006 (Wade, 2021). NMFS' Guidelines for Assessing Marine Mammal Stocks suggest that the N_{MIN} estimate of the stock should be adjusted to account for potential abundance changes that may have occurred since the last survey and provide reasonable assurance that the stock size is at least as large as the estimate (NMFS, 2023a). The abundance trend for this stock is unclear; therefore, there is no basis for adjusting these estimates (Young *et al.*, 2023). Assuming the population has been stable, the 4 takes of this stock proposed for authorization represents small numbers of this stock (0.18 percent of the stock assuming a N_{MIN} of 2,241 individuals and 0.52 percent of the stock assuming a N_{MIN} of 766 individuals).

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that would be affected. The most relevant estimate of partial stock abundance is 1,233 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.*, 2006). Given three proposed takes by Level B harassment for the stock, comparison to the best estimate of stock abundance shows, at most, less than 1 percent of the stock would be expected to be impacted.

There is no stock-wide abundance estimate for Northeast Pacific fin whales. However, Young *et al.* (2022) estimate the minimum stock size for the areas surveyed is 2,554. Given two proposed takes by Level B harassment for the stock, comparison to the minimum population estimate shows, at most, less than 1 percent of the stock would be expected to be impacted.

The Alaska stock of Dall's porpoise has no official NMFS abundance estimate for this area, as the most recent estimate is greater than 8 years old. As

described in the 2022 Alaska SAR (Young *et al.*, 2023) the minimum population estimate is assumed to correspond to the point estimate of the 2015 vessel-based abundance computed by Rone *et al.* (2017) in the Gulf of Alaska ($N = 13,110$; $CV = 0.22$). Given six authorized takes by Level B harassment for the stock, comparison to the minimum population estimate shows, at most, less than 1 percent of the stock would be expected to be impacted.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Hilcorp's towing, holding, and positioning of the jack-up rig would occur offshore and north of Kenai and the Village of Salmatof. The last ADF&G subsistence survey conducted in Kenai was in 1998 (Fall *et al.*, 2000). In the greater Kenai area, an estimated 13 harbor seals and no sea lions were harvested in 1988 by an estimated 10 households. In the Kenai area, estimated harbor seal harvest has ranged between 13 (1998) and 35 (1997) animals. In 1996, two sea lions and six harbor seals were harvested. No sea otters have been

reported harvested in Kenai. ADF&G Community Subsistence Information System harvest data are not available for Salmatof, so Hilcorp assumes the subsistence harvest patterns are similar to other communities along the road system on the southern Kenai Peninsula, namely Kenai.

Tugs towing, holding, or positioning a jack-up rig on the Tyonek platform in the North Cook Inlet Unit in middle Cook Inlet would occur approximately 10 km from the Native Village of Tyonek. Tyonek, on the western side of middle Cook Inlet, has a subsistence harvest area that extends south from the Susitna River to Tuxedni Bay (Stanek *et al.*, 2007). Moose and salmon are the most important subsistence resources measured by harvested weight (Stanek, 1994). In Tyonek, harbor seals were harvested between June and September by 6 percent of the households (Jones *et al.*, 2015). Seals were harvested in several areas, encompassing an area stretching 32 km along the Cook Inlet coastline from the McArthur Flats north to the Beluga River. Seals were searched for or harvested in the Trading Bay areas as well as from the beach adjacent to Tyonek (Jones *et al.*, 2015).

The only non-ESA-listed marine mammal available for subsistence harvest in Cook Inlet is the harbor seal (Wolfe *et al.*, 2009). The listed Steller sea lions are occasionally taken in lower Cook Inlet, but at a low level (Wolfe *et al.*, 2009) (e.g., 33 harbor seals were harvested in Tyonek between 1983 and 2013). Seal hunting occurs opportunistically among Alaska Natives who may be fishing or traveling in upper Cook Inlet near the mouths of the Susitna River, Beluga River, and Little Susitna River. Hilcorp's tug towing jack-up rig activities may overlap with subsistence hunting of seals. However, these activities typically occur along the shoreline or very close to shore near river mouths, whereas most of Hilcorp's tugging is in the middle of the Inlet and rarely near the shoreline or river mouths.

Any harassment to marine mammal stocks if it were to occur would be limited to minor behavioral changes (e.g., increased swim speeds, changes in dive behaviors and communication signals, temporary avoidance near the tugs) and is anticipated to be short-term,

mild, and not result in any abandonment or behaviors that would make the animals unavailable to Alaska Natives.

To further minimize any potential effects of their action on subsistence activities, Hilcorp has outlined their communication plan for engaging with subsistence users in their Stakeholder Engagement Plan (appendix C of Hilcorp's application). This includes using traditional/subsistence knowledge to inform planning for the activity. Hilcorp would be required to abide by this plan and update the plan accordingly.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the POA's proposed activities.

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 NMFS Alaska Regional Office (AKRO).

NMFS is proposing to authorize take of fin whale, humpback whale (Mexico DPS and Western North Pacific DPS), fin whale (Northeastern Pacific stock), beluga whale (Cook Inlet), and Steller

sea lion (Western DPS), which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with NMFS AKRO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to an IHA to Hilcorp for the use of tugs to tow, hold, and position a jack-up rig in support of their oil and gas activities in Cook Inlet, Alaska from September 14, 2024 through September 13, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. Drafts of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA and the draft EA for the proposed tugging activities. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the proposed IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice

would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: July 17, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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Part IV

Consumer Financial Protection Bureau

12 CFR Part 1024

Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; Regulation X; Proposed Rule

CONSUMER FINANCIAL PROTECTION BUREAU**12 CFR Part 1024**

[Docket No. CFPB–2024–0024]

RIN 3170–AB04

Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; Regulation X**AGENCY:** Consumer Financial Protection Bureau.**ACTION:** Proposed rule; request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is proposing a rule that would amend regulations originally issued in 2013 regarding the responsibilities of mortgage servicers. The proposed amendments would streamline existing requirements when borrowers seek payment assistance in times of distress, add safeguards when borrowers seek help, and revise existing requirements with respect to borrower assistance. The proposed rule would also require servicers to provide certain communications in languages other than English, such as when a borrower is seeking payment assistance with their mortgage. The proposed rule, if finalized, would increase the likelihood that investors and borrowers can avert the costs of avoidable foreclosure.

DATES: Comments must be received on or before September 9, 2024.**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2024–0024 or RIN 3170–AB04, by any of the following methods:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2024-0024>.

- *Email:* 2024-NPRM-MortgageServicing@cfpb.gov. Include Docket No. CFPB–2024–0024 or RIN 3170–AB04 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—Mortgage Servicing, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail is subject to delay, commenters are

encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

George Karithanom, Regulatory Implementation and Guidance Program Analyst, Office of Regulations, at 202–435–7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

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Abbreviations and Acronyms

The following abbreviations and acronyms are used in this proposed rule:

- ACS = American Community Survey
 AFR = Americans for Financial Reform
 ASMB = American Survey of Mortgage Bankers
 CARES Act = Coronavirus Aid, Relief, and Economic Security Act
 CDIA = Consumer Data Industry Association
 CFPB = Consumer Financial Protection Bureau
 CPI–U = Consumer Price Index for All Urban Consumers
 CRA = Credit Reporting Agency
 DI = Depository Institution
 FAQ = Frequently Asked Question
 FHA = Federal Housing Administration
 FHFA = Federal Housing Finance Agency
 FRFA = Final Regulatory Flexibility Analysis
 FSOC = Financial Stability Oversight Committee
 GSE = Government-Sponsored Enterprise
 HAMP = Home Affordable Modification Program
 HHS = United States Department of Health and Human Services
 HUD = United States Department of Housing and Urban Development
 ICE = Intercontinental Exchange, Inc.
 ICR = Information Collection Request
 IRFA = Initial Regulatory Flexibility Analysis
 MBA = Mortgage Bankers Association
 MHA = Making Home Affordable
 NAICS = North American Industry Classification System
 NCLC = National Consumer Law Center
 NMDB = National Mortgage Database Program
 Non-DI = Non-Depository Institution
 OCC = Office of the Comptroller of the Currency
 OMB = Office of Management and Budget
 PRA = Paperwork Reduction Act
 RESPA = Real Estate Settlement Procedures Act
 RFA = Regulatory Flexibility Act
 RFI = Request for Information
 SBA = Small Business Administration
 SIGTARP = Office of the Special Inspector General for the Troubled Asset Relief Program

TILA = Truth in Lending Act
URLA = Uniform Residential Loan
Application

USDA = United States Department of
Agriculture

VA = United States Department of Veterans
Affairs

I. Summary

A. Goals of the Rulemaking

Mortgage servicers handle the day-to-day management of mortgage loans and work with borrowers when they need help making their payments. Poor default servicing of home mortgages can have serious repercussions for both individual borrowers and the larger economy. The foreclosure crisis that began in 2007 demonstrated the risks. Leading up to that crisis, servicers did not have robust default servicing practices and generally lacked accountability when they failed to address borrower needs. Between July 2007 and August 2009, approximately 1.8 million homeowners lost their homes to foreclosure while another 5.2 million homeowners faced foreclosure initiation.¹

In 2013, the CFPB finalized comprehensive mortgage servicing rules in response to these widespread servicing failures.² In the decade since, the market has changed, and servicing practices in the event of borrower default have further changed. Investors have increasingly required use of loss mitigation options that require little or no documentation. Streamlined loss mitigation options can improve overall profitability for investors by reducing servicer costs, increasing the rate at which borrowers resume making payments, and reducing foreclosures, which are often costly for investors. Streamlined loss mitigation options can also help borrowers to get help faster and free servicer resources for borrowers who need greater assistance.

The COVID-19 pandemic demonstrated that approaches to loss mitigation not contemplated in the 2013 Mortgage Servicing Final Rule could be successful and necessary for borrowers,

servicers, and investors. During the COVID-19 pandemic, large numbers of borrowers were placed in long-term forbearance, with the vast majority successfully resuming payments. Additionally, macroeconomic factors, such as shifts in interest rates, require new approaches to default servicing practices. Loss mitigation approaches that were successful in the wake of the foreclosure crisis, such as reducing the interest rate to the current market rate in order to lower payments, are significantly less successful under current market conditions.

The changes in default servicing and market conditions have highlighted several areas where the prescriptive rules that the CFPB initially put in place may no longer be optimally effective for borrowers or servicers, and where more flexibility is needed in order to respond to future changes in the macroeconomic environment. Thus, the CFPB is proposing to remove certain prescriptive requirements from the existing rules. At the same time, the CFPB recognizes the continuing need to protect borrowers from harms such as unnecessary fees and avoidable foreclosures that can occur due to default mortgage servicing failures. Therefore, the CFPB is also proposing certain new procedural safeguards designed to protect borrowers from these harms while creating strong incentives for servicers to review borrowers for loss mitigation assistance quickly and accurately.

B. Key Changes

To achieve these goals, the CFPB is proposing and seeking comment on several topics, including four key groups of changes related to assisting borrowers during loss mitigation and early intervention, as well as seeking comment on a fifth key issue related to credit reporting. None of the proposed new requirements would apply to small servicers (as defined in Regulation Z § 1026.41(e)(4)(ii)).

1. *Streamlined loss mitigation procedures and foreclosure procedural safeguards.* The CFPB is proposing to streamline and simplify Regulation X's loss mitigation procedures by removing most of the existing requirements regarding incomplete and complete loss mitigation applications and replacing them with a new framework based on foreclosure procedural safeguards. Currently, a servicer generally must collect a complete loss mitigation application for all available options before making a determination about what loss mitigation options, if any, it will offer a borrower, and a borrower's foreclosure protections against initiation and sale are largely based on whether

and when the borrower has submitted a complete loss mitigation application. Under the proposed framework, a servicer would not be required to collect a complete application prior to making a loss mitigation determination and would have flexibility to review a borrower for loss mitigation options sequentially rather than simultaneously, although a simultaneous review would be permitted. Under the proposed framework, once a borrower makes a request for loss mitigation assistance, the loss mitigation review cycle begins. It continues until either the borrower's loan is brought current or one of the following foreclosure procedural safeguards is met: 1) the servicer reviews the borrower for all available loss mitigation options and no available options remain, or 2) the borrower remains unresponsive for a specified period of time despite the servicer regularly taking steps to reach the borrower. During a loss mitigation review cycle, the servicer may not begin or advance the foreclosure process and borrowers would also be protected against the accrual of certain fees.

The CFPB is also proposing to remove currently required loss mitigation notices that would no longer be necessary under the new proposed framework, such as those notifying a borrower about whether a loss mitigation application is complete or incomplete.

2. *Early intervention changes.* The CFPB is proposing to require servicers to provide certain additional information in written early intervention notices, including, among other things, the name of the owner or assignee of the borrower's mortgage loan, a brief description of each type of loss mitigation option that is generally available from that owner or assignee, as well as a website to access a list of all loss mitigation options that may be available from that owner or assignee. The CFPB is also proposing a partial exemption for servicers from early intervention requirements while a borrower is performing under a forbearance, new live contact and written notice requirements when a borrower's forbearance is nearing its scheduled end, and timing for resuming compliance with early intervention when a borrower's forbearance ends.

3. *Loss mitigation determination notices and appeals.* The CFPB is proposing to require that servicers provide loss mitigation determination notices and appeal rights to borrowers regarding all types of loss mitigation options, instead of just loan modifications, and for offers as well as denials. The CFPB also is proposing to

¹ Cong. Oversight Panel, *October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months*, at 1 (Oct. 9, 2009), <https://www.congress.gov/111/cprt/JPRT52671/CPRT-111/JPRT52671.pdf> (Oversight Panel Report). The impact of poor default servicing led to a decline in overall economic activity. John Weinberg, Fed. Rsr. Bank of Richmond, *Federal Reserve History: The Great Recession and Its Aftermath*, <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath> (written as of Nov. 22, 2013) (FRH Essay).

² The Consumer Financial Protection Bureau (CFPB) has made several amendments to the mortgage servicing rules in the intervening years. See part II.F for a discussion of amendments made after the 2013 Mortgage Servicing Rule was issued.

require servicers to include certain additional information in determination notices, including the key borrower-provided inputs, if any, that served as the basis for the determination; a list of other loss mitigation options that are still available to the borrower, if any, including a clear statement describing the next steps the borrower must take to be reviewed for those options or, if applicable, a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain; and, if applicable, a list of any loss mitigation options that the servicer previously offered to the borrower that remain available but that the borrower did not accept. The CFPB is also proposing to clarify that loss mitigation determinations are subject to the notice of error procedures contained in § 1024.35.

4. *Credit reporting.* The CFPB is aware of a select number of specific instances where mortgage servicers may be furnishing information about borrowers undergoing loss mitigation review that raise questions about accuracy and consistency. While the CFPB is not proposing any regulatory changes at this time, the CFPB is requesting comment about possible approaches it could take to ensure servicers are furnishing accurate and consistent credit reporting information for borrowers undergoing loss mitigation review.

5. *Language access.* The CFPB is proposing several requirements to provide borrowers with limited English proficiency greater access to certain early intervention and loss mitigation communications in languages other than English so that they can access the information they need, when they need it. In general, the proposed rule would require mortgage servicers to provide Spanish-language translations of certain written communications to all borrowers. The proposed rule also would require servicers to make certain written and oral communications available in multiple languages and to provide those translated or interpreted communications upon borrower request. The proposed rule would require servicers to include brief translated statements in certain written communications notifying borrowers of the availability of the translations and interpretations, and how they can be requested. It also would require that borrowers who received marketing for a loan in a language other than English receive specific early intervention and loss mitigation communications in that same language upon the borrower's request.

II. Background

A. Mortgage Servicing During the Foreclosure Crisis

The 2007 foreclosure crisis led to a broad downturn in the economy and left lasting effects on the mortgage servicing industry. The foreclosure crisis was brought on, in part, by mortgage servicing failures and the lack of a standardized loss mitigation infrastructure.³ As a result, between July 2007 and August 2009, approximately 1.8 million homeowners lost their homes to foreclosure and another 5.2 million homeowners faced foreclosure initiation.⁴

A lack of regulatory oversight at the Federal level and fragmented oversight at the State level also contributed to the crisis. The CFPB was created in 2011 to increase accountability in government by consolidating consumer financial protection authorities, which previously existed across several different Federal agencies. The creation of the CFPB increased Federal accountability with respect to consumer financial protection, which had not been the primary focus of any single Federal agency. Prior to the CFPB's creation, no Federal agency had comprehensive tools to set the rules for and oversee all consumer markets. The result was a system without effective rules or consistent enforcement, which was a significant factor in the foreclosure crisis.

Prior to 2007, the mortgage industry had never experienced such a sizable number of loss mitigation applications and foreclosures simultaneously.⁵ The mortgage industry lacked a standardized approach and uniform structure to assist the millions of delinquent borrowers who needed mortgage payment relief. At the time, mortgage servicers were largely focused on managing the collection of mortgage payments and the foreclosure process for defaulted borrowers.⁶ In addition, investor guidance to servicers regarding default servicing was limited and seldom provided meaningful standards for loss mitigation.⁷

In the period preceding the foreclosure crisis, loan modifications were rare, and borrowers were unlikely to receive any redress, with only

approximately 3 percent of seriously delinquent loans obtaining a loan modification.⁸ The loss mitigation processes at the time were fragmented and lacked sufficient industry-wide standards and procedures for servicers and investors to assist delinquent homeowners. Thus, the foreclosure crisis exposed major flaws in default servicing and created a need for permanent loss mitigation assistance programs. The absence of any standardized loss mitigation options at that time contributed to 2.8 million foreclosure starts in 2009, which was a 21 percent increase from 2008 and a 120 percent increase from 2007.⁹ The emergence of the Making Home Affordable program (MHA) would later create a standardized set of guidelines and establish a framework for default servicing.

B. Early Standardization Efforts

The U.S. Department of the Treasury (Treasury) introduced MHA at the beginning of 2009. Treasury designed MHA to assist mortgage borrowers at risk of foreclosure by providing government-backed loss mitigation programs. MHA was the first program of its kind and had a major influence on future loss mitigation programs.

The cornerstone program under MHA was the Home Affordable Modification Program (HAMP), which offered permanently reduced mortgage payments to qualifying borrowers.¹⁰ There were other specialty programs under MHA, such as programs to assist borrowers with underwater mortgages, short sale programs, and deed-in-lieu of foreclosure programs.¹¹ These programs were part of a wider government response intended to help struggling borrowers, preserve communities, and prevent avoidable foreclosures.¹² Prior to HAMP, there was no standard approach among servicers or investors for providing mortgage assistance to

³ Manuel Adelino et al., *Why Don't Lenders Renegotiate More Home Mortgages? Redefaults, Self-Cures, and Securitization*, at 3 (Nat'l Bureau Econ. Resch., Working Paper 15159, 2009), https://www.nber.org/system/files/working_papers/w15159/w15159.pdf.

⁴ Lynn Adler, *U.S. 2009 foreclosures shatter record despite aid*, Reuters (Jan. 14, 2010), <https://www.reuters.com/article/us-usa-housing-foreclosures-idUSTRE60D0LZ20100114/>.

⁵ John Rao et al., Nat'l Consumer L. Ctr. (NCLC), *6.7.2.5 The HAMP "Waterfall"*, In *Mortgage Servicing and Loan Modifications* (Digital version), <https://library.nclc.org/book/mortgage-servicing-and-loan-modifications/6725-hamp-waterfall> (last visited July 1, 2024).

⁶ U.S. Dep't of Treas., *Making Home Affordable (MHA)*, <https://home.treasury.gov/data/troubled-assets-relief-program/housing/mha> (last visited July 1, 2024).

⁷ *Id.*

³ See FRH Essay.

⁴ Oversight Panel Report at 1.

⁵ See FRH Essay.

⁶ *Id.*

⁷ Martin Neil Bailey et al., Initiative on Bus. & Pol'y at Brookings, *The Origins of the Financial Crisis*, at 20 (Brookings Inst., Fixing Fin. Sers.—Paper 3, 2008), https://www.brookings.edu/wp-content/uploads/2016/06/11_origins_crisis_bailey_litan.pdf.

homeowners who wanted to keep making payments.¹³

However, the program fell short of its original projected target of the number of homeowners who would be assisted with the program. The HAMP application process was extensive and required borrowers to submit several documents to be evaluated for the program; for example, it required proof of financial hardship, income tax returns, bank statements, and paystubs.¹⁴ These extensive documentation requirements led to challenges for borrowers and mortgage servicers. The document collection process adversely affected the ability of borrowers to receive permanent loan modifications due to events such as the servicer losing documents the borrower sent. These challenges were compounded by the sheer volume of borrower applications and inquiries during this time.¹⁵ Changing documentation requirements created further difficulties in converting trial loan modifications into permanent loan modifications.

Although both borrowers and servicers faced challenges in keeping up with the documentation requirements of HAMP, the program provided several protections for distressed borrowers. Among other things, HAMP provided foreclosure protections to any borrower who submitted a HAMP loss mitigation application and established program guidelines that prohibited a servicer from referring a loan to foreclosure or conducting a scheduled foreclosure sale until the borrower was either evaluated for HAMP and determined to be ineligible, or the servicer had made reasonable attempts to solicit the borrower and was unsuccessful.¹⁶ This guidance was critical in beginning to address the industry practice of “dual-tracking” borrowers, a practice where

servicers would accept and review loss mitigation applications while simultaneously moving forward with foreclosure proceedings.

In February 2012, 49 State attorneys general, the District of Columbia, and the Federal government entered the National Foreclosure Settlement¹⁷ with what were at the time the nation’s five largest mortgage servicers.¹⁸ It was the largest consumer financial protection settlement in U.S. history. Along with \$50 billion in relief to distressed borrowers harmed by the wrongful foreclosures,¹⁹ the settlement agreement included a description of when a servicer may refer a borrower to foreclosure or conduct a foreclosure sale. The settlement provided two standards for protecting borrowers from dual tracking—one for before a servicer refers a borrower to foreclosure, and the other for after the servicer has referred a borrower to foreclosure.²⁰ The 2013 Mortgage Servicing Final Rule was influenced by the foreclosure protections introduced by HAMP and the National Foreclosure Settlement.

C. CFPB’s 2013 Mortgage Servicing Final Rule Aimed To Address the Challenges Previously Observed Prior to and During the Foreclosure Crisis

The CFPB finalized the 2013 Mortgage Servicing Final Rule in the wake of the widespread default servicing failures of the preceding years.²¹ The rule was designed to help ensure that mortgage servicers maintain proper communication with borrowers and evaluate borrowers for all available loss mitigation options within a reasonable timeframe.²²

Regulation X requires that a mortgage servicer obtain a complete loss mitigation application from a borrower prior to making a determination as to what loss mitigation option or options, if any, it may offer to the borrower.²³ A complete loss mitigation application is

defined in the 2013 Mortgage Servicing Final Rule as an application for which the servicer has received all the information that the servicer requires from a borrower in evaluating applications for any loss mitigation options available to the borrower. The 2013 Mortgage Servicing Final Rule also contains requirements aimed at ensuring that borrowers know when their servicer has received their loss mitigation application, whether the application is complete or incomplete, and, if the application is incomplete, what additional information is needed to make the application complete.²⁴ Under the rule, the borrower generally only receives foreclosure protections once the application is complete.

The 2013 Mortgage Servicing Final Rule does contain limited exceptions to the general requirement that servicers cannot offer borrowers loss mitigation options based on an incomplete loss mitigation application. For example, it allows servicers to offer short-term forbearance programs or short-term repayment plans to borrowers based on an incomplete loss mitigation application.²⁵ Those limited exceptions do not specifically address streamlined loan modifications.

D. Streamlined Modifications and Other Borrower Protections Emerge

The concept of a low-to-no documentation loan modification was introduced in the years following the foreclosure crisis. For example, the Government Sponsored Enterprises (GSEs) Fannie Mae²⁶ and Freddie Mac²⁷ introduced a streamlined

¹³ *Id.*

¹⁴ HAMP also required a Third-Party Authorization Form if the borrower was represented by an attorney, a Dodd-Frank Verification Form, and a demonstrated ability to make their monthly mortgage payments following a loan modification. In addition to a loan application and the standard required supporting documents, a borrower might be asked to submit additional supporting documentation based on the borrower’s particular situation.

¹⁵ Off. of Special Inspector Gen. for the Troubled Asset Relief Program (SIGTARP), *Factors Affecting Implementation of the Home Affordable Modification Program*, at 26 (Mar. 25, 2010), https://www.sig tarp.gov/sites/sigtarp/files/Audit_Reports/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf.

¹⁶ John Rao et al., NCLC, *10.6.1 HAMP Review As a Prerequisite to Foreclosure*, In *Mortgage Servicing and Loan Modifications* (Digital version), <https://library.nclc.org/book/mortgage-servicing-and-loan-modifications/1061-hamp-review-prerequisite-foreclosure> (last visited July 1, 2024).

¹⁷ CFPB, *What was the National Mortgage Settlement?*, <https://www.consumerfinance.gov/ask-cfpb/what-was-the-national-mortgage-settlement-en-2071/> (last reviewed Sep. 8, 2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Stephanie C. Robinson & Kerri M. Smith, K&L Gates, *National Mortgage Foreclosure Settlement Tackles “Dual Tracking” of Foreclosure and Loan Modification*, *Consumer Fin. Servs. Watch* (Apr. 5, 2012), <https://www.consumerfinancialserviceswatch.com/2012/04/05/national-mortgage-foreclosure-settlement-tackles-dual-tracking-of-foreclosure-and-loan-modification/>.

²¹ 78 FR 10696 (Feb. 14, 2013) (2013 RESPA Servicing Final Rule), 78 FR 10902 (Feb. 14, 2013) (2013 TILA Servicing Final Rule). Throughout this notice, these rules are referred to collectively as the “2013 Mortgage Servicing Final Rule.”

²² *Id.*

²³ 12 CFR 1024.41(c)(2)(i).

²⁴ See CFPB, *2013 RESPA Servicing Rule Assessment Report*, at 11 (Jan. 2019), <https://files.consumerfinance.gov/f/documents/cfpb-mortgage-servicing-rule-assessment-report.pdf> (Servicing Rule Assessment Report).

²⁵ See 12 CFR 1024.41(c)(2)(iii); see also comments 41(c)(2)(iii)–1 and –4 (defining short-term payment forbearance program and short-term repayment plan for purposes of the regulation).

²⁶ Fannie Mae, *Servicing Guide Announcement SVC-2013-05: Streamlined Modifications, Conventional Mortgage Loan Modifications, and Outbound Communications* (Mar. 27, 2013), <https://singlefamily.fanniemae.com/media/19256/display>. This announcement describes updates and clarifications to the introduction to streamlined modifications, which targets borrowers whose mortgage loans are at least 90 days delinquent and who meet the eligibility requirements provided above. Prior to and after offering a Streamlined Modification, a servicer must continue to comply with the delinquency management and default prevention requirements in the Servicing Guide.

²⁷ Tracy Hagen Mooney, Freddie Mac, *Bulletin—Number 2013-8: New Freddie Mac Streamlined Modification and Updates to Freddie Mac Standard Modification Requirements* (Mar. 27, 2013), https://guide.freddiemac.com/ci/okcsFattach/get/1006761_3. This bulletin announces the Freddie Mac Streamlined Modification which provides an additional modification opportunity to certain

modification program in 2013. The GSE programs significantly reduced the documentation requirements needed for servicers to evaluate borrowers for a loan modification. The programs helped demonstrate that streamlining the loan modification process can have benefits for borrowers. For example, streamlined loan modifications generate significantly more participation, according to a 2018 report by the Urban Institute. The report, using data from 2012 to 2015, found that the rate at which struggling borrowers agreed to participate in a modification, or the “take-up” rate, improved from 20.2 percent without streamlining to 29.2 percent with the program.²⁸ Studies also show that the streamlined loan modification programs not only increased the take-up rate, but also resulted in strong loan performance two years after implementation.²⁹ Additionally, streamlining the loan modification process eased capacity concerns for servicers.

E. Loss Mitigation During the COVID-19 Pandemic

During the COVID-19 pandemic, mortgage delinquencies increased to levels not seen since the foreclosure crisis.³⁰ As a result, the Federal Government enacted policies that allowed borrowers to easily access loss mitigation options with limited documentation. These policies, combined with the relatively strong equity position of homeowners due to rapid home price appreciation and historically low interest rates, enabled most borrowers to resume payments or pay off their loan. Ultimately, foreclosures remained low, and credit losses to investors were minimized.³¹

borrowers who are at least 90 days delinquent but not more than 720 days delinquent.

²⁸ Laurie Goodman et al., Urb. Inst., *Streamlining increases the success of mortgage modifications by 34 percent*, Urb. Wire (July 17, 2018), <https://www.urban.org/urban-wire/streamlining-increases-success-mortgage-modifications-34-percent> (Urban Wire 2018). While the redefault rate for streamlined loan modifications were slightly higher compared to standard modifications, the study concluded that streamlined loan modification options provided a 7.9 percent net benefit to all distressed borrowers.

²⁹ Robert M. Dunskey, Fed. Hous. Fin. Agency (FHFA), *Measures of Home Retention Following a Loan Modification* (Apr. 7, 2023), <https://www.fhfa.gov/blog/statistics/measures-of-home-retention-following-a-loan-modification>.

³⁰ Kristin Wong, CFPB, *New data show improving yet sustained housing insecurity risks* (June 22, 2021), <https://www.consumerfinance.gov/about-us/blog/new-data-show-improving-yet-sustained-housing-insecurity-risks/>.

³¹ See generally U.S. Gov’t Accountability Off., *COVID-19 Housing Protections: Mortgage Forbearance and Other Federal Efforts Have Reduced Default and Foreclosure Risks*, GAO-21-554, (July 12, 2021), <https://www.gao.gov/assets/gao-21-554.pdf>.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.³² The legislation created certain protections for federally backed mortgage loans that ran from the act’s effective date until September 30, 2021.³³ The CARES Act was followed by the Consolidated Appropriations Act of 2021 to provide additional protections for consumers affected by the ongoing COVID-19 pandemic.³⁴ Among other borrower protections, the CARES Act provided that all borrowers who were financially affected either directly or indirectly by the COVID-19 pandemic, upon a request, had the option to temporarily suspend their monthly mortgage payments. The CARES Act provided forbearance for up to 180 days for borrowers who asserted their financial hardship was caused by the COVID-19 pandemic. Generally, documentation was not required, and borrowers received foreclosure and fee protection.³⁵

In February of 2021, the Federal Housing Administration (FHA), the Federal Housing Finance Agency (FHFA), the United States Department of Agriculture (USDA), and the Department of Veterans Affairs (VA) all announced they were extending their forbearance programs beyond the minimum 180 days required by the CARES Act.³⁶ Under the agencies’

³² Coronavirus Aid, Relief, and Economic Security Act (CARES Act), H.R. 748, 116th Cong. (2020).

³³ CARES Act section 4022 (2020).

³⁴ Consolidated Appropriations Act of 2021, H.R. 133, 116th Cong. (2020).

³⁵ CARES Act section 4022 (2020); CFPB, *CARES Act Forbearance & Foreclosure*, at 1 (May 2020), https://files.consumerfinance.gov/f/documents/cfpb_csbs_industry-forbearance-guide_2020-06.pdf. Under the CARES Act, servicers also were required to extend the forbearance for up to an additional 180 days at the request of the borrower, provided that the request for an extension was made during the covered period. The borrower could request that either the initial or extended forbearance period be less than 180 days. See CARES Act section 4022(b) and (c)(1).

³⁶ FHA, VA, and USDA permitted borrowers who were in a COVID-19 forbearance program prior to June 30, 2020, to be granted up to two additional three-month payment forbearance programs. See The White House, *Fact Sheet: Biden Administration Announces Extension of COVID-19 Forbearance and Foreclosure Protections for Homeowners* (Feb. 16, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/>. FHFA stated that the additional three-month extension allows borrowers to be in forbearance for up to 18 months. Eligibility for the extension was limited to borrowers who are in a COVID-19 forbearance program as of February 28, 2021, and other limits may have applied. See Press Release, FHFA, *FHFA Extends COVID-19 Forbearance Period and Foreclosure and REO Eviction Moratoriums* (Feb. 25, 2021), [https://www.fhfa.gov/news/news-release/fhfa-extends-](https://www.fhfa.gov/news/news-release/fhfa-extends-covid-19-forbearance-period-and-foreclosure-and-reo-eviction-moratoriums)

forbearance programs, nearly 5 million borrowers had a loan in forbearance by May of 2020.³⁷

As part of the overarching Federal approach to help borrowers resume their mortgage payments, there was widespread adoption by servicers of streamlined evaluations for permanent loan modifications, which allowed borrowers to quickly be evaluated for and enter loss mitigation programs, preventing avoidable foreclosures. Of borrowers who exited forbearance, 29.4 percent obtained a streamlined payment deferral to bring their loans current.³⁸ The increased use and availability of other loss mitigation tools, such as payment deferrals and partial claims, also greatly contributed to positive borrower outcomes.

Based on the success of the shift towards streamlined loan modifications during the COVID-19 pandemic, the CFPB has preliminarily concluded that the streamlined loss mitigation offers contributed to performance for these loans after loss mitigation programs were implemented. The loan performance of these loans was superior to performance under the HAMP approach. The re-default rate for all mortgages that exited COVID-19 loss mitigation programs was at the relatively low rate of 10 percent as of June 7, 2022.³⁹ By comparison, the redefault rate for HAMP loan modifications was approximately 46 percent as of April 30, 2013.⁴⁰ In addition, the types of loan modifications that were prevalent during the foreclosure crisis generally do not offer payment relief in the current high interest rate environment because the payments required under those loan modifications would be higher than a borrower’s current mortgage payment. The Federal housing agencies have recently introduced mortgage assistance programs specifically designed to

covid-19-forbearance-period-and-foreclosure-and-reo-eviction-moratoriums.

³⁷ Intercontinental Exchange, Inc. (ICE), *Mortgage Monitor report—December 2023*, at 23 (Dec. 2023), https://www.blackknightinc.com/wp-content/uploads/2023/12/ICE_MM_DEC2023_Report.pdf.

³⁸ See Press Release, Mortg. Bankers Ass’n (MBA), *Share of Mortgage Loans in Forbearance Decreases to 0.29% in October* (Nov. 20, 2023), <https://www.mba.org/news-and-research/newsroom/news/2023/11/20/share-of-mortgage-loans-in-forbearance-decreases-to-0.29-in-october>.

³⁹ *Id.*

⁴⁰ SIGTARP, *Rising Redefault Rates of HAMP Mortgage Modifications Hurt Homeowners, Communities and Taxpayers*, at 6 (July 24, 2013), https://www.sigtrap.gov/sites/sigtrap/files/Audit_Reports/Rising_Redefaults_of_HAMP_Mortgage_Modifications.pdf.

address high interest rate environments.⁴¹

F. Amendments to the Mortgage Servicing Rules

The CFPB has amended the 2013 Mortgage Servicing Final Rule several times. Prior to the COVID-19 pandemic, these amendments were primarily based on information gained about aspects of the 2013 Mortgage Servicing Final Rule that posed implementation challenges or required further clarification.⁴² In 2020, the CFPB issued an interim final rule to amend Regulation X to assist mortgage borrowers with financial hardships due to the COVID-19 pandemic by temporarily allowing mortgage servicers to offer borrowers certain loss mitigation options based on the evaluation of incomplete loss mitigation applications.⁴³

In 2021, the CFPB proposed, and then finalized with changes another rule to extend access to additional COVID-19-related loss mitigation options without requiring evaluation of a complete loss mitigation application.⁴⁴ As a result, mortgage servicers could get borrowers into certain streamlined loan modifications more quickly, ultimately helping borrowers avoid foreclosure. Under both the 2020 and 2021 rules, servicers could offer these loss mitigation options without evaluating a complete application only if the options had certain borrower protections built in, such as a required waiver of certain fees and charges.

B. Outreach and Engagement

Consistent with section 1022(b)(2)(B) of the CFPB, the CFPB has consulted with the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

III. Legal Authority

The CFPB is issuing this proposed rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), including the authorities discussed below. The CFPB is issuing this proposed rule in reliance on the same authority relied on in adopting the relevant provisions of the 2013 RESPA Servicing Final Rule, as discussed in detail in the Legal Authority section and Section-by-Section Analysis of the 2013 RESPA Servicing Final Rule.⁴⁵

A. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the CFPB to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the CFPB to establish any requirements necessary to carry out section 6 of RESPA. Section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E) further authorizes the CFPB to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes.

The consumer protection purposes of RESPA, as articulated in the 2013 RESPA Servicing Final Rule and several subsequent rules amending it, include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers prevent avoidable costs and fees, and facilitating review for foreclosure avoidance options. The amendments to Regulation X in this notice of proposed rulemaking are intended to achieve some or all these purposes.

Specifically, and as described further below, the CFPB preliminarily believes that a more flexible approach to the loss mitigation process requirements in Regulation X would more effectively assist borrowers with preventing avoidable foreclosure due in part to the increased prevalence in recent years of

streamlined loss mitigation options. Streamlining and simplifying the loss mitigation process while providing new borrower protections, as the CFPB is proposing to do, would facilitate review for foreclosure avoidance options and help borrowers prevent avoidable costs and fees.

B. Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the CFPB to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” RESPA is a Federal consumer financial law.⁴⁶ In addition, section 1032(a) of the Dodd-Frank Act authorizes the CFPB to “prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.”⁴⁷

The authority granted to the CFPB in Dodd-Frank Act section 1032(a) is broad and empowers the CFPB to prescribe rules regarding the disclosure of the “features” of consumer financial protection products and services generally. Accordingly, the CFPB may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the CFPB “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.”⁴⁸ The CFPB requests any such available evidence. The CFPB also requests comment on any sources that the CFPB should consider in determining whether to finalize the elements of this proposal prescribed under section 1032(a).

IV. Discussion of the Proposed Rule

A. Foreclosure Procedural Safeguards (§ 1024.41)

As discussed above, the CFPB seeks to improve upon the outcomes from the

⁴¹ See Anoush Garakani & Nanci Weissgold, Alston & Bird, LLP, *FHA and VA Announce New Loss Mitigation Option*, Of Interest Consumer Fin. Blog, (Apr. 15, 2024), <https://www.alstonconsumerfinance.com/fha-and-va-announce-new-loss-mitigation-options/>.

⁴² Since issuing the 2013 Mortgage Servicing Final Rule, the CFPB has engaged in continuous forward-looking efforts to prevent avoidable foreclosure. For example, in 2016 the CFPB outlined consumer protection principles to guide mortgage servicers, investors, government housing agencies, and policymakers as they developed new foreclosure relief solutions. See CFPB, *Consumer Financial Protection Bureau Outlines Guiding Principles For The Future Of Foreclosure Prevention* (Aug. 2, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-outlines-guiding-principles-future-foreclosure-prevention/>.

⁴³ CFPB, *Treatment of Certain COVID-19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA), Regulation X; Interim Final Rule*, 85 FR 39055 (June 30, 2020).

⁴⁴ CFPB, *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X*, 86 FR 18840 (Apr. 9, 2021) (proposed rule); 86 FR 34848 (Aug. 31, 2021) (final rule). The rule also contained several other provisions meant to protect borrowers experiencing financial hardship due to the COVID-19 pandemic.

⁴⁵ 78 FR 10696 (Feb. 14, 2013).

⁴⁶ 12 U.S.C. 5481(12), (14).

⁴⁷ 12 U.S.C. 5532(a).

⁴⁸ 12 U.S.C. 5532(c).

existing loss mitigation rules in § 1024.41 and to enhance their ability to account for a variety of macroeconomic conditions. To accomplish this, the CFPB is proposing to remove most of the existing requirements regarding incomplete and complete loss mitigation applications and to replace them with a new framework based on foreclosure procedural safeguards as discussed in more detail below in this part. In general, under the proposed framework, once a borrower makes a request for loss mitigation assistance, the loss mitigation review cycle would begin, and a servicer would need to ensure that one of the following procedural safeguards is met before beginning or advancing the foreclosure process or charging certain fees: (1) the servicer has reviewed the borrower for all available loss mitigation options and no available loss mitigation options remain; or (2) the borrower has not communicated with the servicer for at least 90 days despite the servicer having regularly taken steps to communicate with the borrower regarding their loss mitigation review. Among other things, the amendments would permit a servicer to review a borrower for loss mitigation options sequentially, instead of simultaneously. The foreclosure and fee protections would remain throughout the loss mitigation review cycle, until the borrower has come current or one of the procedural safeguards applies, much as is the case now for borrowers who are able to complete their loss mitigation applications. The proposed framework is intended to ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation without unnecessary delay. The CFPB preliminarily determines that stopping the advancement of foreclosure and the accumulation of certain fees on the borrower's account throughout the loss mitigation review cycle will provide strong incentives for servicers to complete loss mitigation reviews quickly and accurately.

1. Existing Loss Mitigation Procedures and Foreclosure Protections and the Proposed Loss Mitigation Landscape

At the time the CFPB finalized the existing overall complete application framework in the 2013 Mortgage Servicing Final Rule, described in part II and below, the CFPB stated that significant consumer benefits would result from requiring that borrowers be considered for all loss mitigation options in a single process. The CFPB stated that borrowers incurred more significant burdens in the market as evaluations occurred sequentially over

time and borrower documents and information had to be continuously updated to make such documents and information current. The CFPB stated that the 2013 Mortgage Servicing Final Rule eliminated the need for borrowers to submit multiple applications for different loss mitigation options and provided for more efficient compliance by servicers with the requirements of the rule.

As detailed in part II, the loss mitigation landscape has changed dramatically over the past several years. The CFPB has preliminarily determined that streamlined loss mitigation options and the ability to do sequential review, with appropriate consumer safeguards, can help borrowers access loss mitigation more quickly and increase borrowers' chances of being able to avoid foreclosure.

Both industry and consumer groups have urged the CFPB to revise the existing regulatory framework to permit additional flexibility. In response to the CFPB's 2022 Request for Information Regarding Mortgage Refinances and Forbearances,⁴⁹ numerous stakeholders noted that the flexibility to more easily offer streamlined loss mitigation options would benefit borrowers, servicers, and investors.

Under the existing rule, a borrower's foreclosure protections are largely based on whether and when the borrower has submitted a complete loss mitigation application to the servicer. As defined in existing § 1024.41(b), a complete application is an application in connection with which the servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. In general, only if a servicer receives a complete application more than 37 days before a foreclosure sale must the servicer halt certain foreclosure activity while evaluating the borrower for all available loss mitigation options. Borrowers are also protected by a series of procedural requirements in existing § 1024.41(b) through (i), including notice requirements informing the borrower of what documents must be submitted and when, evaluation timeframes for servicers and related notices, and certain exceptions for when a servicer can offer a borrower any loss mitigation option based on an incomplete

application. The limited number of exceptions for evaluation based on an incomplete application include specific requirements for each exception.

2. The Proposed Foreclosure Procedural Safeguards Framework

The CFPB proposes to remove most of the application-based framework from § 1024.41, including the entirety of § 1024.41(b). As discussed in detail below, the CFPB also proposes to replace the existing prohibitions on foreclosure referral and sale in § 1024.41(f)(2) and (g) with a streamlined set of foreclosure procedural safeguards in revised § 1024.41(f)(2) and (3). The procedural safeguards refer to a loss mitigation review cycle and a request for loss mitigation assistance, which are proposed as new defined terms. The CFPB proposes to delete existing § 1024.41(g) in its entirety and to remove the temporary COVID-19 procedural safeguards at § 1024.41(f)(3). In addition, as discussed in part IV.C, the CFPB separately proposes new loss mitigation determination notice requirements in revised § 1024.41(c) that incorporate certain aspects of existing § 1024.41(c)(1), (c)(4) and (d) and proposes other revisions to existing § 1024.41(e), (h), (i) and (k) to conform to the other changes discussed throughout this notice. The CFPB would retain both the pre-foreclosure review period in existing § 1024.41(f)(1) and the small servicer requirements in existing § 1024.41(j) unchanged. Section 1024.41 generally does not apply to small servicers, but the pre-foreclosure review period in existing § 1024.41(f)(1) does apply to small servicers, and will continue to apply to small servicers if this proposal is finalized.

Under proposed § 1024.41(f)(2), a loss mitigation review cycle begins when a borrower makes a request for loss mitigation assistance more than 37 days before a foreclosure sale. Once the cycle begins, the servicer would be required to ensure that one of the following procedural safeguards is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process: (1) the servicer has reviewed the borrower for all available loss mitigation options and no available loss mitigation options remain, the servicer has sent the borrower all notices required by § 1024.41(c) and (e), if applicable, and the borrower has not requested any appeal within the applicable time period or, if applicable, all of the borrower's appeals have been denied; or (2) the borrower has not

⁴⁹ See 87 FR 58487 (Sept. 27, 2022); see also CFPB, Request for Information Regarding Mortgage Refinances and Forbearances (Sept. 22, 2022), <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/archive-closed/request-for-information-regarding-mortgage-refinances-and-forbearances/>.

communicated with the servicer for at least 90 days despite the servicer having regularly taken steps to communicate with the borrower regarding their loss mitigation review. The proposed fee provision in § 1024.41(f)(3) would provide that during a loss mitigation review cycle, no fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract shall accrue on the borrower's account.

i. Loss Mitigation Review Cycle

The CFPB proposes a new definition, loss mitigation review cycle, in § 1024.31 to describe the period of time that the proposed procedural safeguards in § 1024.41(f)(2)(i)–(ii) and (f)(3) would be in effect. Loss mitigation review cycle would mean a continuous period of time beginning when the borrower requests loss mitigation assistance, provided the request is made more than 37 days before a foreclosure sale. A loss mitigation review cycle would end when a servicer implements a loss mitigation solution for the borrower so that the borrower's loan is brought current, or when one of the procedural safeguards in paragraph (f)(2)(i) or (ii) are met.

A loss mitigation review cycle would continue while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or loan modification trial payment plan, and the loan has not yet been brought current. The loss mitigation review cycle would continue during forbearance. Borrowers in forbearance would typically need additional loss mitigation assistance to become current. The cycle would also continue during a trial payment plan, to provide the borrower an adequate opportunity to perform on the plan and become current. If the trial is unsuccessful and the borrower is not brought current, the servicer must ensure that one of the procedural safeguards in paragraph (f)(2)(i) or (ii) is met before the cycle ends and the servicer can begin or advance foreclosure.

ii. Request for Loss Mitigation Assistance

The CFPB proposes to add request for loss mitigation assistance as a new defined term in § 1024.31 to mean any oral or written communication, occurring through any usual and customary channel for mortgage servicing communications, whereby a borrower asks a servicer for mortgage relief. Thus, a loss mitigation review cycle would begin as soon as the borrower simply asks for mortgage relief

or otherwise indicates that they need mitigation assistance. As discussed in detail below, the CFPB intends for the definition of request for mortgage relief to be construed broadly.

After the 120-day pre-foreclosure review period provided in § 1024.41(f)(1) elapses, the existing rules make certain foreclosure safeguards provided in § 1024.41 contingent on the borrower having submitted a complete loss mitigation application. As a result, if a loan is more than 120 days delinquent and the borrower has yet to submit a complete loss mitigation application, the existing rules allow servicers to initiate, continue, or conduct foreclosures against borrowers while they participate in the loss mitigation review process, a practice known as “dual tracking.” Dual tracking can cause substantial consumer harm to borrowers and investors alike. For example, dual tracking can result in inconsistent and confusing communications, servicing errors, and additional costs to borrowers. These types of harms increase the risk that borrowers will not complete the loss mitigation process successfully, which in turn can lead to foreclosures that borrowers and investors otherwise could have avoided.⁵⁰

The proposed rule would significantly reduce the periods during which dual tracking could occur by establishing procedural safeguards against foreclosure that begin as soon as the borrower makes a request for loss mitigation assistance and that continue for the entire loss mitigation review cycle. The CFPB anticipates that beginning foreclosure protections earlier in the loss mitigation process would provide an additional incentive for servicers to review borrowers for loss mitigation quickly and accurately. This incentive will be particularly important if the CFPB finalizes the other proposed changes to § 1024.41, many of which would remove prescriptive timelines for servicers' review of borrowers' requests for loss mitigation assistance.

Under the proposed rule, a borrower could make a request for loss mitigation assistance either orally or in writing. Borrowers currently ask their servicers to review them for loss mitigation assistance both orally and in writing, and excluding either oral or written communications could unduly restrict a borrower's ability to request review for loss mitigation assistance. However, to ensure that a request for loss mitigation assistance is directed to appropriate servicer personnel, the proposed definition also specifies that the request

must come through the servicer's usual and customary channels for mortgage servicing communications. Because a request for loss mitigation assistance halts foreclosure initiation or advancement until the foreclosure procedural safeguards are met, the CFPB has preliminarily determined that servicers should be able to expect borrowers to reach out to personnel capable of either escalating or acting on their requests for loss mitigation assistance. As a result, certain borrower communications would not meet the definition of a request for loss mitigation assistance. For example, requests for mortgage relief made through informal channels, such as social media messaging or handwritten notes on payment coupons, would not constitute a request for loss mitigation assistance under the proposed rule unless the servicer used such informal channels for mortgage servicing communications.

The proposed rule further specifies that a request for loss mitigation assistance is to be construed broadly. A borrower does not need to use a specific form or any specific language to submit a request for loss mitigation assistance that triggers the proposed foreclosure procedural safeguards in § 1024.41(f)(2). Additionally, a servicer should presume that a borrower who experiences a delinquency as defined in § 1024.31 has made a request for loss mitigation assistance when they contact the servicer unless they clearly express some other intention. For example, a borrower who calls to inform the servicer that they will make a payment tomorrow has, absent more, not made a request for loss mitigation assistance.

The proposed rule provides three examples of communications that would be considered requests for loss mitigation assistance while also clarifying that these examples are not exhaustive. The first proposed example provides that a request for loss mitigation assistance includes any communication in which a borrower expresses an interest in pursuing a loss mitigation option, as defined in existing § 1024.31. Therefore, a request for loss mitigation assistance would include any request from a borrower for temporary or long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation

⁵⁰ See 78 FR 10696, 10819 (Feb. 14, 2013).

programs sponsored by a locality, a State, or the Federal government. Consistent with the directive to construe a request for loss mitigation assistance broadly, a borrower would not need to ask their servicer to review them for a specific loss mitigation option; rather, the borrower could simply express a general interest in goals such as staying in their home, receiving payment assistance, pursuing an alternative to foreclosure, or some combination of those objectives. To emphasize this point further, the second proposed example provides that a request for loss mitigation assistance includes situations in which a borrower indicates that they have experienced a hardship and asks the servicer for assistance with making payments, retaining their home, or avoiding foreclosure.

The third proposed example provides that a request for loss mitigation assistance includes any communication in which, in response to a servicer's unsolicited offer of a loss mitigation option, a borrower expresses an interest in pursuing the loss mitigation option offered or any other loss mitigation option. The CFPB intends this example to clarify that an unsolicited offer of a loss mitigation option from a servicer would be considered a request for loss mitigation assistance if, in response to the offer, the borrower expressed any interest in exploring an alternative to foreclosure, even if the borrower expresses disinterest in the specific unsolicited offer. The CFPB preliminarily views this clarification as necessary to ensure that a borrower's response to a servicer's unsolicited offer of loss mitigation would trigger the procedural safeguards against foreclosure in proposed § 1024.41(f) as long as such response included a request for some form of mortgage relief.

Additionally, the proposed rule would establish a process that is similar to the process provided in existing comment 31 (*Loss Mitigation Application*)–1 for vetting a borrower's representative who submits a loss mitigation application on behalf of a borrower. The CFPB preliminarily finds it reasonable to allow a borrower's representative to make a request for loss mitigation assistance on a borrower's behalf. For example, a borrower in need of loss mitigation assistance may ask a housing counselor or other knowledgeable person to assist them in making a request for loss mitigation assistance. However, the CFPB acknowledges that servicers may have concerns regarding potential liability under State and Federal privacy laws for communicating with a person claiming to be a representative of a borrower. To

address these concerns, proposed comment 31 (*Request for Loss Mitigation Assistance*)–1 would clarify that servicers may use reasonable procedures to determine if a person who claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf. Reasonable procedures may include, for example, requiring purported agents to provide documentation from a borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer would treat a request for loss mitigation assistance as having been submitted by the borrower.

The proposed rule also would address servicer's options for handling requests for loss mitigation assistance received from potential successors in interest. Existing comments 41(b)–1.i and .ii currently address servicers' options for reviewing and evaluating loss mitigation applications received from potential successors in interest. The proposed rule would renumber these comments as comments 41(f)(2)–7.i and ii and then amend them to reflect the new foreclosure protections in § 1024.41(f)(2).

Specifically, proposed comment 41(f)(2)–7.i would provide that, if a servicer receives a request for loss mitigation assistance from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but is not required to, comply with the foreclosure procedural safeguards in § 1024.41(f)(2) with respect to that person. The proposed comment also would clarify how § 1024.41(i)'s limitation on duplicative requests applies to that person.

Proposed comment 41(f)–7.ii would provide that, if a servicer receives a request for loss mitigation assistance from a potential successor in interest and elects not to comply with the foreclosure procedural safeguards before confirming that person's status, the servicer must comply with those safeguards with respect to that person as soon as the person becomes a confirmed successor in interest and must treat the request for loss mitigation assistance as if it had been received on the date that the servicer confirmed the successor in interest's status.

The CFPB is seeking comment on these proposed requirements and associated commentary and, in particular, requests comment on the following issues:

(i) Should the proposed definition of a request for loss mitigation assistance limit the communication channels through which borrowers may make

requests for loss mitigation assistance? What alternative channels should the CFPB consider, if any?

(ii) Are there additional examples of requests for loss mitigation assistance the CFPB should provide?

(iii) Should the rule require servicers to provide borrowers with notices that acknowledge when borrowers have made requests for loss mitigation assistance? If so, what information should such notice provide? What potential challenges and burdens might such notice create for servicers?

iii. Advancing the Foreclosure Process

As noted above, the CFPB is proposing procedural safeguards that, under certain circumstances, limit any actions that advance the foreclosure process beginning when borrowers have requested loss mitigation assistance. Under existing § 1024.41(f) and (g), servicers are prohibited from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances, as well as from moving for foreclosure judgment or order of sale or conducting a foreclosure sale under other circumstances. These restrictions not only apply to servicers, but also foreclosure counsel retained by servicers. However, currently, servicers may still proceed with other interim foreclosure actions, such as mediation or arbitration, even if those actions may not be beneficial to the borrower or may be unnecessary for borrowers that shortly thereafter obtain loss mitigation.

The CFPB has heard from some stakeholders that while some foreclosure actions can prompt borrowers to cure delinquency, other actions that advance the foreclosure process after a borrower has requested loss mitigation assistance and while the servicer is evaluating them for such assistance can confuse borrowers and affect the success of that request. Additionally, borrowers and servicers may accrue foreclosure costs (often the responsibility of the borrower under the loan contract) that could be avoided if foreclosure actions were paused during loss mitigation review. For example, servicer foreclosure counsel and borrower attorneys may both continue to file required affidavits and responses in foreclosure litigation, drafting and preparing responses and filings that may not eventually be required if the borrower is approved for loss mitigation. The legal fees and filing costs for such actions, which are often paid by the borrower either out of their own funds or added to the balance of the borrower's mortgage, could be

avoided if foreclosure processes were halted during the loss mitigation review.

When finalizing existing § 1024.41(f) and (g) in 2013, the CFPB stated it recognized foreclosure processes were complex. To balance the needs of borrowers, servicers, and investors, the CFPB limited foreclosure prohibitions to foreclosure initiation and sale but did not prohibit interim actions. However, since that time, the CFPB has heard that many servicers now typically place a complete hold on foreclosure activity upon receipt of a complete loss mitigation application. Given this shift in industry practice, in proposing to replace the existing complete application framework as discussed above, the CFPB has preliminarily determined that building on that shift in industry practice by including foreclosure advancement in the foreclosure procedural safeguards, in addition to initiation and sale, will help address concerns about borrower confusion and costs related to interim foreclosure actions that advance the foreclosure process. Applying the foreclosure procedural safeguards to foreclosure advancement might also help provide servicers with additional incentive to quickly and accurately review loss mitigation requests so that they can proceed with foreclosure activity (if the proposed procedural safeguards are met) when necessary. As a result, the CFPB is proposing to require that when a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, a servicer is required to ensure that one of the safeguards discussed below in this part is met before it makes the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process. If a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, but the foreclosure process advances without one of the safeguards being met, the foreclosure advancement would constitute a violation of this regulation, if finalized as proposed.

Under the proposed rule, advancing the foreclosure process would include any judicial or non-judicial actions that advance the foreclosure process and were not yet completed prior to the borrower's request for a loss mitigation option. Such actions might include, for example, certain filings, such as those related to mediation, arbitration, or reinstatement that take place prior to final order or sale; certain affidavits, motions, and responses that advance the foreclosure process; or recordings or public notices that occur before a final

foreclosure judgment or sale. The CFPB is not proposing to require servicers to dismiss pending foreclosures. However, actions such as necessary filings to pause the foreclosure proceedings may be required until the safeguards are met. The CFPB is seeking comment on all aspects of these proposed requirements and in particular requests comment on the following issues:

(i) Should the CFPB provide or codify additional detail as to the meaning of advancing the foreclosure process, and if so, what details should it provide?

(ii) Are there State or local foreclosure laws or requirements that might affect a servicer's ability to comply with this requirement, and if so, how?

(iii) Should the CFPB consider excepting any interim foreclosure actions, such as mediation or arbitration, where the borrower would prefer to participate in those meetings, and if so, should the CFPB identify any minimum standards for servicers to determine borrower preference regarding participation in those meetings?

iv. No Remaining Loss Mitigation Options

The CFPB proposes that the procedural safeguards in § 1024(f)(2) would apply during a loss mitigation review cycle, as defined in § 1024.31. As long as a borrower requests loss mitigation assistance more than 37 days before a foreclosure sale, the servicer would be required to ensure that one of the procedural safeguards in § 1024(f)(2)(i) or (ii) is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process. The CFPB preliminarily determines that this proposed approach will create incentives for servicers to review borrowers for loss mitigation quickly and accurately and will also effectively protect borrowers from avoidable foreclosures and certain fees.

Under the first proposed procedural safeguard in § 1024.41(f)(2)(i), a servicer would be able to begin or advance the foreclosure process if the servicer has reviewed the borrower for loss mitigation and no available loss mitigation options remain, the servicer has sent the borrower all notices required by proposed § 1024.41(c)(1) and (h)(4) if applicable, and the borrower has not requested any appeal within the applicable time period or, if

applicable, all of the borrower's appeals have been denied.⁵¹

Existing comment 31 (Request for Loss Mitigation Assistance)—2, which the CFPB is not proposing to amend, provides that a loss mitigation option is available through the servicer if it is an option for which the borrower may apply, even if the borrower ultimately does not qualify for that option. For purposes of proposed § 1024.41, a loss mitigation option would not be available if (1) the borrower affirmatively opts out of review for that option; (2) the servicer offers the borrower the option and the borrower rejects it; or (3) the servicer finds the borrower ineligible for the option.

The CFPB is proposing to retain existing § 1024.41(a), which clarifies that § 1024.41 imposes no duty on a servicer to provide a borrower with any specific loss mitigation option. The CFPB acknowledges that a servicer must follow applicable investor guidelines regarding which loss mitigation options, if any, are available to the borrower and for which the borrower may qualify.

Under the proposed framework, a servicer would not be required to collect a complete loss mitigation application for all available options prior to making a determination about whether to deny or offer a loss mitigation option to a borrower. As a result, the servicer would have more flexibility to review a borrower for loss mitigation options sequentially rather than simultaneously, although a simultaneous review would be permitted. While the CFPB expects that this approach would create incentives for servicers to conduct loss mitigation reviews and place borrowers into loss mitigation options quickly, the CFPB recognizes that more complex situations may arise. For example, under the proposed framework, a borrower may decline an offer for a specific type of loss mitigation and seek first to learn what other options exist. The servicer may evaluate the borrower for additional options and the borrower may later decide that they would like to accept the offer that they previously declined. Investor guidelines, including what are commonly referred to as waterfalls, will continue to determine whether any loss mitigation option is available and whether the borrower qualifies for a given option.⁵² However, as further discussed in part IV.C, to achieve the goal that borrowers be

⁵¹ Regarding the reference to notices and appeals in § 1024.41(f)(2)(i), see the discussion of the proposed rule's amendments to § 1024.41(c) and (h).

⁵² A waterfall is an evaluation criteria that sets an order ranking for evaluation of loss mitigation options.

informed of whether certain loss mitigation options are or will continue to be available, the CFPB is proposing to add loss mitigation determination notice disclosure requirements related to this issue. The CFPB encourages servicers to work with borrowers throughout the loss mitigation process, including by allowing borrowers to select an option that the borrower previously rejected, subject to investor requirements.

Similarly, the CFPB encourages a servicer to re-review a borrower for an option for which the borrower was previously denied during the same loss mitigation review cycle. Such a review may be due to changed borrower circumstances or other reasons, subject to investor requirements. The CFPB is proposing changes to § 1024.41(i) and deleting no longer applicable commentary regarding duplicative requests to align that provision with the new proposed regulatory framework. The proposed language clarifies that servicers must comply with the requirements of § 1024.41 for a borrower's request for loss mitigation assistance during the same loss mitigation review cycle unless one of the procedural safeguards is met.

A loss mitigation review cycle would continue while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or loan modification trial payment plan, and the loan has not yet been brought current. Thus, if a borrower were placed in a loan modification trial payment plan and missed a payment or otherwise became unable to perform on the trial plan, the servicer would not be permitted to advance the foreclosure process immediately. Rather, the servicer would be required to review the borrower for any remaining available loss mitigation options.

The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(i), including the advantages and disadvantages of permitting a sequential review process.

v. Unresponsive Borrower

Under the second proposed procedural safeguard in § 1024.41(f)(2)(ii), a servicer would be able to begin or advance the foreclosure process if the servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower, and, if the servicer has made a loss mitigation determination, has regularly taken steps to reach the borrower regarding that determination, but the borrower has not

communicated with the servicer for at least 90 days.

The CFPB preliminarily determines that allowing a servicer to proceed with foreclosure for a borrower who has been unresponsive for less than 90 days may encourage less rigorous and less effective servicer outreach. The CFPB proposes comment 41(f)(2)(ii)–3 to clarify that servicers cannot delay or procrastinate in their efforts to obtain information or documentation necessary to evaluate a borrower for loss mitigation, and that servicers cannot delay or procrastinate in their efforts to notify borrowers of available loss mitigation options. Accordingly, comment 41(f)(2)(ii)–3 states that, although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation review, throughout the loss mitigation review cycle, the servicer must regularly communicate the status of the loss mitigation review to the borrower, which includes requesting documentation and information that the servicer requires from the borrower and communicating available loss mitigation options.

This proposed procedural safeguard, requiring that the servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower and has regularly taken steps to reach the borrower, is intended to ensure that servicers are making efforts to be in regular contact with borrowers during the loss mitigation review cycle before moving forward in circumstances where a borrower is unresponsive. This safeguard is based on the existing rule's requirement that servicers exercise reasonable diligence in obtaining documents and information from the borrower to complete the loss mitigation application. In exercising reasonable diligence, servicers must promptly communicate with borrowers about the status of their application, any missing documents or information the servicer needs to evaluate the borrower for loss mitigation, and any deadlines by which the borrower should submit the documents or information the servicer needs. Once a servicer obtains all the information and documentation from the borrower to evaluate the loss mitigation application, the servicer is required to communicate to the borrower that the application is complete, and later communicate what loss mitigation options, if any, it can offer to the borrower.

While the proposed loss mitigation framework removes most of the existing requirements regarding incomplete and

complete loss mitigation applications, the CFPB has preliminarily determined that the proposed procedural safeguard requiring that servicers regularly communicate with borrowers at various stages of the loss mitigation review cycle before servicers can begin or advance foreclosure will protect borrowers from avoidable foreclosure. Moreover, while the CFPB proposes to replace the term “reasonable diligence” with the “regularly taken steps” phrasing that uses simpler language, it does not intend to reduce or lessen a servicer's existing obligation to identify and obtain needed information and to communicate with borrowers about their loss mitigation determination status. For example, under the proposed rule, servicers would still be required to reach out to borrowers through multiple live and written methods, including the borrower's preferred method if so indicated.

Even as the CFPB expects servicers to be in regular contact with borrowers seeking loss mitigation, including borrowers who have been unresponsive for a period of time, the CFPB acknowledges that it would be harmful to borrowers, servicers, and investors if a servicer was never able to begin or advance the foreclosure process. The CFPB preliminarily believes 90 days is a sufficient timeframe to allow borrowers to respond to a servicer's communication attempts. The CFPB's proposal of 90 days is similar to the timeframe used for the unresponsive borrower provision of the temporary special COVID–19 loss mitigation procedural safeguards put in place in 2021.⁵³

The CFPB also proposes several changes to commentary to clarify proposed § 1024.41(f)(2)(ii). The CFPB proposes to make minor amendments to existing comment 41(f)(3)(ii)(C)–1 and transfer it to proposed comment 41(f)(2)(ii)–1. Existing comment 41(f)(3)(ii)(C)–1 provided clarity regarding when a borrower was considered to be unresponsive for purposes of the now expired temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3). The CFPB is proposing to remove the last sentence of comment 41(f)(3)(ii)(C)–1, since that sentence was primarily applicable to borrowers who may not have communicated with their servicer at all since becoming delinquent. The CFPB preliminarily determines that the subject sentence has limited utility for the new proposed procedural safeguards in § 1024.41(f). The CFPB is also proposing to relocate existing comment

⁵³ 86 FR 34848, 34885 (June 30, 2021).

41(f)(3)(ii)(C)–2, which generally provides that communication from a borrower's representative constitutes communication from the borrower themselves, to proposed comment 41(f)(2)(ii)–2. Though existing comment 41(f)(3)(ii)(C)–2 was finalized as part of the now expired temporary special COVID–19 loss mitigation procedural safeguards in § 1024.41(f)(3), the CFPB preliminarily believes that it remains applicable to the new proposed procedural safeguards in § 1024.41(f), and therefore proposes to relocate it without amendment.

The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(ii) and, in particular, requests comment on the following issues:

(i) Does 90 days provide borrowers with a sufficient amount of time to respond to a servicer's communication and avoid foreclosure? If not, what amount of time is sufficient?

(ii) Does the CFPB's proposal to require servicers to regularly take steps to obtain information and to regularly take steps to contact borrowers before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process, adequately provide servicers with the appropriate incentives to make regular attempts to obtain missing information or contact the borrower regarding loss mitigation determinations? Should the CFPB consider more specific requirements, or provide additional clarification in the commentary, for determining when a servicer has "regularly taken steps" in accordance with proposed § 1024.41(f)(2)(ii)? Are there ways that the CFPB could further simplify and streamline these proposed requirements?

vi. Abandoned Property

The CFPB recognizes that the 2021 Mortgage Servicing Final Rule's temporary special COVID–19 procedural safeguards included an exception for abandoned property, generally stating that the servicer may begin the foreclosure process if the property securing the mortgage loan is abandoned according to the laws of the State or municipality where the property is located. As described in the preamble to that rule, this procedural safeguard was specific to the circumstances of the COVID–19 pandemic, including the extended foreclosure moratorium, and the expected surge in foreclosure activity. The CFPB stated that this safeguard was not intended to define abandoned property or principal residence more

broadly for purposes of Regulation X. The CFPB requests comment on all aspects of proposed § 1024.41(f)(2)(ii), including on whether the CFPB should include an abandoned property exception in this rulemaking, and, if so, what the content of that exception should be.

vii. Fee Protections

The CFPB proposes to replace the temporary COVID–19 procedural safeguards at § 1024.41(f)(3) with a proposed requirement that during a loss mitigation review cycle, no fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract shall accrue on the borrower's account.

The CFPB preliminarily determines that borrowers who have made a request for loss mitigation assistance should not continue accruing fees that make it harder for them to resolve the delinquency and avoid foreclosure. In addition, the CFPB preliminarily determines that fee protections may create incentives for servicers under the proposed new framework to efficiently process a borrower's request for loss mitigation assistance and evaluate them for loss mitigation solutions quickly and accurately.

The CFPB has previously acknowledged that the waiver of delinquency-related fees benefits borrowers who are already experiencing financial hardship. In the 2020 Mortgage Servicing Interim Final Rule and the 2021 Mortgage Servicing Final Rule (COVID–19-related mortgage servicing rules finalized in line with section 4022 of the CARES Act,⁵⁴ which restricted the accrual of interest, penalties, and fees during forbearance), the CFPB allowed servicers to offer certain loss mitigation options to borrowers even if the borrowers had not yet submitted a complete application, as long as the options incorporated a fee waiver as a safeguard. In the 2020 Mortgage Servicing Interim Final Rule, the CFPB explained that benefits of the fee waiver included (1) eliminating the immediate potential risk of foreclosure, (2) permitting borrowers to resume repayment with no delinquency and no additional fees or interest, and (3) enabling borrowers to better plan how to eventually repay the amount that was deferred. Similarly, in the 2021 Mortgage Servicing Final Rule, the CFPB explained that loss mitigation options qualifying for the complete

application exception adopted in the final rule (which included required fee waivers) avoided imposing additional economic hardship on borrowers who had already experienced prolonged hardship due to the pandemic.

The proposed fee protection would be broad, and would restrict the accrual of interest, penalties, and fees during the loss mitigation review cycle. Though this broad prohibition may result in servicers making payments to third party companies for delinquency-related services that servicers may not be able to recoup, as stated above, the CFPB preliminarily determines that this result may further create incentives for servicers to process loss mitigation applications quickly and accurately in order to minimize costs and lost revenue.

viii. Removing Aspects of the Current Application-Based Framework From § 1024.41

As discussed in detail above, the CFPB proposes to amend the existing § 1024.41 loss mitigation framework to simplify the loss mitigation process for borrowers and servicers, and to provide more flexibility to servicers while continuing to protect borrowers from avoidable foreclosures and certain fees. As a result of the proposed amendments, the CFPB proposes to remove most of the application-based framework from § 1024.41. Specifically, the CFPB proposes to remove the existing provisions regarding loss mitigation application reviews and notices in § 1024.41(b); complete application evaluations and notices in § 1024.41(c)(1); "anti-evasion" facially-complete applications, and exceptions for short-term loss mitigation options and COVID–19-related options in § 1024.41(c)(2); notices of complete application in § 1024.41(c)(3); and the associated commentary. The CFPB is also proposing to remove § 1024.41(c)(4), which generally requires a servicer to exercise reasonable diligence in obtaining information or documentation not in the borrower's control; however, as discussed in detail in part IV.C, the CFPB plans to incorporate the general requirements of existing § 1024.41(c)(4) into proposed § 1024.41(c)(2). The CFPB is also proposing a technical edit to § 1024.38(b)(2)(vi). This proposed technical edit would remove the reference to the notice requirement in existing § 1024.41(b)(2)(i)(B), which the CFPB proposes to remove.

The CFPB preliminarily determines that these provisions are no longer necessary under the proposed loss mitigation framework. Under the new

⁵⁴ The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, section 4022, 134 Stat. 281, 490 (2020).

framework that the CFPB is proposing, all borrowers would receive foreclosure protections as soon as they request loss mitigation assistance. Thus, under the proposed loss mitigation framework, the existing § 1024.41 provisions listed above are no longer necessary. For example, it would no longer be necessary to define an application as either complete or incomplete for purposes of the CFPB's loss mitigation rules, as the proposed loss mitigation framework removes that distinction. In addition, it would no longer be necessary to require the servicer to notify the borrower within five days that the servicer has received and determined that the loss mitigation application is incomplete to ensure the borrower has enough time to complete its loss mitigation application and obtain foreclosure protections because the proposed loss mitigation framework would require all borrowers to receive foreclosure protections as soon as they request loss mitigation assistance.

The CFPB also proposes conforming changes to § 1024.41(k) and its associated commentary. Generally, existing § 1024.42(k) addresses servicers' obligations and borrower protections following a mortgage servicing transfer when a loss mitigation application is pending. Primarily, the proposed conforming changes would replace the terms loss mitigation application and complete loss mitigation application with references to a request for loss mitigation assistance. The CFPB also proposes to make other changes throughout § 1024.41(k) and its associated commentary to conform to the changes discussed elsewhere in this proposal.

The CFPB requests comment on all aspects of its proposal to remove the existing loss mitigation framework in § 1024.41 and associated commentary. In particular, the CFPB requests comment on whether the CFPB should consider alternatives that would retain parts of the existing § 1024.41 loss mitigation framework. For example, consumer advocates have suggested the CFPB amend the definition of "complete application" in existing § 1024.41(b)(1) to include a list of specific documents that a borrower must submit. If so, how would their retention combine with the proposed § 1024.41 loss mitigation framework?

B. Changes to Early Intervention Requirements (§ 1024.39)

In addition to removing language relating to the COVID-19 pandemic, as discussed in part IV.G, the CFPB proposes to amend the early intervention requirements in § 1024.39

in three other ways. First, it proposes to amend the content of § 1024.39(b) written notices to require that those notices include certain additional information, such as the name of the investor currently holding the borrower's mortgage. Second, it proposes to create alternative early intervention notice requirements in § 1024.39(e) for borrowers performing under the terms of a forbearance agreement. Third, it proposes to amend comments 39(a)–4.i.A and 39(a)–6 so that those comments reflect the procedural safeguards established by proposed § 1024.41(f).

1. Requiring Investor Specific Information in Written Early Intervention Notices

The CFPB proposes to require a servicer to include additional information in the written early intervention notices required under § 1024.39(b)(2) to more fully inform the borrower about loss mitigation options that may be available from the owner or assignee of the borrower's loan. Under these proposed requirements, a servicer would provide contact information for borrowers to access a list of such loss mitigation options, the name of the investor, *i.e.*, owner or assignee of the borrower's loan, as well as additional descriptive information about each type of loss mitigation option that is generally available from that investor. The CFPB also proposes to make conforming changes to relevant existing commentary and to remove model clauses MS-4(A) and MS-4(B), currently in appendix MS-4.

Servicers are currently required to provide a delinquent borrower with a written early intervention notice containing certain information no later than 45 days into the borrower's delinquency and at specified intervals thereafter while the borrower remains delinquent.⁵⁵ Section 1024.39(b)(2) currently requires that written early intervention notices include certain information to ensure that a borrower is made aware of available loss mitigation options and the ability to contact the servicer to understand their options. Section 1024.39(b)(2)(ii) currently states that the written early intervention notice must include the telephone number to access servicer personnel assigned pursuant to § 1024.40(a) and the servicer's mailing address. Sections 1024.39(b)(2)(iii) and (iv) currently require that, if applicable, the written early intervention notice must include a statement providing a brief description

of examples of loss mitigation options that may be available from the servicer, and either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer.

As discussed in part IV.A, the CFPB is proposing to allow servicers to review borrowers for loss mitigation options sequentially rather than requiring that servicers evaluate a borrower for all available options at the same time. As a result, under the proposed rule, a borrower may only receive information about the option for which they were most recently reviewed. Borrowers could benefit, however, from more information at the beginning of the process in order to better understand their options.

The CFPB is proposing to require servicers to include two additional resources for borrowers, the details of which would be disclosed under § 1024.39(b)(2)(ii). In addition to the telephone number to access servicer personnel assigned pursuant to existing § 1024.40(a) and the servicer's mailing address, the CFPB is proposing that the written early intervention notice must also include the telephone number where the borrower can access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan and a website to access the same list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan. The telephone number provided may be the same as the telephone number to access servicer personnel, which is already required to be included in the written early intervention notice under Regulation X's continuity of contact provision pursuant to § 1024.40(a). The website would be a resource where borrowers in delinquency could obtain information about all loss mitigation options that the owner or assignee of their loan may make available. Servicers may outsource the development and maintenance of the website, but must ensure that the information available is accessible, accurate, and complete.

The CFPB is proposing that the servicer disclose the name of the owner or assignee of the borrower's loan along with a statement providing a brief description of each type of loss mitigation option that is generally available from the investor of the borrower's loan under § 1024.39(b)(2)(iii). The CFPB is proposing that the servicer disclose the name of the owner or assignee of the loan both for transparency and so that borrowers and their housing counselors may better navigate the loss mitigation

⁵⁵ These requirements are similar to those imposed by the GSEs and FHA.

process and understand what loss mitigation options may be available to them from the particular investor on their loan through the servicer. The CFPB is proposing to change the language in existing § 1024.39(b)(2)(iii) from servicer to owner or assignee because available loss mitigation options are determined by the investor and not the servicer. This proposed change is not intended to be substantive, but rather is for the purpose of clarifying and cross-referencing the terminology used across Regulation X when referring to loss mitigation options as defined under § 1024.31.

The CFPB is proposing to amend the existing § 1024.39(b)(2)(iii) requirement that servicers include a statement providing a brief description of examples of loss mitigation options that may be available from the investor. Under the proposed rule, servicers would be required to include a statement providing a brief description of each type of loss mitigation option that is generally available from the investor. The existing framework allows servicers to list generic examples of loss mitigation options, without specifying a number of examples or requiring that all types or categories of loss mitigation options are listed on the written early intervention notice. The proposed amendment would instead require servicers to provide greater specificity to borrowers based on the types of loss mitigation that the investor offers, but would strike a balance by still not necessarily requiring a description of all individual programs that may be available from the investor on the borrower's loan in the written early intervention notice itself. For example, types of loss mitigation options could include forbearance, deferral, and loan modification. Under the proposed rule, if the investor offers various forbearance, deferral, and loan modification programs, each such category would constitute a different type of loss mitigation option and servicers need only give a brief description of each category, even if there were multiple programs under each category made available by the investor. Consistent with this change, the CFPB is proposing to make conforming terminology amendments to existing comments 39(b)(2)(iii)–1 and 39(b)(2)(iii)–2.

The CFPB is proposing to amend § 1024.39(b)(2)(iv) to include a statement informing the borrower how to make a request for loss mitigation assistance, and no longer require the inclusion of a statement informing the borrower about how to obtain more information about loss mitigation

options from the servicer. The proposed additions in § 1024.39(b)(2)(ii) and (iii) would otherwise require the servicer to provide more information about loss mitigation options that may be available, without a request for more information from the borrower. The borrower would still receive the telephone number to access servicer personnel and the servicer's mailing address should the borrower wish to seek additional information about loss mitigation assistance beyond that which would already be made available through the proposed requirements. For consistency, the CFPB is proposing to make conforming terminology amendments to existing comment 39(b)(2)(iv)–1.

The CFPB is also proposing to remove model clauses MS–4(A) and MS–4(B) in appendix MS–4, as well as relevant regulatory text in § 1024.39(b)(3), which allows servicers to use model clauses MS–4(A) and MS–4(B) to comply with the requirements of § 1024.39(b). The CFPB proposes these changes because the language in model clauses MS–4(A) and MS–4(B) would no longer align with the proposed rule's requirements.

2. Alternative Early Intervention Notice Requirements for Borrowers Performing Pursuant to the Terms of a Forbearance

Under the existing rules, servicers generally must provide early intervention live contact and written notices to delinquent borrowers, including borrowers performing pursuant to the terms of a forbearance. In response to its September 2022 Request for Information (RFI),⁵⁶ the CFPB received comments asking it to change how these requirements apply to borrowers who have accepted a forbearance. One industry trade group noted that requiring early intervention notices to continue while a borrower is performing pursuant to the terms of a forbearance creates unnecessary borrower confusion because the notices do not reflect the fact that the borrower and the servicer have entered into a forbearance. Additionally, several consumer advocates indicated that the current early intervention notice requirements are deficient because they do not require servicers to provide borrowers in forbearance with written notice at the end of their forbearance period. These commenters asked the CFPB to consider adding a new

requirement that servicers send a notice to borrowers at least 30 days before the end of their forbearance period that explains their options post-forbearance.

The CFPB proposes to address these concerns by creating alternative early intervention notice requirements for borrowers performing pursuant to the terms of a forbearance. These proposed requirements would replace the current temporary COVID–19 related live contact provisions at § 1024.39(e) and would consist of three provisions, proposed § 1024.39(e)(1), (2), and (3). As discussed in more detail below, proposed § 1024.39(e)(1) would provide that servicers may forgo the live contact and written early intervention notice requirements of § 1024.39(a) and (b) while a borrower is in a forbearance; proposed § 1024.39(e)(2) would provide that servicers must provide delinquent borrowers with forbearance-specific live contact and written early intervention notices prior to the scheduled end date of their forbearance; and proposed § 1024.39(e)(3) would establish procedures for resuming compliance with § 1024.39(a) and (b) after a borrower's forbearance period ends.

i. Partial Exemption From § 1024.39(a) and (b) if a Borrower Is Performing Pursuant to the Terms of a Forbearance (Section 1024.39(e)(1))

The CFPB proposes to add a new § 1024.39(e)(1) that would partially exempt servicers from the requirements of § 1024.39(a) and (b) while a borrower performs pursuant to the terms of a forbearance. As noted above, providing borrowers with early intervention notices while they are in forbearance may create borrower confusion. For example, a borrower who just entered into a forbearance may think that the servicer failed to process the forbearance if, shortly after executing the agreement, they receive a written early intervention notice encouraging them to contact their servicer to learn more about loss mitigation options and how to apply. Additionally, where the borrower and servicer have entered into a forbearance, borrower-servicer communication is already established, obviating the need for early intervention notices as a tool to prompt such communication.⁵⁷ Furthermore, as discussed in part IV.A, proposed § 1024.41(f)(2) would provide borrowers

⁵⁶ See CFPB, *Request for Information Regarding Mortgage Refinances and Forbearances*, 87 FR 58487 (Sept. 27, 2022); see also CFPB, *Request for Information: Mortgage Refinances and Forbearances*, Docket ID CFPB–2022–0059, <https://www.regulations.gov/document/CFPB-2022-0059-0001/comment> (last visited July 1, 2024).

⁵⁷ As discussed in the 2013 Mortgage Servicing Final Rule, one of the principal rationales for requiring early intervention loss mitigation notices is to correct impediments to borrower-servicer communication so that borrowers have a reasonable opportunity to pursue loss mitigation at the early stages of their delinquency. See 78 FR 10696, 10788–89 (Feb. 14, 2013).

with foreclosure protections for the entirety of a loss mitigation review cycle, such that a servicer could not initiate or advance foreclosure proceedings against a borrower who accepts a forbearance unless the procedural safeguards in proposed § 1024.41(f)(2)(i) or (ii) were met. As a result, suspending early intervention requirements while a borrower performs pursuant to the terms of a forbearance poses less risk to the borrower alongside these proposed procedural safeguards.

ii. Contact and Notice Requirements for a Forbearance Nearing Its Scheduled End (Section 1024.39(e)(2))

The CFPB proposes to add a new § 1024.39(e)(2) that would require servicers to attempt to establish live contact with and to send written notices to delinquent borrowers nearing the scheduled end of their forbearance. Specifically, proposed § 1024.39(e)(2)(i) would provide that servicers must make good faith efforts to establish live contact with delinquent borrowers at least 30 days, but no more than 45 days, before the scheduled end of their forbearance. During such live contact, servicers would be required to notify delinquent borrowers of the date their forbearance is scheduled to end and of the availability of loss mitigation options, if appropriate, as set forth in § 1024.39(a). Similarly, proposed § 1024.39(e)(2)(ii) would provide that servicers must send delinquent borrowers a written notice at least 30 days, but no more than 45 days, before the scheduled end of their forbearance. This written notice would disclose the date that the borrower's current forbearance is scheduled to end as well as the content of the written notice as set forth in proposed § 1024.39(b)(2)(i) through (v).

These live contact and written notice requirements would apply only to delinquent borrowers because delinquent borrowers typically will need to apply for additional loss mitigation options. In contrast, if a borrower were to cure their delinquency during their forbearance period, the information provided by proposed § 1024.39(e)(2) would not be relevant to the borrower and, in fact, could confuse the borrower by incorrectly stating that they were delinquent.

The CFPB proposes that servicers must provide the live contact and written notices described in proposed § 1024.39(e)(2)(i) and (ii) at least 30 days, but no more than 45 days, before the scheduled end of a borrower's forbearance for several reasons. First, this timing should help maximize the likelihood that borrowers have time to

apply for additional loss mitigation while being close enough to the end of forbearance that it is sensible for them to do so. Second, the CFPB understands that some mortgage investors already require servicers to contact borrowers at least 30 days before the scheduled end of their forbearance.⁵⁸ Aligning the timing of the live contact and written notice requirements described in proposed § 1024.39(e)(2)(i) and (ii) with existing investor requirements should avoid duplicative contact efforts that would increase servicer burden and potentially cause borrower confusion. Third, the CFPB preliminarily finds that the communications described in proposed § 1024.39(e)(2)(i) and (ii) would be more useful to borrowers if they occurred roughly contemporaneously. For example, borrowers and servicers may have more productive conversations if borrowers have access to the written notice at the time of live contact. Alternatively, if the written notice arrived shortly after the servicer established live contact, it could reinforce the information provided during live contact.

The CFPB further proposes to tie the timing requirements described in proposed § 1024.39(e)(2)(i) and (ii) to the scheduled end of the borrower's forbearance rather than the actual end date of the borrower's forbearance because a consumer may leave a forbearance early or the parties may agree to extend the forbearance period. As a result, tying the timing requirements to the scheduled end of the borrower's forbearance would provide servicers a more certain date for compliance purposes. If a borrower's forbearance ended before the servicer either sent the written notice described in proposed § 1024.39(e)(2)(ii) or attempted to establish live contact as described in proposed § 1024.39(e)(2)(i), proposed § 1024.39(e)(3) would provide servicers with procedures for resuming compliance with § 1024.39(a) and (b).

The live contact and written notice requirements described in proposed § 1024.39(e)(2)(i) and (ii) would parallel the live contact and written notice requirements described in § 1024.39(a) and (b)(2), respectively, except that they also would require the servicer to disclose the date that the borrower's forbearance is scheduled to end. The

CFPB proposes this approach for two reasons. First, borrowers who remain in forbearance for many months are likely to benefit from a reminder about the need to work with their servicer if they wish to obtain a permanent loan modification. Second, because proposed § 1024.39(e)(1) would partially exempt servicers from the requirements of § 1024.39(a) and (b) while a borrower performs pursuant to the terms of a forbearance agreement, borrowers who remain in forbearance for many months also likely would not receive the early intervention notices required by § 1024.39(a) and (b) for several months and likely would benefit from receiving such information again given the lapse of time since they were previously provided such notices.

iii. Procedures for Resuming Compliance With § 1024.39(a) and (b) (Section 1024.39(e)(3))

Proposed § 1024.39(e)(3) would provide that, when a forbearance ends for any reason, including, but not limited to, the borrower's successful completion of a forbearance or the borrower's nonperformance under the terms of a forbearance, a servicer that was exempt from § 1024.39(a) and (b) pursuant to § 1024.39(e)(1) must resume compliance with § 1024.39(a) and (b) after the next payment due date following the forbearance end date. This proposed approach would align with the approach used in § 1024.39(c)(2) for resuming compliance with § 1024.39(a) and (b) after the borrower has become a debtor in a bankruptcy proceeding.⁵⁹ Additionally, the CFPB preliminarily finds that resuming compliance on the next payment due date provides servicers with a clear date for resuming compliance.

Existing § 1024.39(b)(1) provides that a servicer is not required to provide the written notice required by § 1024.39(b) more than once during any 180-day period. Because it would be functionally identical to the § 1024.39(b) written notice, the § 1024.39(e)(2)(ii) written notice is a suitable substitute for the § 1024.39(b) written notice and should reset the start date for calculating the 180-day period in § 1024.39(b). To this end, proposed § 1024.39(e)(3) would clarify that, for purposes of providing the written notice required by § 1024.39(b) after resuming compliance, the 180-day period referenced in § 1024.39(b) begins with the date the

⁵⁸ See Fannie Mae, *Forbearance Plan Terms*, in Fannie Mae Servicing Guide—Fannie Mae Single Family, at 319 (May 8, 2024), <https://singlefamily.fanniemae.com/media/39096/display> (Fannie Mae Forbearance Plan Terms); Freddie Mac Single Family, *Contact Requirements when transitioning from a forbearance plan* (Oct. 11, 2023), <https://guide.freddie.com/app/guide/section/9203.14>.

⁵⁹ See 12 CFR 1024.39(c)(2)(i) (“[A] servicer that was exempt from paragraphs (a) and (b) of this section . . . must resume compliance with paragraphs (a) and (b) of this section *after the next payment due date that follows the earliest of the following events . . .*”) (emphasis added).

servicer provided the last written notice to the borrower under either § 1024.39(b) or § 1024.39(e)(2)(ii), whichever is later.

3. Amendment To Comment 39(a)–4.i.A

Promptly after establishing live contact, § 1024.39(a) requires a servicer to inform a delinquent borrower about the availability of loss mitigation options “if appropriate.” Existing comment 39(a)–4.i states that it is appropriate for a servicer to inform a delinquent borrower about the availability of loss mitigation options if the borrower notifies the servicer of a material adverse change in their financial circumstances that is likely to cause them to experience a long-term delinquency for which loss mitigation options may be available.

The CFPB proposes to amend the example in comment 39(a)–4.i.A to clarify that it is appropriate for a servicer to inform a delinquent borrower about the availability of loss mitigation options if the borrower notifies the servicer of a hardship for which a loss mitigation option may be available. The CFPB proposes this change to make clear that it would be appropriate to inform borrowers about the availability of loss mitigation options whenever a loss mitigation option may be available to the borrower, irrespective of the projected length of the borrower’s delinquency or the extent to which the borrower’s financial circumstances have changed.

4. Amendment To Comment 39(a)–6

Existing comment 39(a)–6 clarifies, among other things, that:

[i]f the servicer has established and is maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41, including during the borrower’s completion of a loss mitigation application or the servicer’s evaluation of the borrower’s complete loss mitigation application, or if the servicer has sent the borrower a notice pursuant to § 1024.41(c)(1)(ii) that the borrower is not eligible for any loss mitigation options, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact.

To reflect the new loss mitigation requirements in proposed § 1024.41, discussed in part IV.A, proposed comment 39(a)–6 would replace the phrase “maintaining ongoing contact with the borrower under the loss mitigation procedures under § 1024.41” with the phrase “maintaining regular contact with the borrower during a loss mitigation review cycle under § 1024.41” and would strike examples referencing the borrower’s completion

of a loss mitigation application, the borrower’s complete loss mitigation application, and the § 1024.41(c)(1)(ii) notice.

The CFPB requests comment on all aspects of proposed § 1024.39(e) and, in particular, requests comment on the following issues:

(i) Do the live contact and written notice requirements in proposed § 1024.39(e)(2)(i) and (ii) align with existing investor requirements for contacting borrowers before the end of their forbearance period?

(ii) Would borrowers in a forbearance who are no longer delinquent for purposes of § 1024.39 benefit from additional servicer contact before the scheduled end of their forbearance period? If so, what information should servicers provide to such borrowers during such contact?

C. Loss Mitigation Determinations—Covered Errors and Appeals Process (§§ 1024.35 and 1024.41)

The CFPB proposes to amend Regulation X to clarify that inaccurate loss mitigation determinations are a covered error under the existing error resolution provisions in § 1024.35. In addition, the CFPB proposes to amend the current loss mitigation appeal process provisions in § 1024.41(h) to clarify how they relate to the procedures in § 1024.35 and to expand them to cover all loss mitigation determinations, instead of only loan modification denials. Lastly, the CFPB proposes to amend comment 41(h)(3)–1 to remove all references to a complete application, conforming to changes the CFPB proposes to make throughout § 1024.41, as discussed above.

The CFPB is aware of confusion about whether the “catch-all” category in the error resolution procedures in § 1024.35(b)(11) includes loss mitigation determinations. Although the CFPB did not explicitly specify loss mitigation determinations as a covered error category in the 2013 Mortgage Servicing Final Rule, it has always intended for the catch-all to cover a broad range of errors—including errors related to loss mitigation determinations. However, courts have interpreted this issue inconsistently, with some courts finding that the catch-all does include loss mitigation determinations, and others finding that it does not. Thus, the CFPB believes that it should provide clarity on this issue in a manner that is consistent with its longstanding interpretation and original intent.

Given the interrelatedness of the subject matter and policy goals of the two provisions, the CFPB proposes to amend both the error resolution

provision in § 1024.35 and the appeal process provision in § 1024.41(h) as described below.

1. Error Resolution Provisions

Regulation X’s error resolution provisions in § 1024.35 currently implement RESPA sections 6(k)(1)(C) and 6(e), requiring a servicer to comply with several specific procedural requirements, including conducting a reasonable investigation, for any written notice from the borrower that asserts a covered error and that meets other specified criteria. Under RESPA, servicers must respond to qualified requests to address errors related to “allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer’s duties.” 12 U.S.C. 2605(k)(1)(C). Section 1024.35 lists ten specifically enumerated categories of covered errors, plus a catch-all for “any other error relating to the servicing of a borrower’s mortgage loan.”

The CFPB has consistently viewed servicer activities related to whether a borrower is able to avoid foreclosure—including loss mitigation determinations—as core duties of mortgage servicing, fitting squarely within RESPA and Regulation X’s coverage and purpose. As defined in § 1024.31, a loss mitigation option is an alternative to foreclosure. Borrowers request loss mitigation options to avoid foreclosure, and, if a servicer makes an error related to a loss mitigation determination, that error ultimately may result in a foreclosure. Losing a home due to an avoidable foreclosure may be one of the greatest financial harms that can come to a mortgage borrower. Thus, the CFPB has consistently viewed servicer errors related to loss mitigation determinations as errors relating to the servicing of a borrower’s mortgage loan.

In promulgating the 2013 Mortgage Servicing Final Rule, the CFPB considered but declined to add an enumerated category in § 1024.35 for a servicer’s failure to correctly evaluate a borrower for a loss mitigation option.⁶⁰ However, the CFPB did not conclude that errors related to loss mitigation determinations were excluded from § 1024.35’s reach. Rather, the CFPB explained in preamble that it intended the appeals process in § 1024.41(h) as well as the catch-all in § 1024.35 to be available for borrowers who encountered errors related to loss mitigation.

The CFPB stated that it intended the catch-all error provision to be broad and flexible. RESPA expressly prohibits

⁶⁰ 78 FR 10696, 10744 (Feb. 14, 2013).

servicers from, among other things, failing to take timely action to respond to a borrower's request to correct errors relating to avoiding foreclosure or other standard servicer's duties. In promulgating the 2013 Mortgage Servicing Final Rule, including the error resolution provisions, the CFPB stated that it believed that any error related to the servicing of a borrower's mortgage loan also relates to standard servicer duties. In the preamble discussion regarding the catch-all provision, the CFPB stated that it recognized that the mortgage market was fluid, and the CFPB could not anticipate in advance all types of errors related to servicing that a borrower may encounter. In finalizing the catch-all, the CFPB aimed to create error resolution procedures that were flexible enough to adapt to changes in the mortgage market and to encompass the various types of errors that borrowers may encounter with respect to their mortgage loans.

The CFPB emphasized that its approach to loss mitigation was not limited to the loss mitigation procedures set forth in § 1024.41 but involved a coordinated use of tools in different provisions of the rules, including the error resolution procedures in § 1024.35.⁶¹

The CFPB's 2016 Mortgage Servicing Final Rule reiterated the CFPB's view that § 1024.35's error resolution requirements have always applied to errors related to loss mitigation determinations. At that time, the CFPB was considering whether to extend the period during which a borrower could exercise appeal rights in cases where servicing of the borrower's loan has been transferred. The CFPB explained that it decided not to provide such an extension, but noted that even absent appeal rights, borrowers may still submit a notice of error relating to the loss mitigation or foreclosure process and to the servicing of the loan, and servicers must comply with the notice of error provisions.⁶²

However, as noted above, the catch-all has not always been interpreted as broadly as the CFPB intended in the 2013 Mortgage Servicing Final Rule. Given the inconsistent application, the CFPB has preliminarily determined that both servicers and borrowers would benefit from the CFPB expressly clarifying that errors related to loss mitigation determinations are subject to the error resolution procedures in § 1024.35. Thus, the CFPB proposes to amend § 1024.35(b)(11) to specify that it

covers a servicer's failure to make an accurate loss mitigation determination.

The proposed additional language would not create additional rights for consumers or extra burdens for servicers. Rather the additional language regarding inaccurate loss mitigation determinations is intended to merely clarify what the CFPB has always considered to be a covered error under the catch-all provision.

The CFPB anticipates that this provision would work together with proposed § 1024.41(c), which would require servicers to provide more specific information to borrowers in loss mitigation determination offer and denial notices, allowing borrowers to have more insight into specific reasons for servicers' loss mitigation determinations and whether those inputs were accurate. Proposed § 1024.35(b)(11) would not, however, cover challenges to investor requirements or specifications, such as, for example, a requirement that a borrower complete a trial period before being offered a loan modification.

2. Appeals Process

Section 1024.41(h) currently permits a borrower to appeal a denial of a loan modification program as long as the borrower's complete loss mitigation application is timely received, and the borrower appeals within specific timeframes. Different personnel must review an appeal than those responsible for evaluating the borrower's complete loss mitigation application. Within 30 days of a borrower making an appeal, the servicer must provide a notice to the borrower stating the servicer's determination.

The CFPB recognizes that an appeal process similar to that in existing § 1024.41(h) may be useful when a borrower believes an error has occurred in a loss mitigation determination. A borrower may be more familiar with the concept of an appeal and thus might be more likely to submit an appeal to a servicer rather than a notice of error under § 1024.35. Thus, the CFPB is proposing to retain a revised appeals process in § 1024.41(h). As described in proposed § 1024.41(h)(2), however, when the appeal meets the error resolution procedural requirements of § 1024.35, the proposed rule would require servicers to treat it as a notice of error and to comply with those procedural requirements.

Similarly, proposed § 1024.41(h)(2) would provide that if a borrower submits a notice of error under § 1024.35 relating to a loss mitigation determination, the notice of error is also an appeal under § 1024.41(h) if the

borrower submits notice of error within 14 days after the servicer provides its loss mitigation determination. The CFPB also proposes to amend § 1024.41(h)(4) to require that, when a notice of error is also an appeal, a servicer must complete the notice of error response requirements in § 1024.35 prior to making a determination about the borrower's appeal under § 1024.41(h). As a result, the proposed rule would require servicers to respond to a notice of error within 30 days, the time allowed under existing § 1024.41(h)(4) for an appeal, even in those circumstances when § 1024.35 allows servicers more than 30 days to respond to notices of error.

In addition, if a borrower contests a loss mitigation determination in a manner that does not satisfy the procedural requirements of § 1024.35, the proposed rule would require a servicer to continue to treat the borrower's statement as an appeal under § 1024.41(h) and to respond to it in accordance with its policies and procedures for appeals.

The appeal rights in § 1024.41(h) currently apply only to loan modification denials; they do not cover other types of loss mitigation. In the 2013 Mortgage Servicing Final Rule, the CFPB explained that it was limiting the appeal provision to loan modification denials because this approach maintained consistency with existing appeals and escalation processes established under State law or Federal regulatory agency requirements, including obligations pursuant to the National Mortgage Settlement and the California Homeowner Bill of Rights. This limited approach was consistent with a national focus on loan modifications as a necessary and under-used tool for addressing the historic rates of foreclosures. As discussed in part II, default mortgage servicing has changed dramatically in the intervening years. As a result, the CFPB proposes to amend § 1024.41(h) to apply to all loss mitigation determinations, not just loan modification denials. This proposed change would require servicers to provide appeal determination notices. As discussed below in this part, in the case of a loss mitigation offer, the primary benefit to borrowers of requiring detailed determination notices is to assist the borrower with potential appeals or notices of error in cases where the terms of the offer may depend on borrower-provided inputs. By providing details on the inputs used as basis for the determination, the proposed notices may enable borrowers to recognize errors in determinations and to file a notice of error or an appeal.

⁶¹ *Id.* at 10816.

⁶² 81 FR 72160, 72281 (Oct. 19, 2016).

Finally, the CFPB proposes to amend § 1024.41(h)(1) to remove the reference to the servicer receiving a complete loss mitigation application 90 days or more before a foreclosure sale, because it would no longer be applicable under the proposed framework.

3. Loss Mitigation Determination Notices

The CFPB proposes to amend the loss mitigation determination notice and loan modification denial notice provisions in existing § 1024.41(c) and (d) to require that servicers provide determination notices regarding both offers and denials as well as all types of loss mitigation options, instead of just loan modifications. Under the proposed rule, servicers would provide borrowers with additional information in connection with their loss mitigation determinations, including, for example, the specific reason or reasons for the determination to offer or deny loss mitigation assistance and any key borrower-provided inputs that served as the basis of the determination. The CFPB also proposes requirements regarding offers of loss mitigation from a servicer when a borrower has not requested loss mitigation assistance. The CFPB proposes to make conforming changes to relevant existing commentary and renumber certain provisions for alignment with the proposed changes.

Additionally, under this proposal, existing § 1024.41(c)(4), which relates to denials of loss mitigation solely because the servicer lacks required documents or information not in the borrowers' control and associated determination notices, would be relocated to § 1024.41(c)(2) with certain revisions.

Section 1024.41(c) currently requires servicers to evaluate a borrower for all available loss mitigation options upon receipt of a complete application and to provide, among other information, a notice stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower. Under existing § 1024.41(d), if the servicer denies the borrower any trial or permanent loan modification option, the notice must include information such as the specific reason or reasons for the servicer's determination, but this requirement does not apply to determinations on loss mitigation options other than loan modifications.

As discussed above in part IV.A, the CFPB proposes to replace the existing loss mitigation framework with a new framework that will allow servicers to review borrowers for loss mitigation options sequentially. Accordingly, the

CFPB proposes to amend § 1024.41(c) to remove references to complete applications and related timing requirements so that it instead focuses on loss mitigation determination notice requirements more generally. The notices would add new specific information as well as include some of the information required under existing § 1024.41(c), such as the amount of a time a borrower has to accept or to reject an offer and the right to appeal.

i. Expansion of Determination Notice Requirements to Offers and Loss Mitigation Options Other Than Loan Modifications

Under existing § 1024.41(d), borrowers only receive the specific reason or reasons for a loss mitigation determination when that determination is a denial. The CFPB preliminarily determines that servicers should be required to disclose the same information for loss mitigation offers in order to inform borrowers about the information relied upon while conducting the review, as this information could require correction or serve as the basis for an appeal. As noted in part II, non-loan modification loss mitigation options, such as forbearances, deferrals, and partial claims, have become increasingly common in recent years. The CFPB therefore also proposes to broaden the determination notice requirements to apply more generally to all types of loss mitigation offers and denials, not solely denials of loan modifications.

ii. Additional Information in Determination Notices

In addition to disclosing the amount of time the borrower has to accept or to reject an offer, notice of the borrower's right to appeal the loss mitigation determination, and the specific reason or reasons for that loss mitigation determination, the CFPB is proposing to require that servicers include the additional information discussed below in determination notices.

a. Borrower-Provided and Non-Borrower Provided Inputs

Servicers may rely on a variety of borrower-provided and non-borrower-provided inputs when determining whether to offer or to deny loss mitigation assistance to a borrower. Borrower-provided inputs, for example, can include information such as household income. Non-borrower provided inputs, for example, can include property valuations and credit scores. The CFPB proposes to require disclosure of the key borrower-provided inputs that served as the basis for the

determination. For example, if a servicer relied on income information provided by the borrower, the servicer would be required to state that this information served as the basis for the determination and to provide the income figure relied upon. The CFPB preliminarily determines that borrowers would benefit from being made aware of the specific information that went into the servicer's determination so that they have an opportunity to correct any errors, file an appeal, or both. Errors could prevent a borrower from being appropriately evaluated for all available loss mitigation options for which they may be eligible, and therefore lead to a foreclosure action that could have been avoided. Allowing the borrower insight into the specific borrower-provided inputs in the written determination notice may help ensure the borrower promptly contacts the servicer and seeks a correction where there is an error. The CFPB preliminarily determines that providing this information to borrowers may prevent avoidable foreclosures.

The CFPB is not requiring proactive disclosure of all non-borrower provided inputs, although a borrower or the borrower's representative would be able to access this information via mail, telephone, or website, as detailed in the notice. Such information may not be useful to the borrower when they are simply used in the review process and do not serve as the basis for the determination. For example, a servicer could deny a loan modification after reviewing the borrower's income information, credit score, and the property's present value. Under the proposed rule, if the servicer only relied on the borrower's income in making the determination, the servicer would only be required to disclose the borrower's income relied on and not the property value or credit score. If, however, credit score was determinative for the servicer, the servicer would be required to disclose the credit score as the specific reason for the determination. The CFPB is aware that certain borrower-provided inputs constitute sensitive consumer information. As the CFPB has previously noted, it expects servicers and other financial institutions to take appropriate measures to protect consumer data.⁶³

The CFPB proposes that determination notices must include a telephone number, mailing address, and website to access a list of non-borrower provided inputs, if any, that the servicer

⁶³ See CFPB, *Consumer Financial Protection Circular 2022-04* (Aug 11, 2022), <https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/>.

used in making the loss mitigation determination. The CFPB preliminarily determines that it would be useful for borrowers exercising their appeal rights and seeking this information to have access to it upon request, such that borrowers could readily identify and correct any errors on file with the servicer.

b. Enabling the Borrower To Access a List All Loss Mitigation Options That May be Available From the Investor

Consistent with allowing for sequential loss mitigation review, the CFPB proposes that a written determination notice must include a telephone number and website to access a list of all loss mitigation options that may be available from the investor. This proposed requirement mirrors the CFPB's proposed requirements as to the written early intervention notice, such that the borrower would be able to access this resource readily at this stage of the loss mitigation review process rather than solely at the point of early intervention. Making this information more accessible to the borrower is expected to allow borrowers to assess their options in deciding whether to use their appeal rights, file a notice of error, accept or decline an offer, or request review for a different loss mitigation option.

Under the proposed rule, the servicer would be responsible for ensuring that the website is accessible, contains accurate information, and that the lists are complete, but the servicer may outsource the development and/or maintenance of the website to a third party. The requirement that this information also be available via telephone is intended to ensure that borrowers who may not have access to the internet are still able to receive this information. The telephone number may be, but is not required to be, the same as the telephone number that a servicer may provide in order for the borrower to contact assigned personnel under the continuity of contact provision pursuant to § 1024.40(a)(2). The CFPB anticipates that this requirement should not overly burden servicers because it is the same information made available in the written early intervention notice provided pursuant to § 1024.39(b).

c. Remaining Available Loss Mitigation Options, Previously Offered Options, and Continued Availability of Offered Options

The CFPB also proposes to require servicers to disclose additional information about remaining loss mitigation options, including previously offered options that the borrower did

not accept, and whether offered options will remain available if the borrower requests review for additional options prior to accepting or rejecting an offer. Informing the borrower of all other loss mitigation options that are still available, if applicable, along with a clear statement describing the next steps the borrower must take to be reviewed for those options, could be useful for the borrower to engage with the servicer as to what loss mitigation assistance they could still request following the determination. If no loss mitigation options remain available, then the servicer would be required to include a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain. Additionally, the servicer would be required to include a list of any loss mitigation options that were previously offered that remain available, but that the borrower did not accept at the time. If the loss mitigation determination results in an offer, the servicer would be required to include a statement informing the borrower whether the offered option would remain available if the borrower were to request further review for other loss mitigation options prior to accepting or rejecting the offer. If the determination results in a loss mitigation offer of a forbearance, the servicer would be required to include a statement informing the borrower of the specific payment terms and duration of the forbearance. This proposed disclosure requirement regarding forbearances is similar to an existing disclosure requirement in current § 1024.41(c)(2)(iii). As noted above, the CFPB is proposing to delete that existing provision. However, the CFPB expects that it would continue to benefit borrowers to have a written notice confirming that their servicer is aware of and agrees to a forbearance for a certain period of time.

iii. Denial Due to Missing Documents or Information Not in the Borrower's Control

Existing § 1024.41(c)(4) generally prohibits a servicer from denying a loss mitigation application due solely to missing information not in the borrower's or servicer's control unless the servicer has exercised reasonable diligence to obtain that information and has been unable to obtain it for a significant period of time following the 30-day period during which servicers are generally required to make a determination on a complete loss mitigation application under current § 1024.41(c)(1)(ii). If the servicer does deny such a loss mitigation application, they must send a written notice

informing the borrower of the missing information, that the servicer has requested the information, and that the servicer will evaluate the borrower for all available loss mitigation options promptly upon receiving it. The CFPB is proposing to replace current § 1024.41(c)(4) and related commentary with proposed § 1024.41(c)(2), which would have similar requirements but also include certain changes to align with the other proposed changes in § 1024.41.

As noted in part IV.A, the CFPB is proposing to remove existing § 1024.41(c)(1)(ii). Thus, the regulatory text in current § 1024.41(c)(4) and related commentary pertaining to the 30-day review period in existing § 1024.41(c)(1)(ii) would no longer be relevant under the new proposed loss mitigation framework. Instead, proposed § 1024.41(c)(2)(i) would prohibit servicers from denying a loss mitigation application due solely to missing information not in the borrower's or servicer's control unless the servicer has regularly taken steps to obtain the missing information and has been unable to obtain the information for at least 90 days. For example, if a servicer receives a request for loss mitigation on a Monday and requests information not in the borrower's or servicer's control on the following Friday, assuming the servicer regularly took steps to obtain the missing information, the servicer may send a written notice to the borrower, in accordance with proposed § 1024.41(c)(2), 90 days from the Friday it requested the information not in the borrower's or servicer's control. While every situation will vary, the CFPB expects that regularly taking steps would minimally include repeated attempted contact throughout the 90-day period with the relevant third party from whom the servicer needs to obtain the information. Requiring that the servicer has regularly taken steps to obtain any information and documents necessary from a party other than the borrower or the servicer is intended to ensure that servicers are making efforts to obtain needed information before denying a loss mitigation application due to missing information. While the CFPB proposes to replace the term reasonable diligence with the regularly taking steps phrasing that uses simpler language, it does not intend to reduce or to lessen a servicer's current obligation to obtain missing documents or information not in the borrower's control. The CFPB's proposal of 90 days is similar to the timeframe used for the unresponsive borrower provision in proposed § 1024.41(f)(2)(ii). The CFPB

preliminarily determines that proposed § 1024.41(c)(2)(ii) will provide an incentive to servicers to obtain needed information from third parties in a timely manner.

Proposed § 1024.41(c)(2)(ii) also would require servicers to provide a notice to borrowers if they deny such an application. The notice requirements in proposed § 1024.41(c)(2)(iii) would retain aspects of the notice requirements in existing § 1024.41(c)(4), including requiring a statement that the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the missing third-party information, but also would provide borrowers with additional information. Existing § 1024.41(c)(4) does not allow the servicer to state a period of time after which the servicer will not complete its loss mitigation evaluation even if the servicer receives the missing information. As noted in part IV.A, the CFPB is proposing a new § 1024.41 loss mitigation framework that would generally require a servicer to exhaust review for all available loss mitigation options prior to advancing foreclosure, and this new framework allows for the possibility of sequential loss mitigation review. The CFPB preliminarily determines that it is important for a servicer to be able to determine with certainty whether it has met the procedural safeguards in proposed § 1024.41(f)(2)(i) to (ii) and can move forward with foreclosure. This is especially the case if a servicer elects or is required by the loan's investor to conduct review for loss mitigation options sequentially, which could involve a lengthy overall process. Therefore, the CFPB is proposing to require a servicer to inform the borrower that the servicer will complete its evaluation of the request for loss mitigation assistance if the servicer receives the referenced missing documents or information within 14 days of providing the missing information determination notice to the borrower. This proposed timeframe is similar to the timeframe during which a servicer must allow a borrower to appeal a loan modification denial pursuant to existing § 1024.41(h)(2).

Proposed § 1024.41(c)(2)(iii) also would require servicers to provide borrowers with the information contained in proposed § 1024.41(c)(1)(iv) through (ix), which includes, among other things, a list of all other loss mitigation options that are still available to the borrower and a statement describing the next steps the borrower must take to be reviewed for those loss mitigation options, or a

statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain. The CFPB preliminarily determines that providing this information would aid borrowers in protecting their rights, which may include filing an appeal pursuant to proposed § 1024.41(h), a notice of error pursuant to § 1024.35, or both.

The CFPB requests comment on all aspects of proposed § 1024.41(c)(2). In particular, the CFPB is interested in whether a more prescriptive standard would be helpful for determining whether a servicer took regular steps to obtain missing information not in the borrower's or servicer's control, or if there is clearer language to convey the concept of "regularly taking steps" that still allows for flexibility over a variety of circumstances over time.

iv. Unsolicited Loss Mitigation Offers

The CFPB understands that servicers may frequently and routinely review borrowers for loss mitigation, using automated processes required by investors, without a borrower request and solely based on information already on record.⁶⁴ While potentially helpful to borrowers, these reviews and subsequent offers nevertheless may fail to inform borrowers about other loss mitigation options for which they may have been eligible, because such information is not required under current § 1024.41(c)(1)(ii).

The CFPB preliminarily determines that, in these circumstances, borrowers would not necessarily benefit from notices of denials, but that the additional information regarding available options in notices of offers would be helpful to borrowers deciding whether to seek additional loss mitigation assistance. The CFPB proposes that servicers provide the borrower with a notice when it offers a loss mitigation option, even when the servicer has reviewed no borrower-provided information. The notice would be required to include the amount of time the borrower has to accept or reject the offer of loss mitigation, and information notifying the borrower, among other things, of remaining available loss mitigation options and investor information.

v. Removal and Amendment of Current Commentary

The CFPB proposes to remove comment 41(c)(1)–1 because the new proposed framework refers to the

servicer's review of a borrower's request for loss mitigation assistance, and the language would be updated throughout Regulation X consistent with this change. The new proposed removal of comment 41(c)(1)–1 does not constitute a substantive change in how the CFPB views the relationship between an investor and servicer, including with respect to reviewing requests for loss mitigation assistance in accordance with CFPB regulations. The CFPB also proposes to make conforming edits to current comments 41(d)–1 through –4 in accordance with the changes to the loss mitigation determination notice requirement described above. Under the proposed rule, comment 41(d)–1 would no longer discuss disclosure requirements if a denial was based on investor criteria, such as a waterfall, because the current obligation to approve or deny every loss mitigation option following the servicer's receipt of a complete loss mitigation application would no longer apply under the new proposed framework. Instead, even if a borrower qualifies for a loss mitigation option, other options may still remain available for them rather than be automatically denied because of the position of the option in the investor's waterfall.

The CFPB proposes to remove comment 41(d)–2 because a net present value (NPV) calculation is no longer a frequently used calculation in the loss mitigation review process. Therefore, requiring disclosure of the key borrower-provided inputs that served as the basis of the determination, and all non-borrower provided inputs available via telephone or on a website, should allow borrowers and their representatives to better identify critical information and allow for future changes to servicer practices in loss mitigation evaluations. Additionally, the CFPB proposes to remove comment 41(d)–3 because servicers would be required to send specific determination notices for both offers and denials of all forms of loss mitigation, not solely for denials of loan modification options.

Finally, the CFPB proposes to update comment 41(d)–4 to apply the requirement that the specific reason or reasons for the denial be listed in the notice to all determinations, and not solely denials. The CFPB also proposes to remove references to the investor's hierarchy of eligibility criteria in comment 41(d)–4. As noted above, borrowers who are offered a loss mitigation option may remain eligible for other loss mitigation options in the investor's waterfall for which they have not yet been reviewed. Additionally, in connection with the proposed removal

⁶⁴ See, e.g., Bill Maguire, Freddie Mac, *Guide Bulletin 2023–8: Servicing Updates* (Mar. 29, 2023), <https://guide.freddiemac.com/app/guide/bulletin/2023-8>.

of § 1024.41(d), the CFPB also proposes to relocate comments 41(d)–1 and (d)–4 to appear as comments 41(c)–1 and 41(c)–2.

The CFPB proposes to update § 1024.41(e)(1) to remove references to a complete loss mitigation application and instead apply the existing timing requirements to a borrower's request for loss mitigation assistance. Under the new proposed framework, which allows for sequential review for loss mitigation assistance, the timing requirements of § 1024.41(e)(1) would be triggered by a borrower's initial request for loss mitigation assistance, regardless of whether the servicer subsequently reviews the borrower for additional loss mitigation options. For example, if a foreclosure sale is scheduled for December 1 and a borrower makes a request for loss mitigation assistance on August 1, the borrower would be entitled to the 14-day period to accept or reject any offered loss mitigation option because the initial request for loss mitigation assistance occurred 90 days or more before a scheduled foreclosure sale. This would be the case regardless of when the servicer makes the offer to the borrower.

The CFPB requests comment on all aspects of its proposal to amend Regulation X's requirements related to loss mitigation determination notices and, in particular, requests comment as to whether there are opportunities for further simplification and streamlining of the loss mitigation determination notices.

D. Language Access

The CFPB is proposing several requirements that would provide borrowers with limited English proficiency greater access to mortgage servicing communications in languages other than English. These proposed requirements are a first step towards the goal of ensuring that all borrowers have access to information they need, when they need it, regardless of the language they may use to communicate. In general, the proposed rule would require mortgage servicers to accurately provide or make available in multiple languages certain written and oral communications under the CFPB's mortgage servicing early intervention and loss mitigation provisions, including any applicable amendments to those provisions as discussed within this proposed rule. The proposed rule would also impose certain requirements aimed at helping to ensure that borrowers who receive marketing for a loan in a language other than English receive the identified early intervention and loss mitigation communications

accurately in that same language. Finally, the CFPB is also proposing conforming edits to § 1024.32(a)(2), which currently provides for optional servicing disclosures in languages other than English.

Based on the most recently available 2022 American Community Survey of 1-Year Estimates from the United States Census, almost one fourth of the population is estimated to reside in a household that speaks a language other than English.⁶⁵ Of those households, almost one fifth have limited proficiency in English, meaning that while they may be highly literate in their preferred language, they both do not speak English as their primary language (sometimes referred to as “non-native English speakers”) and have a limited ability to read, speak, write, or understand English.⁶⁶ Nationally, the most frequently spoken languages among these households are Spanish, Chinese (including Mandarin or Cantonese), French/Cajun/Haitian, Russian/Polish/Other Slavic languages, Tagalog (including Filipino), German or West Germanic languages, Vietnamese, Arabic, and Korean. Additional languages may be more common in particular regions. According to the survey, as of 2022, Spanish-speaking households account for 13 percent of households in the United States and for 59 percent of households with limited English proficiency in the United States, while the other languages are used at rates between 1 percent and 9 percent of households with limited English proficiency nationally.⁶⁷

CFPB outreach and market monitoring has shown that when borrowers with limited English proficiency are not able to access early intervention and loss mitigation communications in their

preferred language or when they obtain inaccurate translations of these communications, those borrowers may have reduced ability to receive effective loss mitigation assistance and may experience avoidable foreclosures.⁶⁸ Mortgage servicing communications provide critical information for borrowers, and when those communications relate to delinquency, they are often the first step to help borrowers explore loss mitigation options to avoid foreclosure. These communications provide instructions and binding agreement details, and many contain technical legal information or information about complex and specialized financial topics. Borrowers who fluently communicate in English may have difficulty understanding some of this legal and financial text, and that difficulty may compound for borrowers with limited English proficiency. The increased difficulty in understanding this information may result in missed information or a lack of communication with the servicer if borrowers do not receive language assistance, or it may push borrowers to seek outside sources for assistance that may not be well versed in these topics or may not act in the borrower's interest.

Based on discussions with stakeholders, the CFPB understands that there are some mortgage servicers that are successfully addressing borrower language needs. These servicers effectively determine which languages are necessary for the geographic areas in which they do business, the investors they serve, and their business models. In determining which languages are best for their business, these servicers can quickly adapt as those borrower needs or business models change. They can provide informed translations and interpretation services, accurately conveying information to many borrowers in their preferred language, and do so in hundreds of languages.

However, these efforts are not universal across the mortgage market. Borrowers, consumer advocates, and industry stakeholders have expressed concern that borrowers' ability to access mortgage information in their preferred

⁶⁵ See U.S. Census Bureau, *2022 American Communities Survey Estimates Data: Detailed Household Language by Household Limited English Speaking Status*, American Community Survey Table B16002, <https://data.census.gov/table/ACSDT1Y2022.B16002?t=Language%20Spoken%20at%20Home&y=2022> (last visited July 1, 2024) (2022 ACS Table). This survey identifies “limited English-speaking households,” which it defines as a household in which no member 14 years old and over (1) speaks only English or (2) speaks a non-English language and speaks English “very well.” This notice uses the term limited English proficiency, which for purposes of this notice effectively has the same meaning.

⁶⁶ For more information about what “limited English proficiency” means, see, e.g., Civ. Rights Div. of the U.S. Dep't of Justice, *Commonly Asked Questions*, <https://www.lep.gov/commonly-asked-questions> (last visited July 1, 2024).

⁶⁷ See, e.g., 2022 ACS Table; see also Edward Golding et al., *Is Limited English Proficiency a Barrier to Homeownership?*, Urb. Inst. (Mar. 2018), https://www.urban.org/sites/default/files/publication/97436/is_limited_english_proficiency_a_barrier_to_homeownership.pdf.

⁶⁸ See, e.g., *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)* 81 FR 72160, 72163 (Oct. 19, 2016). See also CFPB, *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace*, at 6–7 (Nov. 2017), https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf; CFPB, *Statement Regarding the Provision of Financial Products and Services to Consumers With Limited English Proficiency*, 86 FR 6306 (Jan. 21, 2021).

language remains challenging.⁶⁹ Some servicers may not offer borrowers translated mortgage-related financial disclosures and written documents or may not provide access to oral interpretation services.⁷⁰ Further, even when servicers make available communications in a borrower's preferred language, borrowers may not be able to obtain or effectively use those communications in their preferred language because (1) the availability may not be widely known, (2) the communications may have accuracy issues, or (3) accessing the communications in the borrower's preferred language may be prohibitively difficult.⁷¹ For example, borrowers that prefer languages other than English often find that they encounter delays using interpretation services offered by their mortgage servicer.⁷²

The CFPB expects mortgage servicers to assist borrowers with limited English proficiency. As noted in the 2016 Mortgage Servicing Final Rule, this includes communicating with borrowers clearly in the borrower's preferred

language, where possible, and especially when lenders advertise in the borrower's preferred language.⁷³ In that rule, the CFPB stated that it was not imposing mandatory language translation requirements or other language access requirements at that time because, among other reasons, it had not had the opportunity to take comment from all interested parties about the challenges in addressing language access in the mortgage servicing context. The CFPB stated that it would continue to consider language access in connection with mortgage servicing and that it would further consider translation or interpretation in the mortgage servicing context, if appropriate.⁷⁴ Since that time, the CFPB has conducted outreach and stakeholder engagement and received comments from borrowers, consumer advocates, and industry stakeholders on more recent rulemakings and requests for information. Based on the information received, the CFPB better understands the challenges and obstacles faced by both mortgage borrowers and the mortgage servicing industry, as well as the successful actions some have taken to overcome these challenges.

In order to meet the language access goals identified above and in recognition of the successful industry practices noted above, the CFPB is proposing to require servicers to provide (1) Spanish-language translations of certain written communications to all borrowers; (2) upon borrower request, translation or interpretation services of certain written and oral communications in the requested language (as long as it is one of the "servicer-selected languages" discussed below), as well as brief translated statements on certain written communications in five servicer-selected languages identifying the availability of translations in those languages and how the borrower can request those translations (*i.e.*, translation and interpretation availability statements); and (3) upon borrower request, translation or interpretation services of certain written and oral communications in languages the servicer knows or should have known were used in marketing to the borrower for that mortgage loan.

The CFPB is not including proposed regulation text for these proposed requirements as there may be multiple ways to structure the specific requirement options detailed above, which will vary based on the aspects of the proposed rule ultimately finalized. The CFPB recognizes that public input will help design an effective intervention, including potentially identifying additional relevant details or alternative approaches, and is eager to consider those suggestions as it drafts regulatory text. Though the CFPB is currently proposing to limit these requirements to delinquency-related communications, it may also consider additional language access and translation requirements in future rulemakings.

The CFPB is seeking comment generally on current language access practices and standards in the mortgage servicing industry that could help further inform the final rule, and specifically:

- (i) What is the capacity and availability of translation and interpretation services used by servicers, including third-party translation services? Have servicers experienced difficulty obtaining translation or interpretation services, and if so, what are the details of those difficulties?
- (ii) What difficulties have borrowers experienced obtaining translation or interpretation services?
- (iii) Are there servicers that specialize in servicing mortgage loans for borrowers who speak languages other than English and Spanish, and if so, do they also originate mortgages using those languages?
- (iv) Are there details the CFPB should provide on the extent to which and how servicers currently translate or engage interpretation services for less frequently spoken languages in the United States?
- (v) How accurate are translations and interpretations of mortgage servicing communications currently and what practices are used to ensure accuracy? Are there factors that affect the enforceability of requiring accuracy that the CFPB might consider? Are there bona fide errors that may occur that the CFPB should consider?
- (vi) Are there any relevant State laws that may affect provision of mortgage servicing communications in languages other than English?
- (vii) Are there additional flexibilities the CFPB should consider to help ensure servicers are able to properly tailor these requirements to the language needs of their borrowers?

⁶⁹ See, e.g., comments received in response to recent rulemakings and requests for information, such as the CFPB's *Request for Information on the Equal Credit Opportunity Act and Regulation B*, 85 FR 46600 (Aug. 3, 2020), and the CFPB's *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X*, 86 FR 34848 (June 30, 2021). See also Petition from NCLC to Rohit Chopra, Director, CFPB Re. Request for RESPA Rulemaking: Home Equity Lines of Credit, Home Equity Conversion Mortgages, Language Access, and Manufactured Housing (Aug. 29, 2023), <https://www.regulations.gov/document/CFPB-2023-0045-0001>; Letter from Edward J. DeMarco, President, Hous. Pol'y Council to Rohit Chopra, Director, CFPB Re. CFPB's Upcoming Rulemaking on Regulation X Loss Mitigation Rules (Nov. 29, 2023), https://www.housingpolicycouncil.org/_files/ugd/d315af_e2ce077e731d403f9c1f8407622158c8.pdf; Letter from Pete Mills, Senior Vice President, MBA to Rohit Chopra, Director, CFPB Re. Upcoming Rulemaking to Modernize the Loss Mitigation Rules of Regulation X (Dec. 6, 2023), https://www.mba.org/docs/default-source/advertising/mba-regulation-x_early-intervention-and-loss-mitigation-letter_december-2023.pdf.

⁷⁰ CFPB, *Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace*, at 12 (Nov. 2017), https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf.

⁷¹ See, e.g., NCLC, et al., *Comments on the Federal Housing Finance Agency's Request for Input on the Enterprise Equitable Housing Finance Plans* (Oct. 25, 2021), https://www.nclc.org/wp-content/uploads/2022/08/FHFA_Equitable_Hsg_Finance_RJ_LEP.pdf; Kleimann Comm'n Grp., *Language Access for Limited English Proficiency Borrowers: Final Report* (Apr. 2017), <https://www.fhfa.gov/sites/default/files/2023-04/Borrower-Language-Access-Final-Report-June-2017.pdf> (Kleimann 2017 Report); Ams. for Fin. Reform (AFR), *Barriers to Language Access in the Housing Market: Stories from the Field* (May 2016), https://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Narratives_05.26.2016.pdf (AFR 2016 Paper).

⁷² See Kleimann 2017 Report; AFR 2016 Paper.

⁷³ 81 FR 72160, 72163–64, (Oct. 19, 2016); See also CFPB, *New rule ensures mortgage servicers provide options to potentially vulnerable borrowers exiting forbearance* (Sept. 30, 2021), <https://www.consumerfinance.gov/about-us/blog/new-rule-ensures-mortgage-servicers-provide-options-potentially-vulnerable-borrowers-exiting-forbearance/>.

⁷⁴ 81 FR 72160, 72163, (Oct. 19, 2016).

1. Specified Communications for the Proposed Rule

i. Specified Written Communications

The CFPB is proposing that the written communication requirements discussed in this part would apply to the (1) written early intervention notices required under § 1024.39(b), including any changes set forth in this proposal, (2) the § 1024.39(e)(2) proposed written notices for borrowers whose forbearances will end soon, and (3) written notices regarding loss mitigation currently required under § 1024.41, as well as any content changes or additions set forth in this proposal, as discussed above. Collectively, these notices are referred to in this part as the specified written communications. The CFPB is proposing that the requirements discussed in this part would apply to the notices identified above, but would not apply to the website referred to in those notices. For example, the proposed requirements would apply to the early intervention notice, but not the website listing loss mitigation options that the CFPB is proposing to require servicers to reference in that notice. The CFPB is seeking comment on whether it should make subject to these requirements any other written communications required by the CFPB's mortgage servicing rules (such as the transfer of servicing notice, etc.) or the website that the CFPB is proposing to require servicers to reference in certain notices.

ii. Specified Oral Communications

The CFPB is proposing that the oral communication requirements discussed in this part would apply to (1) live contact communications required under § 1024.39(a) and, if finalized, § 1024.39(e), and (2) oral communications made in compliance with a servicer's continuity of contact requirements under § 1024.40. These communications are referred to in this part as the specified oral communications. The CFPB is seeking comment on whether it should make subject to these requirements any additional oral communications required by the CFPB's mortgage servicing rules.

2. Translation and Interpretation Service Proposed Requirements

i. Spanish Language Translations for Specified Written Communications

The CFPB is proposing to require that servicers accurately translate each of the specified written communications into Spanish and provide the Spanish versions with the English versions to all borrowers. As noted above, Spanish-

speaking households account for almost one in eight households and a majority of households with limited English proficiency nationally. The CFPB has preliminarily determined that the number of Spanish-speaking households warrant provision of requiring Spanish translations of the specified written communications to all mortgage borrowers.

The CFPB is proposing that translations provided by the servicer in Spanish must be accurate. Inaccurate translations would violate not only this translation requirement, but also the underlying communication content requirements. The CFPB is not proposing specific format requirements (e.g., spacing, layout, font size, readability on electronic devices) for servicers when providing both English and Spanish versions of the specified written communications.

The CFPB seeks comment on these proposed requirements and on whether it should consider (1) format or readability requirements and (2) providing flexibility or exceptions (for example, for servicers without any Spanish-speaking borrowers).

ii. Translations of Specified Written Communications and Interpretations of Specified Oral Communications Upon Request

The CFPB also aims to address the language access needs of the 10 percent of United States households with limited English proficiency that speak a language other than English or Spanish. First, the CFPB is proposing to require that servicers, upon borrower request, provide accurate translations of the specified written communications to borrowers in certain servicer-selected languages. Second, the CFPB is proposing to require that servicers, upon borrower request, make available and establish a connection (e.g., making a telephone connection in real time) with interpretation services before or within a reasonable time of establishing connection with borrowers during the specified oral communications to the extent that the borrower's requested language is one selected by the servicer under the requirements of the proposed rule. For this aspect of the proposed rule, the CFPB is proposing to require that servicers would be the party responsible for coordinating with the interpretation services such that those services are able to translate in real-time (e.g., through a conference call) the conversation between the servicer personnel and the borrower. The proposed rule would limit the burden on borrowers that may prefer a language other than English by permitting those

borrowers to receive the specified communications in the borrower's preferred language without having to spend additional time waiting for connection to interpretation services or receive those services in a separate phone call. For both aspects of this proposed requirement, the CFPB is proposing to require a servicer to act only upon receipt of a borrower's request for translation or interpretation services.

The CFPB is proposing to require that servicers must ensure that the translations and interpretation services used under this proposed requirement are accurate. Failure to provide accurate translations or interpretations would result in a violation of not only this proposed requirement, but also the underlying requirements.

The CFPB is proposing to provide individual servicers with discretion to select the languages used for translation and interpretation, but also proposes caveats to that discretion. The servicer would be required to select languages that (1) collectively address the needs of at least a significant majority of their non-Spanish speaking borrowers with limited English proficiency (although interpretation services must also be made available in Spanish), and (2) must include the five languages identified for the translation and interpretation availability statement, as discussed below. The CFPB acknowledges that servicers may need to reevaluate the language decisions periodically, to ensure they continue to meet the standard for discretion. The CFPB has also identified alternative methods for determining the languages for which servicers must be able to provide translations and discusses those alternatives in part IV.D below.

The CFPB has preliminarily determined that allowing a servicer discretion to select which languages it uses to comply with this proposed requirement will best serve borrowers over time as language demographics and servicer business strategies may change. The CFPB recognizes that the composition of the United States population is not static, and the utilization of various languages in the United States will change. Additionally, regional language usage may differ from national language usage. Permitting individual servicer discretion also allows for flexibility as a servicer changes its business strategies, such as when a servicer shifts the regions in which it primarily services mortgage loans. The flexibility would also prevent servicers from being required to translate the specified written communications in languages that are

not spoken by the borrowers that they serve, preventing servicers from incurring unnecessary costs.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) Should the CFPB provide minimum standards for identifying translator or interpreter services, such as requiring “qualified” translators or interpreters, and if so, what the requirements should be?

(ii) Should the CFPB provide minimum standards for language selection, such as standards related to significant majority determinations, and if so, what they should be?

(iii) Should the CFPB require servicers to periodically reevaluate the language determinations?

(iv) Are there certain languages that the CFPB should consider specifying as required for translation or interpretation, no matter the preferences of the servicer’s borrowers?

iii. Five Brief In-Language Statements (Other Than English or Spanish) Regarding Translation and Interpretation Availability in the English Specified Written Communications

To increase borrower awareness of the availability of the translations and interpretations discussed above, the CFPB is proposing to require servicers to provide five brief statements, accurately translated into five languages other than English or Spanish, in the English version of the specified written communications. Under the proposed rule, these statements would identify the availability of translated versions of the specified written communications and interpretation services for the specified oral communications in those five languages and how the borrower can request those translations or interpretation services (*i.e.*, translation and interpretation availability statements).

According to stakeholder feedback, borrowers that prefer languages other than English or Spanish may not be aware that translations or interpretations are available from their servicer or may not know how to obtain those services in their preferred language.⁷⁵ In-language statements highlighting the availability and instructions for obtaining translations and interpretation services may increase the likelihood that borrowers will successfully request translations and interpretations services. For example, in complying with the proposed translation and interpretation

availability statement requirement, a servicer might identify Chinese, Vietnamese, Tagalog, Russian, and French as the top five languages used by a significant majority of its collective non-Spanish speaking borrowers with limited English proficiency. The servicer would include in the English version of the specified written communications a statement in each of those five languages (*i.e.*, five statements in total) that tells the borrower communications are available in [Chinese/Vietnamese/Tagalog/Russian/French] upon request and briefly describes how the borrower can make that request.

For the languages selected for the translation and interpretation availability statements, the CFPB is proposing that servicers must select five of the most frequently used languages from the languages spoken collectively by a significant majority of their borrowers with limited English proficiency that prefer languages other than English and Spanish, as discussed above. The CFPB has preliminarily determined to limit the number of languages to five languages. Based on examples reviewed by the CFPB of the specified written communications currently in use with this type of statement, it appears that five statements would be feasible to include on the specified written communications without affecting their readability or significantly adding length.

The CFPB is not proposing specific model language for the translation and interpretation availability statements for several reasons. Regulation X currently provides flexibility to servicers to develop their own terminology and scripts to use for many of their required written and oral communications. The CFPB also recognizes that some servicers already provide these types of statements in certain of their written communications. To reduce implementation costs for those currently providing statements that would comply with this proposal, the CFPB has preliminarily determined servicers should have the flexibility to determine the terminology and phrasing for the statements.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) Are there current process or technology limitations that may prevent a servicer from complying with this proposed requirement, and if so, what they are?

(ii) Are there certain languages that the CFPB should consider specifying as

required for the translation and interpretation availability statements?

(iii) Should the CFPB consider requiring more or fewer than five languages for the translation and interpretation availability statements? Should the CFPB address situations where the languages spoken collectively by a significant majority of a servicer’s borrowers with limited English proficiency are fewer than five different languages?

(iv) How are servicers currently notifying borrowers of the availability of translations or interpretation services, including the language or languages currently used?

iv. Translation and Interpretation Services in Languages Used in Marketing Upon Request

The CFPB is also proposing that, if a borrower received marketing for their mortgage loan before origination in a language other than English, and the servicer knows or should have known of that marketing, the servicer must comply with the translation and interpretation service requirements in part IV.D for that language, even if it is not a language selected by the servicer under that requirement. For example, if a servicer knows or should have known that a mortgage it services was marketed to a borrower in Navajo, then, under the proposed rule, it would be required to provide accurate Navajo translations of the specified written communications upon the borrower’s request and must engage accurate Navajo interpreter services under the conditions specified in the proposed rule upon the borrower’s request. Failure to provide accurate translations or interpretations would result in a violation of not only this requirement, but also the underlying requirements of the specified written or oral communications, as applicable.

When marketing for financial products is provided in a borrower’s preferred language, the CFPB has preliminarily determined that such marketing might falsely imply to the borrower (or sometimes explicitly promise) that future communication regarding that financial product will also be available in that language, regardless of any disclaimers that might be used. Borrowers with limited English proficiency might shop for mortgage products based on the implied or explicit promise of future in-language communications to ensure that they can better understand the terms of and communications about the mortgage product.

The CFPB recognizes that servicers may not have direct involvement in the

⁷⁵ See, e.g., Kleimann 2017 Report.

marketing for the mortgage, and there may be limited information available to the servicer about those marketing efforts. As such, the CFPB is limiting the proposed rule to those situations where a servicer knows or should have known of that in-language marketing.

The CFPB is seeking comment on these proposed requirements and specifically requests comment on:

(i) What information is currently in a loan's servicing file or information readily available elsewhere that might inform servicers of the language that was used to market the borrower's mortgage loan before origination?

(ii) How prevalent is it for institutions that originate a mortgage to retain servicing rights for that mortgage?

(iii) Should the requirement described be limited to only those servicers that originated the mortgages at issue, or are there other exceptions that should be created?

(iv) Should the CFPB consider other ways to help ensure implied or explicit promises about the future availability of language access made to borrowers during marketing are upheld?

3. Alternatives for Determining Which and How Many Languages To Require

As discussed above, the CFPB is proposing to permit individual servicers discretion to determine the languages used to comply with the requirements above. Regarding this servicer discretion, the CFPB is proposing the languages selected should be based on the collective needs of a significant majority of a servicer's non-Spanish-speaking borrowers with limited English proficiency. The CFPB is seeking comment on whether the proposed servicer discretion described above is the appropriate method to determine how many and which languages a servicer should use or whether alternative methods, such as a list maintained by a designated source outside the regulation, or a threshold or ranking system established by the CFPB would be better suited for the proposed requirements.

4. Interaction With § 1024.32(a)(2)

Because the CFPB is proposing to require translations for the specified written and oral communications, the CFPB is also proposing conforming amendments to existing § 1024.32(a)(2). Section 1024.32(a)(2) currently provides servicers the option of providing borrowers with servicing disclosures required under subpart C of Regulation X in languages other than English, provided that the disclosures are also made available in English upon a recipient's request. The CFPB is

proposing to amend this requirement to make clear that this optionality remains as to subpart C, except as otherwise required by the sections this proposal would amend to require translations for the written communications discussed in part IV.D.

E. Credit Reporting Protections for Borrowers Undergoing Loss Mitigation Review

Through the CFPB's market monitoring activities, the CFPB is aware of a select number of specific instances where mortgage servicers may be furnishing information about borrowers undergoing loss mitigation review that raise questions about accuracy and consistency.

First, the CFPB has learned that some servicers furnish information indicating a consumer is delinquent in making a payment even after a borrower and servicer have agreed to some type of loss mitigation option, and the borrower is performing according to the terms of that loss mitigation option. For example, the CFPB is aware of situations where the servicer has agreed to reduce a borrower's monthly payment by modifying the underlying mortgage loan agreement, but the servicer continues to furnish negative credit reporting information after the borrower performs on the modified agreement. The CFPB has heard that this occurs when the servicer has not implemented the loss mitigation option in their servicing system in a timely manner and instead continues to report delinquency based on the loan terms that were in place prior to the loss mitigation option. Continuing to report delinquency based on the loan terms in place before the loss mitigation agreement may raise questions about the accuracy and consistency of credit reports.

Second, the CFPB has learned that some servicers may be using the Metro 2 Format and associated Consumer Data Industry Association (CDIA) guidance inconsistently, or not at all, when reporting tradeline data when the borrower is affected by a natural disaster.⁷⁶ For example, the CFPB has

⁷⁶ Most servicers provide consumer credit information to one or more credit reporting agencies (CRAs) using a standardized electronic data reporting format called the "Metro 2 Format." The Metro 2 Format transmits consumer credit account data and is maintained and updated by the Consumer Data Industry Association (CDIA). From time to time, CDIA will provide guidance to furnishers on how to report data to CRAs. Tradelines are the accounts in a borrower's name reported by furnishers such as mortgage servicers. For each tradeline, furnishers generally provide the type of credit (e.g., mortgage), the loan amount, the account balance, the account payment history (including the timeliness of payments), whether the account is delinquent or in forbearance, and other

heard that some servicers report the "AW" code for some mortgages that the servicer knows were affected by a natural disaster but not others. While the CFPB is aware that CDIA has characterized some tradeline data as optional, reporting optional tradeline data for certain mortgages, but not others, raises questions about credit reporting accuracy and consistency.

The CFPB is aware that some creditors already make policy decisions to not factor in certain types of negative credit reporting information, such as late payments, that are associated with the "AW" code when assessing credit risk. By excluding the "AW" code from credit reports for certain borrowers that the servicer knows are affected by a natural disaster but not others that the servicer also knows are affected by a natural disaster, servicers may undermine the utility of credit reporting data for future creditors.

The CFPB also understands that some servicers furnish tradeline data without context that could give creditors more complete and accurate information about a borrower's potential credit risk. For example, some servicers do not consistently report a mortgage in forbearance using the forbearance code set forth under CDIA's guidance on reporting accounts placed in forbearance as a result of a natural or declared disaster.⁷⁷ Failing to include the forbearance code or other tradeline data that provides needed context about a mortgage that is in loss mitigation review may lead creditors to falsely conclude that a borrower merely stopped making payments for a certain period of time without the mortgage servicer's agreement. This circumstance also raises questions about the report's accuracy.

Inaccurate information may result in lenders inaccurately assessing a borrower's credit risk for several years after the information appears on a credit report. Moreover, the information in these reports is used by many different types of businesses, such as insurers, landlords, and employers, to make eligibility and other decisions about borrowers. Thus, inaccurate information in a credit report may have far-reaching effects on a borrower.

relevant information that pertains to the type of credit being reported.

⁷⁷ CDIA incorporates its FAQs in their Credit Reporting Resource Guide, which is a resource that includes the Metro 2 Format. CDIA's guidance on reporting accounts placed in forbearance is found in FAQ 45. See Consumer Data Indus. Ass'n, *Credit Reporting Resource Guide, Question 45: How should accounts in forbearance be reported?*, <https://crrg.s3.amazonaws.com/FAQ+45.pdf> (last visited July 1, 2024).

In light of the concerns mentioned above, the CFPB is considering a variety of solutions that could improve the accuracy and consistency of credit reporting information furnished by servicers. These solutions could include adding to or amending CFPB regulations to ensure servicers report accurate information or amending furnisher guidance to improve or enhance the guidance provided to furnishers on how to report tradeline data. The CFPB seeks to learn more about furnishing concerns so that it can better understand how to address them.

The CFPB is requesting comment about possible approaches it could take to ensure mortgage servicers are furnishing accurate and consistent credit reporting information for borrowers undergoing loss mitigation review. In particular, the CFPB requests comments on the following issues:

(i) What servicer practices may result in the furnishing of inaccurate or inconsistent information about mortgages undergoing loss mitigation review?

(ii) What protocols or practices do servicers currently use to ensure that mortgages are being reported accurately and consistently? Are there specific protocols or practices for ensuring loans in forbearance or borrowers affected by a natural disaster are reported accurately and consistently?

(iii) Would it be helpful to have a special code that would be used to flag all mortgages undergoing loss mitigation review in tradeline data?

(iv) What steps should the CFPB take to ensure servicers furnish accurate and consistent tradeline data?

F. Record Retention (§ 1024.38)

The CFPB is proposing to amend existing § 1024.38(c)(1) to specify that the requirement to retain records that document actions taken with respect to a borrower's mortgage loan account includes retention of records evidencing compliance with Regulation X. The CFPB is also proposing to amend existing comment 38(c)(1)–1 with an example illustrating these requirements as they would apply if this proposal's amendments to the loss mitigation framework are finalized.

In the 2013 Mortgage Servicing Final Rule, the CFPB noted that the record retention requirement and timeframe were necessary for servicer compliance with specific legal obligations and to ensure that the CFPB and other regulators have an opportunity to supervise servicers' compliance with applicable laws effectively. However, the CFPB has heard from stakeholders that some servicers may be interpreting

the existing requirement to be more limited. Existing § 1024.38(c)(1) requires that a servicer retain records of actions taken with respect to a borrower's mortgage loan account. That category of actions is broad, and it includes actions taken to evidence compliance with Regulation X. To make clearer that servicers must retain records that evidence compliance with Regulation X, the CFPB is proposing to amend § 1024.38(c)(1). The CFPB is also proposing to amend comment 38(c)(1)–1 to provide an example illustrating requirements regarding methods of record retention if this proposal's amendments to the loss mitigation framework are finalized. The proposed comment notes that a servicer could use a computer program to create and retain records of the date a borrower makes a request for loss mitigation assistance, so long as the servicer ensures it can easily access those records. The CFPB notes that, if this proposal is finalized, a servicer would also be required to create and retain records of additional actions taken to evidence compliance with its requirements, such as creating and retaining records demonstrating the date the servicer stops advancement of the foreclosure process or creating and retaining records that demonstrate the servicer's steps regularly taken to identify and obtain information and documents necessary for loss mitigation review or to notify a borrower of a loss mitigation determination.

The CFPB is seeking comment on these proposed requirements and, in particular, whether the CFPB should provide minimum standards to evidence compliance or specific requirements for recordkeeping, including whether it should provide data standards for mortgage servicers.

G. Removal of Regulations Implemented in Response to the COVID–19 Pandemic

In response to the COVID–19 pandemic, the CFPB amended §§ 1024.31, 1024.39, 1024.41 and related commentary in its June 2020 and June 2021 servicing rules. Among other things, the CFPB added COVID–19-related hardship as a defined term, added temporary COVID–19-related additional early intervention live contact requirements, added temporary special COVID–19-related loss mitigation procedural safeguards, added temporary exceptions from the general anti-evasion requirements for certain COVID–19 related loss mitigation options, and addressed servicer's contact and reasonable diligence requirements relating to delinquent borrowers exiting a short-term payment forbearance program made available to

borrowers experiencing a COVID–19-related hardship.

Because both the temporary additional early intervention live contact requirements and the temporary special COVID–19 loss mitigation procedural safeguards have expired and the COVID–19 Public Health Emergency expired on May 11, 2023,⁷⁸ the CFPB proposes to remove the language relating to the COVID–19 pandemic added by the June 2020 and June 2021 servicing rules from §§ 1024.31, 1024.39(a), 1024.39(e), 1024.41(c)(2)(i), 1024.41(c)(2)(v), 1024.41(c)(2)(vi), 1024.41(f)(3) and comments 39(a)–3, 39(a)–4.i, 39(a)–4.ii, 39(a)–6, 41(b)(1)–4.iv, 41(f)(3)–1, 41(f)(3)(ii)(C)–1, and 41(f)(3)(ii)(C)–2.

H. Other Conforming Changes

In addition to the changes discussed in part IV above, the proposed rule would amend regulatory text in 1024.35(f) and (10), 1024.38(b)(2)(iv)–(vi) and (b)(3)(iii), 1024.40(b)(1)(ii)–(iv) and (b)(2)(ii) and various commentary to § 1024.31, 1024.38, 1024.39, and 1024.41 to conform with other changes in the proposed rule. For example, the proposed rule would update commentary to § 1024.38 regarding servicer policies and procedures to delete references to a complete application and instead refer to a borrower making a request for loss mitigation assistance.

I. Other Servicing Issues—Requests for Comment

1. Zombie Mortgages

In recent years, some borrowers are hearing from companies that claim to own or have the right to collect on long-dormant second mortgages, also known as zombie mortgages. Many borrowers, having not received any notices or periodic statements for years, concluded that these second mortgages had been modified along with the first mortgage, discharged in bankruptcy, or forgiven. These companies often demand the outstanding balance on the second mortgage, plus fees and interest, and threaten to foreclose if the borrower does not or cannot pay. The CFPB is concerned about homeowners who may be facing foreclosure threats and other collection activity because of long-dormant second mortgages.

The CFPB issued an April 2023 advisory opinion providing guidance on

⁷⁸ Press Release, U.S. Dep't of Health & Human Servs., *HHS Secretary Xavier Becerra Statement on End of the COVID–19 Public Health Emergency* (May 11, 2023), <https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html>.

debt collectors attempting to foreclose on zombie mortgages.⁷⁹ The advisory opinion noted that entities selling or collecting on these second mortgages may also be subject to certain requirements under RESPA, the Truth in Lending Act, and the CFPB's mortgage servicing rules. For example, unless an exemption applies, the CFPB's mortgage servicing rules require servicers to provide periodic statements to consumers. The CFPB seeks data and information on the prevalence of this issue. The CFPB also seeks comments on whether and to what extent this issue may continue to cause consumer harm in the future, and any additional actions the CFPB could take, including amending existing rules, to better protect borrowers from harm caused by collection activity on these types of mortgages.

2. Disclosure of Deferred Amounts

As noted in part II, non-loan modification loss mitigation options, including deferrals, have become increasingly common in recent years. In a deferral, missed payments are typically moved to the end of the loan term and generally become due when a borrower refinances, sells, or otherwise terminates their mortgage. The CFPB wants to ensure that borrowers are not taken by surprise when these amounts become due. The CFPB therefore requests comment on whether there are actions it could take, including amending existing rules, to help ensure that borrowers are regularly reminded of deferred amounts that may be due at the end of their loan terms.

3. Successors in Interest

In 2016, the CFPB finalized three sets of rule changes relating to successors in interest. First, the CFPB adopted definitions of successor in interest for purposes of Regulation X's subpart C and Regulation Z that are modeled on the categories of transfers protected under section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982. Second, the CFPB finalized rules relating to how a mortgage servicer confirms a successor in interest's identity and ownership interest. Third, the CFPB finalized rules providing that a confirmed successor in interest is a borrower for purposes of § 1024.17 and subpart C of Regulation X and a consumer for purposes of § 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 of Regulation Z.⁸⁰

Despite these added protections, the CFPB has received reports from housing

counselors and consumer advocates indicating that potential successors in interest continue to encounter delays and other communication difficulties when contacting servicers in an effort to confirm their successor in interest status. These challenges can have downstream implications for successors in interest by interfering with their ability to obtain loss mitigation reviews and to trigger foreclosure protections. Additionally, the CFPB has received reports from housing counselors and consumer advocates indicating that there are categories of homeowners who do not fit the current Regulation X definition of a successor in interest, such as, for example, non-relatives who receive property upon the death of a borrower or co-owners who do not sign their home's promissory note. Often servicers will not allow such homeowners to access information about the mortgage on their home or to apply for loss mitigation.

The CFPB seeks comment on additional actions it could take, including amending existing rules, to better protect potential successors in interest, confirmed successors in interest, and homeowners who do not fit the current Regulation X definition of a successor in interest. The CFPB also seeks data and information on the prevalence of consumer protection issues relating to these consumers.

4. Relation to State laws

Section 1024.5(c)(1) provides that state laws that are inconsistent with RESPA and Regulation X are preempted, but only to the extent of that inconsistency. Comment 5(c)(1)–1 provides that State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. The CFPB recognizes that some States impose their own mortgage servicing requirements and that those requirements may be based on the early intervention and loss mitigation requirements in the CFPB's current mortgage servicing rules, resulting in some overlap if this proposal to amend those requirements were finalized.

The CFPB is requesting comment on possible preemption interventions it could undertake if this proposal is finalized. The CFPB seeks comment on the following:

(i) Are there inconsistencies between the CFPB's proposal, if finalized, and existing State law? If so, what are the details of such inconsistency?

(ii) Are there specific burdens or costs caused by any potential inconsistency or overlap between the CFPB's proposal,

if finalized, and State laws related to early intervention and loss mitigation?

V. Proposed Effective and Compliance Dates

The CFPB proposes that all changes proposed herein, except for the proposed language access requirements discussed in part IV.D, take effect 12 months after publication of a final rule in the **Federal Register**. This timing is consistent with the 2013 Mortgage Servicing Final Rule, which provided servicers 11 months (330 days) from its publication in the **Federal Register** to implement requirements relating to force-placed insurance, error resolution and information requests, general servicing policies and procedures, early intervention, continuity of contact, and loss mitigation procedures.⁸¹ Apart from the proposed language access requirements, the current proposal largely streamlines or builds upon requirements in the current regulation. Therefore, the CFPB preliminarily determines that 12 months would be an appropriate amount of time for servicers to implement all proposed changes other than the proposed language access requirements.

The CFPB proposes that the proposed language access provisions discussed in part IV.D take effect 18 months after publication of a final rule in the **Federal Register**. These proposed language access provisions generally would require mortgage servicers to make certain written and oral communications under the CFPB's mortgage servicing early intervention and loss mitigation provisions available in multiple languages. To implement these proposed provisions, the CFPB anticipates that servicers would need additional time to complete tasks, such as updating systems and software, coordinating with third party service providers, revising policies and procedures, training staff, and performing compliance testing; therefore, the CFPB preliminarily finds that an effective date of 18 months after publication in the **Federal Register** may be appropriate. The CFPB seeks comments on the proposed effective dates.

The CFPB also seeks comment on whether it should allow servicers to comply early with any or all of the proposed provisions. With respect to provisions that have a proposed effective date of 12 months after publication of a final rule in the **Federal Register**, the CFPB proposes to permit optional early compliance only to the extent that a servicer could comply with

⁷⁹ See 88 FR 26475 (May 2023).

⁸⁰ See 12 CFR 1024.30(d); 12 CFR 1026.2(a)(11).

⁸¹ 78 FR 10696, 10842 (Feb. 14, 2013).

all provisions that have the same 12-month effective date. For example, under the proposed rule, a servicer could not begin to conduct sequential reviews of loss mitigation options as would be permitted under proposed § 1024.41(f)(2) prior to the final rule's effective date unless they also were able to comply with all other provisions in the rule with an effective date of 12 months. The CFPB preliminarily determines that the provisions with a 12-month effective date are too intertwined and too interdependent to allow early compliance on a provision-by-provision basis. For the language access provisions that have a proposed effective date of 18 months after publication of a final rule in the **Federal Register**, the CFPB proposes to permit servicers to choose optional early compliance with those provisions without requiring early compliance with other provisions. The CFPB understands that some servicers already offer translations of certain written communications and the CFPB would not wish to discourage servicers from continuing to offer such translations prior to the rule's effective date.

VI. CFPB Section 1022(b) Analysis

In developing this proposed rule, the CFPB has considered the proposed rule's potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.⁸² The CFPB requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts.

A. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of the proposed rule. The CFPB provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of the proposed rule given available data. However, as discussed further below, the data with which to quantify

the potential costs, benefits, and impacts of the proposed rule are generally limited.

Considering these data limitations, the analysis below generally includes a qualitative discussion of the benefits, costs, and impacts of the proposed rule. General economic principles and the CFPB's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

B. Small Servicer Exemption

Small servicers—generally, those that service 5,000 or fewer mortgage loans, all of which the servicer or affiliates own or originated—are exempt from all new requirements under the proposed rule.⁸³ Therefore, the discussion of potential benefits and costs below generally does not apply to small servicers or to consumers whose mortgage loans are serviced by small servicers.

C. Baseline for Analysis

In evaluating the benefits, costs, and impacts of this proposed rule, the CFPB considers the impacts of the proposed rule against a baseline in which the CFPB takes no action. This baseline includes the Mortgage Servicing Final Rules as currently in effect.⁸⁴

D. Potential Benefits and Costs to Consumers and Covered Persons of the Proposed Rule

This section discusses the benefits and costs to consumers and covered persons of the following main provisions in the proposed rule: (1) the replacement of the complete application framework with a streamlined process that allows for the possibility of sequential loss mitigation reviews and includes proposed foreclosure procedural safeguards throughout a loss mitigation review cycle; (2) ensuring consumers are informed of all available loss mitigation options early in the process and changes to early intervention requirements when consumers are in forbearance; (3) fee protections during a loss mitigation review cycle; (4) changes to loss

mitigation determination notice requirements; (5) clarification of notice of error requirements and appeal rights; and (6) new language access requirements discussed in the preamble.

The primary goal of these proposed amendments would be to reduce avoidable foreclosures, including by getting homeowners into loss mitigation solutions more quickly. These proposed amendments aim to address this goal by removing certain prescriptive requirements from the existing rules and proposing certain procedural safeguards to protect borrowers and align servicer incentives with reviewing borrowers for loss mitigation assistance quickly and accurately. As such, the discussion below of the primary costs and benefits to consumers and covered persons focuses on proposed changes in the rule as they relate to the goals of reducing avoidable foreclosures and protecting borrowers from harms that can occur during the loss mitigation review process.

The CFPB also would amend existing record retention requirements to clarify that they include retention of records evidencing compliance with the regulation overall. For covered persons who are not already retaining these records, the CFPB anticipates that this proposed amendment would impose at most minimal costs to update policies and procedures since the relevant records are already produced through compliance with the existing rule, and storage systems are already in place to comply with other record retention requirements.

1. Updating the Complete Application Framework

Proposed amendments to § 1024.41 would replace the existing rule's complete application framework with a streamlined process that allows for the possibility of sequential loss mitigation reviews. A loss mitigation review cycle would begin when the borrower requests loss mitigation assistance and would terminate at the time the mortgage is successfully brought current or one of the procedural safeguards in proposed § 1024.41(f)(2) is met. Certain procedural safeguards against foreclosure would persist during the loss mitigation review cycle. Under the proposed rule, investors could still require that servicers perform a simultaneous review for all available loss mitigation options. However, the proposed rule would allow flexibility for sequential loss mitigation reviews with corresponding proposed foreclosure procedural safeguards throughout a loss mitigation review

⁸² Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the CFPB to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of rules on insured depository institutions and insured credit unions with less than \$10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

⁸³ Regulation Z § 1026.41(e)(4)(ii) defines the term "small servicer" as a servicer that either: "(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee; (B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or (C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor . . ."

⁸⁴ The CFPB has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts, and an appropriate baseline.

cycle, and thus this analysis focuses on that approach.

i. Benefits and Costs to Consumers

Generally, the goal of this proposed amendment would be to reduce avoidable foreclosure by aligning servicer incentives so that servicers could review borrowers for loss mitigation options quickly and accurately. There are two primary considerations of costs and benefits to consumers in this proposed rule. The first relates to preventing borrower harm by preventing avoidable foreclosures and other consequences of delinquency. For example, for borrowers experiencing financial distress, allowing flexibility for an expedited review of loss mitigation options may prevent the borrower from incurring costs associated with the foreclosure process and experiencing negative impacts to their credit reporting. As outlined below, the cost of foreclosure to borrowers is large and manifests through both monetary and non-monetary costs.

The second consideration relates to the potential consequences for borrowers' consideration of all available loss mitigation options. The existing rule provides that once an application is complete, the servicer must evaluate the borrower for all loss mitigation options simultaneously. This includes options for the borrower to sell their home or liquidation options even if the borrower has indicated they would like to remain in the home. The proposed framework would allow servicers to evaluate borrowers more quickly and would provide flexibility to the servicer so that the servicer would not need to review the borrower for non-retention options in instances where the borrower has indicated they would like to remain in the home, for example. Upon informing the borrower of the results of a loss mitigation review, the new framework also would require servicers to provide information about other available loss mitigation options. This will allow borrowers to ask for review for other loss mitigation options that they may prefer.

Avoidance of Foreclosure and Other Consequences of Delinquency

Both the proposed loss mitigation review framework and proposed foreclosure procedural safeguards would play an important role in reducing the probability that a borrower enters foreclosure and that an avoidable foreclosure is completed, which would otherwise cause borrowers to lose their homes, incur expenditures associated with the foreclosure process and incur

non-monetary costs associated with foreclosure. The proposed loss mitigation review framework would provide greater flexibility to servicers to evaluate borrowers for loss mitigation options more quickly and accurately. The CFPB expects that the proposed loss mitigation review framework would increase access to loss mitigation for many borrowers, allowing more borrowers to be evaluated for loss mitigation options than they otherwise would have and reducing avoidable foreclosures. Furthermore, the proposed rule would expand foreclosure procedural safeguards to begin the moment the borrower requests loss mitigation assistance as opposed to the existing rule's foreclosure protections, which generally begin only after the receipt of a complete loss mitigation application. The proposed rule would prevent servicers from initiating or advancing foreclosure proceedings against borrowers from the moment they request loss mitigation assistance until the mortgage is successfully brought current or one of the procedural safeguards in proposed § 1024.41(f)(2) is met. The CFPB expects that the proposed foreclosure procedural safeguards would reduce the probability of foreclosure, as described in more detail below.

The proposed loss mitigation review framework would be expected to reduce avoidable foreclosures by increasing the likelihood that a borrower receives a loss mitigation option sooner. The CFPB understands there are a subset of borrowers who fail to complete a loss mitigation application despite significant improvements in mortgage servicing practices since the 2013 Mortgage Servicing Rules. The barriers to completing a loss mitigation application were well demonstrated during HAMP. Responses to the American Survey of Mortgage Borrowers⁸⁵ (ASMB 2020 Survey) also suggest that borrowers experiencing financial distress had difficulty accessing loss mitigation programs during the COVID-19 pandemic. Among borrowers who had payment concerns or difficulties in 2020, half of

respondents reported that they did not think they qualified for a program or that they did not know how or where to apply for programs. More than one-quarter of respondents experiencing financial distress reported that they experienced "challenges in getting help to address loan payment concerns or difficulties" due to the application process being "too much trouble."⁸⁶ In interviews conducted for the CFPB's 2019 RESPA Servicing Assessment, housing counselors reported that the leeway servicers have in defining when an application is complete under the existing rule makes it challenging to determine whether their application is complete or what additional information is necessary to complete it.⁸⁷ Taken together, this suggests that a substantial share of borrowers who initiate applications may not complete them and that, across servicers, many delinquent borrowers do not initiate applications at all.⁸⁸

Under the existing rule, servicers generally are required to collect documentation for all the options that may be available to the borrower prior to making a determination as to what loss mitigation option or options the servicer may offer to the borrower. This framework proved beneficial for many borrowers. However, as discussed above, it remains the case that some borrowers do not complete the application for loss mitigation assistance in a timely manner or at all. The requirement to obtain and submit documents that may not be relevant to options the borrower is interested in may contribute to borrowers' difficulties in completing an application. Moreover, delays in processing an application can occur when a borrower submits a partial application or otherwise. This delay can result in the borrower needing to resubmit documents that may have become stale (*i.e.*, proof of income). Servicers following investor guidelines might ask borrowers to resubmit

⁸⁶ See Lynn Conell-Price et al., CFPB, *Borrower Experiences with Mortgage Servicing During the COVID-19 Pandemic*, at 3, 10–11 (June 2024), https://files.consumerfinance.gov/f/documents/cfpb_borrower-experiences-with-mortgage-servicing_2024-06.pdf (CFPB June 2024 Report). This question, Question 38 in the ASMB, asked borrowers, "Were any of the following a challenge to you in getting help to address your concerns or payment difficulties?" See 85 FR 46104, 46113 (July 31, 2020).

⁸⁷ Servicing Rule Assessment Report at 171–72.

⁸⁸ Analysis of five servicers' data reported by the CFPB in the Servicing Rule Assessment Report showed a wide range in share of initiated loss mitigation applications that were completed across servicers from about 40 to 95 percent. This variation likely reflects in part differences in how servicers tracked and compiled data on completed applications. Servicing Rule Assessment Report at 139.

⁸⁵ The American Survey of Mortgage Borrowers (ASMB) is a survey conducted annually and jointly sponsored by the FHFA and the CFPB as part of the National Mortgage Database (NMDb) program. The purpose of the ASMB is to collect voluntary feedback directly from mortgage borrowers about their experience with their mortgage and property. The feedback collected by the ASMB on past surveys includes information about a range of topics related to maintaining a mortgage and property. The ASMB 2020 Survey focused on borrower experiences with their mortgage during the COVID-19 pandemic and received over 1700 responses. See 85 FR 46104 (July 31, 2020).

documents multiple times before conducting a review for loss mitigation options. Providing flexibility to servicers by allowing sequential review for loss mitigation options, as proposed, would increase the likelihood that a borrower receives at least one suitable loss mitigation option quickly⁸⁹ and, therefore, would increase their chances of avoiding foreclosure.⁹⁰

For some borrowers, the ability to enter a particular loss mitigation option may be the only way for them to become or remain current and avoid foreclosure. Delays in loss mitigation review can directly lead to foreclosure and the borrower losing their home. For example, some loss mitigation programs are subject to a cap of 12 cumulative deferred past due principal and interest payments,⁹¹ which includes the period of loss mitigation review. Borrowers will be ineligible for this type of loss mitigation program if loss mitigation review and offer are delayed past the 12-month mark for any reason.

Furthermore, reducing the hurdles to obtain a loss mitigation option may benefit borrowers who would successfully complete a loss mitigation application and receive and accept a loss mitigation option under the current framework. To the extent those borrowers receive a loss mitigation option more quickly under the proposal than under the existing rule, their period of delinquency would be reduced. This will reduce negative impact on their credit history. It also would reduce their exposure to fees associated with default, such as late fees, property inspection fees, and foreclosure-related fees.

The CFPB does not have data enabling us to estimate how much the proposed provision would shorten loss mitigation processes. Interviews with servicers conducted for the CFPB's 2019 RESPA Servicing Assessment indicate that the requirement to evaluate the borrower for all options at once is time-consuming for servicers.⁹² The same report

analyzed seven servicers' operations data and found longer durations between a borrower initiating and completing a loss mitigation application after the complete application framework became effective (median 63 days in 2015, post-Rule, relative to a median of 36 days in 2012, pre-Rule, *i.e.*, in the absence of a complete application requirement).⁹³ We caution that these data do not allow us to estimate the increase in time directly attributable to the complete application requirement as opposed to changes in conditions over these three years or other aspects of the rule. These findings suggest that the proposed provision may allow borrowers to be reviewed for loss mitigation options more quickly.

The CFPB also believes that the proposed foreclosure procedural safeguards would benefit consumers significantly by providing them with foreclosure protections more quickly. Under the proposed rule, borrowers would have protection from foreclosure as soon as they indicate that they need mortgage assistance as opposed to waiting until an application is complete. This means most borrowers would receive foreclosure protections earlier in the process. Moreover, because many borrowers do not complete a loss mitigation application under the existing rules, these borrowers would receive foreclosure protections under the proposed rule, which could increase their likelihood of accessing loss mitigation. The CFPB expects that by receiving foreclosure protections earlier in the process borrowers would have an increased likelihood of avoiding foreclosure.

The proposed rule also could prevent some foreclosures by requiring that servicers evaluate borrowers for other available loss mitigation options if the initially chosen loss mitigation option is not successfully implemented (*e.g.*, if the borrower does not complete trial modification payments). Under the existing framework, servicers are required to simultaneously evaluate borrowers for all available options and offer or deny the available options at the same time. Servicers are not required to review another application or re-evaluate previously denied options if the borrower remains delinquent (as in the case where the borrower does not complete trial modification payments). For borrowers whose circumstances change (*e.g.*, new employment), this can result in borrowers being denied access

to loss mitigation options because they were not eligible at the time of application completion even though they become newly eligible after application. The CFPB expects that, because it would require servicers to evaluate borrowers for other available loss mitigation options if a previously offered loss mitigation option is not finalized, the proposed rule would provide borrowers with increased opportunities to finalize a loss mitigation option successfully and to become current.

The CFPB does not have data to estimate how many borrowers would avoid foreclosure due to this additional opportunity for evaluation. However, the CFPB understands that some borrowers who accept a loss mitigation option and enter a trial payment plan do not succeed at bringing their loan current through that option. Borrowers in this situation who have not yet been reviewed for all available loss mitigation options might be able to become current or remain in their home under the proposed rule if they were approved for and successfully completed a different loss mitigation option after failing a trial payment plan.

For borrowers who avoid foreclosure due to the proposed provision, the per borrower benefits would be substantial. Estimates of the cost of foreclosure to consumers are large and include substantial monetary and non-monetary costs. Some of these costs are borne directly by the borrower and others are borne by non-borrowers. In the CFPB's June 2021 Final Rule, we estimated an average per-borrower benefit of avoiding foreclosure of at least \$30,100 or \$35,300 in 2023 dollars.⁹⁴ This figure relies on a study by the Department of Housing and Urban Development in 2010, which estimated a borrower's average out-of-pocket cost from a completed foreclosure of \$10,300 or \$14,630 in 2023 dollars and estimated the average effect of foreclosure on close neighboring house values at \$14,531, or \$20,640 in 2023 dollars.⁹⁵ This number

⁸⁹ 86 FR 34848 (June 30, 2021).

⁹⁵ Estimates from HUD include direct costs to the borrower: moving costs, legal fees, tax penalties, and administrative charges. These estimates from HUD are based on a number of assumptions and circumstances that may not apply to all borrowers who experience a foreclosure sale or those that remediate through non-foreclosures options. U.S. Dep't of Hous. & Urb. Dev., *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010), Adjustment for inflation uses the change in the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted, from January 2010 to September 2023. See U.S. Bureau of Lab. Stat.,

⁸⁹ Under existing § 1024.41(c), servicers may under some circumstances evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option based on the incomplete application if the application has remained incomplete for a significant period of time. See 12 CFR 1024.41(c)(2)(ii). By lowering barriers to receiving an offer, the proposed application framework is expected to lead to more loss mitigation offers, a portion of which will allow consumers to avoid foreclosures that would have occurred under the existing rule.

⁹⁰ See Urban Wire 2018.

⁹¹ See Freddie Mac, *Payment Deferral Solutions*, <https://sf.freddie-mac.com/working-with-us/servicing/products-programs/payment-deferral> (last visited July 1, 2024).

⁹² Servicing Rule Assessment Report at 152, 155–56.

⁹³ The CFPB assessed the 2013 Mortgage Servicing Final Rule between 2018 and 2019 and released a report detailing its findings in early 2019. *Id.* at 142.

likely underestimates the average borrower benefit of avoiding foreclosure due to additional monetary and non-monetary costs to the borrower of foreclosure not included in this estimate. Additional monetary costs to the borrower include loss of equity⁹⁶ and the option value from realizing future housing price appreciation.⁹⁷ Additional non-monetary costs may include, but are not limited to, increased housing instability, reduced homeownership, financial distress,⁹⁸ and adverse medical conditions.⁹⁹ While these estimates are based on data from 2008 or earlier, the CFPB believes the inflation-adjusted estimates provide a reasonable lower bound for the cost of foreclosure to borrowers.

In addition to the above estimate, there would be significant benefits to the borrower of avoiding foreclosure with respect to their credit profile. Foreclosure has a significant impact on a borrower's credit score that can make it difficult to access future credit.¹⁰⁰ The benefit to consumers is even larger if the borrower can shorten the period of loan delinquency by entering a loss mitigation solution faster under the proposed rule compared to baseline.

The CFPB does not have data to estimate the number of borrowers experiencing financial distress who would not complete a loss mitigation application under existing rules and would not therefore receive a loss mitigation offer but would receive a loss mitigation offer under the proposed rule. The CFPB also does not have data to predict how many borrowers would experience foreclosure but for a loss mitigation solution received under the proposed loss mitigation review framework. However, existing evidence suggests that the number of borrowers who would receive a loss mitigation solution under the proposed rule might be substantial. At the national level, a

November 2023 report from Intercontinental Exchange (ICE) Mortgage Technology estimates that 751,000 loans were at least 60 days delinquent. The same report estimates 214,000 total loans in active foreclosure in September.¹⁰¹ The CFPB's 2019 RESPA Servicing Rule Assessment reports on the share of delinquent borrowers from a sample of five servicers who initiated loss mitigation applications in 2015 under the existing complete application framework. Out of the population of borrowers who became 60 days delinquent in 2015, six months later 45 percent of borrowers had initiated a loss mitigation application.¹⁰² The CFPB requests data and other information that could help estimate the extent to which the proposed provisions would increase the number of consumers who receive a loss mitigation option and the number that could avoid foreclosure as a result.

Consequences for Borrower Consideration of All Available Loss Mitigation Options

The proposed loss mitigation review framework may create costs for borrowers if it prevents them from considering and receiving loss mitigation options that they would prefer to those for which they are initially considered. For example, under the proposal, a borrower might be considered for and receive an offer of payment deferral without having provided the documentation required to be considered for a loan modification. This could be harmful to borrowers that would, instead, benefit from a loan modification and who may not understand the difference between the two loss mitigation options. Assuming the borrower is eligible for both options but does not know this, an immediate offer of deferral may induce the borrower to accept that option because they do not realize there are other options available that may be more fitting for their circumstances. Borrowers who receive a streamlined offer may not understand all the loss mitigation options they may have been eligible for if they had submitted a complete application.

In the 2013 RESPA Servicing Final Rule, the CFPB explained that borrowers would benefit from the complete application requirement, in part, because borrowers would generally be better able to choose among available loss mitigation options if the servicer is

required to review them for all options and present any options for which they are eligible simultaneously. The CFPB acknowledges that borrowers accepting an offer without being reviewed for all available options could be prevented from considering loss mitigation options that they may prefer to the initial option for which they are reviewed. However, if a borrower is interested in and eligible for another form of loss mitigation, the proposed rule would allow them to request and receive a review for all available options that they have not already been reviewed for after the servicer's initial offer. In addition, other proposed revisions to the early intervention notice requirements in the proposed rule, discussed below in (2), are designed to ensure the borrower has access to information about and the opportunity to seek review for all options for which they may qualify. These parts of the proposal should mitigate the risk that a borrower is not evaluated for all options in which they may have an interest.

The CFPB's 2019 RESPA Servicing Rule Assessment also showed that servicers generally only offered borrowers one loss mitigation option even under the existing rule's complete application framework. Investor-required evaluation rules sometimes prescribe sequential review and automatically deny a borrower all other options for which the borrower qualifies.¹⁰³ This indicates that in many cases the existing complete application framework may not result in the borrower receiving detailed information on multiple available options.

ii. Benefits and Costs to Covered Persons

The primary benefits to servicers would be a reduction in costs for collecting and processing paperwork associated with loss mitigation applications. Evaluating a complete application for all loss mitigation options is more resource intensive than evaluating eligibility for a single option or subset of options. Thus, if a servicer evaluates a borrower for fewer than all loss mitigation options—as the proposed rule would allow—the servicer will save resources, avoiding parts of the evaluation process that would have occurred under the existing complete application framework. These benefits could be especially beneficial to servicers when a borrower applies for options that are designed to be streamlined and made available quickly with no or minimal paperwork. In those cases, the servicer would avoid

⁹⁶ Consumer Price Index, <https://www.bls.gov/cpi/> (last visited July 1, 2024).

⁹⁷ Campbell et al., *Forced Sales and House Prices*, Am. Econ. Rev. 101 (2011), <https://www.aeaweb.org/articles?id=10.1257/aer.101.5.2108>.

⁹⁸ Janice Eberly & Arvind Krishnamurthy, *Efficient credit policies in a housing debt crisis*, Brookings Papers on Econ. Activity, Fall 2014, at 73–136 (2014).

⁹⁹ Rebecca Diamond et al., *The Effect of Foreclosures on Homeowners, Tenants, and Landlords*, Nat'l Bureau of Econ. Res., Working Paper No. 27358 (2020).

¹⁰⁰ See Janet Currie et al., *Is there a link between foreclosure and health?*, 7 Am. Econ. J.: Econ. Pol'y 63 (2015), <https://www.aeaweb.org/articles?id=10.1257/pol.20120325>.

¹⁰¹ See Jim Akin, *How Does a Foreclosure Affect Credit?*, Experian (July 27, 2023), <https://www.experian.com/blogs/ask-experian/how-does-a-foreclosure-affect-credit/>.

¹⁰² ICE, *Mortgage Monitor report*, at 23–24 (Nov. 2023), https://www.blackknightinc.com/wp-content/uploads/2023/11/ICE_MM_NOV2023_Report.pdf.

¹⁰³ Servicing Rule Assessment Report at 124–25.

¹⁰⁴ See Servicing Rule Assessment Report at 158.

evaluation costs for options that require more extensive documentation that is time-consuming to collect, compile, evaluate, and retain in servicing systems.

The CFPB understands that the process of conducting an evaluation for all loss mitigation options and communicating the determination to consumers can require considerable staff time. Among other things, servicers must communicate with borrowers, exercise diligence to obtain all documents and information needed for review of any potentially available loss mitigation options, and review of all possible options, even ones in which the borrower may not be interested. In the CFPB's 2019 RESPA Servicing Assessment and based on interviews with servicers, the CFPB discussed that the requirement of evaluation for all options at once and a decision letter on outcomes for all options was the costliest provision of the 2013 Rule for servicers.¹⁰⁴

The proposal would also remove the existing requirement in § 1024.41(b)(2) that a servicer send, within five days of receiving the borrower's loss mitigation application, a written notice containing information about the completeness of the borrower's loss mitigation application and any needed documents and information. The removal of this notice requirement would constitute a cost savings to servicers.

The total number of loss mitigation applications servicers receive annually may vary considerably with market conditions that affect borrower delinquency rates. To come up with a rough estimate, we consider the 1.8 percent rate of delinquent borrowers at the end of 2023,¹⁰⁵ or roughly 56 million currently active mortgage loans, and the 45 percent rate of delinquent borrowers who initiated loss mitigation applications in the 2015 servicer operations data analyzed for the CFPB's 2019 RESPA Servicing Rule Assessment.¹⁰⁶ These inputs imply a rough estimate of 450,000 loss mitigation applications annually. The CFPB does not have data to quantify the reduction in costs to servicers from the provision in terms of average savings per loss mitigation application. Given the large number of loss mitigation

applications, even a modest reduction in staff time needed for communication or review of loss mitigation options with borrowers and efforts to obtain all documents needed for review of all possible options could lead to substantial cost savings.

The proposed rule may increase costs to servicers if it delays foreclosures that would have occurred under the existing rule. The CFPB understands that the cost of servicing nonperforming loans is greater than the cost of servicing performing loans. By delaying initial foreclosure proceedings, servicers may have to advance principal and interest payments to investors and continue to fund escrow. Once the foreclosure process has started there continues to be an array of fees, which vary by state. Only some of these fees are recoverable for the servicer when the foreclosure is completed. In addition, servicers may incur significant penalties if foreclosure is initiated after the foreclosure start deadline outlined in the servicer agreement. For example, the Federal Housing Administration penalizes servicers that do not refer by 180 days after initial delinquency,¹⁰⁷ and the Government Sponsored Enterprises (GSEs) impose penalties if foreclosure is not completed within state-specific timelines.¹⁰⁸ Because the proposed rule is intended to align servicer incentives and provide for servicer incentives to review borrowers for loss mitigation quickly and accurately, the CFPB expects any foreclosure delays relative to baseline will be minimal and, therefore, the additional costs of the proposal will be minimal.

Relative to the existing rule, the proposed foreclosure procedural safeguards may begin earlier (when the borrower first requests loss mitigation assistance rather than when there is a complete application) and potentially end later (such as, for example, when a loss mitigation option is successfully implemented rather than when the borrower enters an option that may not be successfully implemented). The proposed foreclosure procedural safeguards also would continue for a borrower who fails a trial payment plan

if the borrower has not yet been reviewed for all available options; and those protections would generally continue until the borrower has either been reviewed for all available options and none remain, another loss mitigation option has been successfully implemented, the loan is brought current, or the borrower remains unresponsive for a specified period of time despite the servicer regularly taking steps to reach the borrower. Assuming some borrowers in that situation would ultimately face foreclosure, the proposed foreclosure procedural safeguards could be more costly for the servicer than a prompt foreclosure following the borrower's initial failure of the trial payment plan.

The CFPB expects that the costs of beginning foreclosure protections earlier and expanding them from initiation and sale to cover all foreclosure advancement may be minimal. The CFPB understands that many servicers already place a pause on foreclosure proceedings as soon as the loss mitigation process begins, and some investor guidelines may require foreclosure to be paused even before an application is complete (when the existing framework's prohibition on these practices begins).¹⁰⁹ Nevertheless, the main difference in time preceding a foreclosure under the proposal would result from the prevention of dual tracking after a request for loss mitigation assistance but before the loss mitigation application is completed. By providing clear requirements, these amendments may reduce complexity for servicers.

The CFPB does not have data to predict the additional possible duration of the proposed foreclosure procedural safeguards or number of borrowers to whom they would apply. The CFPB previously estimated that, under the existing rule, the typical duration from initiating a loss mitigation application to completing it was roughly two months.¹¹⁰ Under the proposed rule, this suggests that the gap between the start of loss mitigation review and foreclosure initiation is two months for

¹⁰⁹ Servicing Rule Assessment Report at 171–73.

For example, guidance for loans with GSE investors is that foreclosure can proceed if the borrower isn't being reviewed for loss mitigation but if a borrower calls and the servicer can determine that the borrower would like to be reviewed for loss mitigation either the foreclosure is held for loss mitigation review or it will continue if it is determined that the borrower is not eligible for loss mitigation.

¹¹⁰ This estimate is based on the 63-day median durations between loss mitigation application initiation and completion in 2015 at five large servicers analyzed in the Servicing Rule Assessment Report. See Servicing Rule Assessment Report at 140.

¹⁰⁴ *Id.* at 152, 155–56.

¹⁰⁵ Estimate from MBA's National Delinquency Survey for 2023 Q4 combining borrowers either 60 to 89 days delinquent (0.7 percent of active loans) or 90 days or more delinquent (1.1 percent of active loans). See MBA, *Mortgage Delinquencies Increase in the Fourth Quarter of 2023* (Feb. 8, 2024), <https://www.mba.org/news-and-research/newsroom/news/2024/02/08/mortgage-delinquencies-increase-in-the-fourth-quarter-of-2023>.

¹⁰⁶ Servicing Rule Assessment Report at 125.

¹⁰⁷ See Karan Kaul et al., *Reforming the FHA's Foreclosure and Conveyance Processes*, Urb. Inst. (Feb. 2018), https://www.urban.org/sites/default/files/publication/96801/reforming_the_fhas_foreclosure_and_conveyance_processes_1.pdf.

¹⁰⁸ See, e.g., Fannie Mae, *Servicing Guide, A1–4.2–02, Compensatory Fees for Delays in the Liquidation Process* (Feb. 13, 2019), <https://servicing-guide.fanniemae.com/svc/a1-4.2-02/compensatory-fees-delays-liquidation-process>; Freddie Mac, *Single Family Seller Servicer Guide-9301.46 Allowable delays in completing a foreclosure*, <https://guide.freddie-mac.com/app/guide/section/9301.46> (last visited July 1, 2024).

the typical borrower. The CFPB expects that servicers would incur additional costs for less than this two-month period due to the likely earlier onset of loss mitigation review, which will partially offset this two-month period relative to baseline. For example, if loss mitigation review begins one month earlier compared to baseline, then foreclosure initiation will be delayed by only one month (not two) for a typical borrower compared to baseline. In this example, the additional cost to the servicer from the proposal would be one month of servicing the non-performing loan. The CFPB understands that there may be some cases where the gap between the start of loss mitigation review and foreclosure initiation may be longer than the two months proposed here, but any costs incurred due to the delay will still be partially offset by starting loss mitigation review sooner.

Any delay in completing foreclosure would create additional costs to service the loan before foreclosure. The Mortgage Bankers Association reported an annual cost of servicing non-performing loans of \$1,857 and performing loans of \$176.¹¹¹ The difference in mortgage servicing costs between non-performing and performing loans is \$1,681, or \$140 per month, on average. Thus, the CFPB estimates that the additional average servicing costs associated with servicing non-performing loans would be near \$140 per month. The average monthly cost may be lower if some of these costs are recoverable from the investor.

Servicers also would incur costs to manage compliance risk and ensure that the provision is not violated. This would encompass the cost of developing systems to ensure compliance with the conditions under which a loss mitigation review cycle ends along with the prohibition on initiating or advancing foreclosures, to ensure that they do not inadvertently violate the protections. On net, these costs may be lower than compliance costs under the existing rule compared to baseline due to the simpler prohibition on initiating or advancing foreclosure.

The proposed changes also would bring the servicing rules into closer alignment with current servicing practices, which are largely set by investors. If the proposed rule increases the likelihood that non-performing loans are modified or speeds the process of achieving a permanent loss

mitigation, then servicers and investors may benefit from either or both changes.

2. Changes to Early Intervention Notice Requirements

The proposal would make changes to the early intervention notice requirements in § 1024.39. Specifically, the proposal would amend the content of § 1024.39(b) written notices by adding to existing notice requirements a new requirement that the notices identify the name of the owner or assignee, currently holding the borrower's mortgage, a brief description of each type of loss mitigation option that is generally available from the investor, and a website address and phone number where the borrower can obtain a list of all of the loss mitigation options that may be available from that borrower's investor. Additionally, the proposal would create alternative early intervention notice requirements at § 1024.39(e) for borrowers performing under the terms of a forbearance. Under the proposed alternative notice requirements, servicers would receive a partial exemption from the live contact and early intervention written disclosure requirements of § 1024.39(a) and (b) while a borrower is performing pursuant to the terms of a forbearance. However, servicers would be required to provide new oral and written notices to delinquent borrowers near the scheduled end of their forbearance period.

i. Benefits and Costs to Consumers

Proposed § 1024.39(b) would benefit borrowers by better informing them about their possible loss mitigation options earlier in the loss mitigation process. Given that the proposed rule would allow servicers to consider borrowers for loss mitigation options one at a time (as discussed above in this part), it may be more critical for borrowers to receive information about all available options upfront than under the existing rule. That is, providing information on all options upfront may mitigate the chance that borrowers accept an inferior option for their needs due to ignorance of a superior alternative for which they have not yet been reviewed.

The existing written early intervention notices rules do not require the servicer to inform the borrower of the investor's identity and do not require a servicer to provide any resource from which the borrower can obtain information regarding each loss mitigation option that may be available from that investor. This can make it difficult or impossible for a borrower to discover the investor's identity and to

determine which loss mitigation options are available for their loan. The main benefit of the proposed provision would be to remedy that problem for some borrowers, allowing them to learn more about their available loss mitigation options. This information may benefit borrowers by enabling them to request a loss mitigation option that may seem appropriate for their situation. In addition, making borrowers aware of options that may be appropriate to their situation earlier in the process may prompt some borrowers to contact their servicer and apply for help sooner. Borrowers who apply for consideration sooner also may successfully enter a loss mitigation option sooner and benefit from avoiding potential fees and other consequences that accompany a longer period of loan delinquency (as discussed above in this part).

Proposed § 1024.39(e) would benefit borrowers in two ways. First, it would eliminate borrower confusion that may currently occur when borrowers receive early intervention notices that do not reflect the fact that a forbearance is in place. Proposed § 1024.39(e) would eliminate this source of borrower confusion by exempting servicers from the early intervention notice requirements of § 1024.39(a) and (b) while borrowers perform under the terms of a forbearance agreement.

Second, proposed § 1024.39(e) would benefit borrowers who are delinquent and are nearing the end of a forbearance period by making it more likely that they are aware of their options at the end of the forbearance period with sufficient time to take the action most appropriate for their circumstances. Borrower responses to the ASMB 2020 Survey demonstrated that many borrowers in forbearance plans in 2020 were unsure of how their deferred payments would be repaid when their forbearance period was up (roughly 13 percent of respondents).¹¹² Borrowers in this situation may benefit from receiving contact from their servicer prior to the end of their scheduled forbearance because it would help them work with their servicer to find other loss mitigation options. This, in turn, might result in more borrowers resolving their delinquencies and reducing delinquency related fees than would

¹¹¹ See Marina Walsh, *Chart of the Week—June 21, 2024: Annual Cost of Servicing Performing and Non-Performing Loans*, MBA Newslink (June 24, 2024), <https://newslink.mba.org/servicing-newslink/2024/june/chart-of-the-week-annual-cost-of-servicing-performing-and-non-performing-loans/>.

¹¹² See CFPB June 2024 Report at 19–20. Question 26 of the ASMB 2020 Survey asked, “When your forbearance period ends or has ended, which of the following best describes how your deferred or reduced payments will be repaid?” Roughly 13 percent of the applicable respondents selected “Unsure/Don’t know.” See 85 FR 46104, 46112 (July 31, 2020).

occur in the absence of the proposed rule.

For both proposed provisions, the total benefits to borrowers would depend on the number of borrowers who might benefit as discussed above. The CFPB cannot currently quantify this number due to lack of information about how many people respond to early intervention notices today, how many recipients of early intervention notices would find the new information important, and how this might change the rate of responses to the notices. The CFPB requests data and other information that could help estimate these quantities.

ii. Benefits and Costs to Covered Persons

For servicers, the main costs of these provisions would come from the costs of developing the new disclosures. Determining the appropriate information about the relevant investor for a borrower's loan and their loss mitigation options may be the costliest addition because it is tailored to each loan. This may require additional employee time to develop a process for linking loan investor and loss mitigation information to production of early intervention written notices. However, the added cost should not be overstated; under the existing rule, servicers must provide relevant loss mitigation information to borrowers when they contact the servicer to ask for help. Thus, the existing rule already requires servicers to have a way of knowing the investors' requirements for individual loans upon request. There may be additional costs to servicers from developing and maintaining the website and telephone resources that provide information on the relevant loss mitigation options for different investors to borrowers.

Additionally, with respect to § 1024.39(e), servicers may benefit from no longer providing early intervention notices while borrowers are in forbearance, although they would incur an additional cost for sending end-of-forbearance notices to these borrowers. Assuming typical forbearance periods of three to six months, the net effect of these two changes for the average borrower may be minimal. That is, the increased cost of providing the proposed end of forbearance notices and the reduced cost of no longer providing notices under § 1024.39(a) and (b) may offset each other.

The CFPB does not have data to estimate these increased costs to servicers. However, we note that any additional costs of gathering, maintaining, and providing this

information may be smaller than the reductions in costs to servicers associated with simplifying the required application and evaluation process as discussed above in (1). The CFPB also requests data or other information to help estimate changes in costs associated with more expansive early intervention notices.

3. Fee Protections

Proposed amendments to § 1024.41(f)(3) would prohibit fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract beginning when a borrower requests loss mitigation assistance and continuing throughout a loss mitigation review cycle. This prohibition would encompass both amounts typically imposed on a borrower's account directly by the servicer, such as late charges and stop payment fees, as well as payments to third party companies for delinquency-related services, such as property inspections.

i. Benefits and Costs to Consumers

The benefit of this provision to the borrower would be the value of delinquency-related fees prevented while a loss mitigation application is pending. The CFPB does not have data to estimate the average amount of fees that would otherwise be incurred by borrowers during the loss mitigation application process. However, GSE loan guidelines provide a ceiling with maximum allowable charges: monthly late charges cannot exceed 5 percent of the principal and interest payment, or roughly \$88 for the average outstanding mortgage at the end of 2023¹¹³ and allowable reimbursements for monthly property inspection fees cannot exceed \$30 for exterior inspections and \$45 for interior inspections.¹¹⁴

¹¹³ The estimate of \$88 is based on the average monthly principal & interest payment of \$1,760 estimated for outstanding mortgages nationally as of the third quarter of 2023 estimate in the NMDB Aggregate Statistics. See FHFA, *National Mortgage Database (NMDB®) Aggregate Statistics*, <https://www.fhfa.gov/DataTools/Downloads/Pages/National-Mortgage-Database-Aggregate-Data.aspx> (last updated June 28, 2024); see also Freddie Mac, *Single-Family Seller/Servicer Guide, Section 9102.2: Late charges* (Mar. 2, 2016), <https://guide.freddie-mac.com/app/guide/section/9102.2>; and Fannie Mae, *Single-Family Selling Guide, B8-3-02, Special Note Provisions and Language Requirements* (June 3, 2020), <https://selling-guide.fanniemae.com/Selling-Guide/Origination-through-Closing/Subpart-B8-Closing-Legal-Documents/Chapter-B8-3-Notes/1032999801/B8-3-02-Special-Note-Provisions-and-Language-Requirements-06-03-2020.htm#Late.20Charges.20for.20Conventional.20Mortgages>.

¹¹⁴ See Freddie Mac, *Single-Family Seller/Servicer Guide, Exhibit 57: 1-to 4-Unit Property*

Given uncertainty about the impact of the proposed changes on loss mitigation review cycle durations, it is not possible to estimate the number of months borrowers would receive these protections on average. Under the existing rule (and prior to COVID-19 temporary exceptions), 2015 servicer operations data from the CFPB's 2019 Servicing Rule Assessment suggests the typical duration from initiating a loss mitigation application to receiving an evaluation from the servicer was roughly two months under the existing rule and slightly more than one month prior to the 2013 Mortgage Servicing Final Rule.¹¹⁵ Under the proposed rule, the CFPB expects that for many borrowers the protections may apply for less than a month and have no impact on monthly fees incurred (both for borrower benefit and servicer cost) in cases where servicers offer and borrowers accept streamlined loss mitigation options that require little or no documentation. The CFPB understands that in an environment where servicers predominantly offer streamlined loss mitigation options it is likely that many borrowers who request help will experience these protections for under a month, but that in some cases where evaluation is more involved, the average borrower may experience protections for near two months and benefit from avoiding roughly \$236 in fees.¹¹⁶ Estimating the total benefit to consumers also requires information on the number of consumers submitting loss mitigation applications. As discussed above in section (1), we estimate roughly 450,000 loss mitigation applications annually given current delinquency rates and market size but note that this number

Approved Expense Amounts, <https://guide.freddie-mac.com/app/guide/exhibit/57> (last visited July 1, 2024); see also Fannie Mae, *Single-Family Servicing Guide, F-1-05: Expense Reimbursement* (Oct. 11, 2023), <https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-F-Servicing-Guide-Procedures-Exhibits-Quick-Referen/Chapter-F-1-Servicing-Guide-Procedures/F-1-05-Expense-Reimbursement/1045188371/F-1-05-Expense-Reimbursement-03-08-2023.htm>.

¹¹⁵ This estimate is based on combining the requirement under the existing rule that servicers evaluate complete applications within 30 days and the 63-day median durations between loss mitigation application initiation and completion in 2015 at five large servicers analyzed in the Servicing Rule Assessment Report. The same report indicates that 88 percent of complete loss mitigation options received servicer decisions within 30 days, and many received decisions within the first week. See Servicing Rule Assessment Report at 140, 157.

¹¹⁶ This estimate ranges from \$236 for a duration of 2 months with monthly late fees of \$88 and exterior inspection fees of \$30.

may vary considerably with market conditions.

ii. Benefits and Costs to Covered Persons

The cost to servicers of the proposed fee prohibition would be the value of the lost fees they would otherwise charge to borrowers with the same estimates discussed above regarding consumer benefit. The CFPB understands that investors typically require their servicers to engage and pay third party companies during delinquencies for a variety of activities, such as regular property inspections. In these cases, the prohibition would prevent servicers from recouping their expenses from payments they must make to third party companies for delinquency-related services, although they may still be able to recoup these expenses later at a foreclosure sale. Incurring these expenses may further incentivize servicers to process loss mitigation applications expediently, mitigating the overall expenses incurred by servicers as well as for borrowers. To the extent servicers either are able to retain any fee income or are required to advance the fees to investors (as may be the case for late fees), servicers will likewise have increased incentives to process loss mitigation applications expediently, mitigating the overall expenses incurred by servicers as well as for borrowers.

4. Loss Mitigation Determination Notices

Proposed amendments to § 1024.41(c) would add new requirements for loss mitigation determination notices that would, in relevant part, (a) require offer and denial notices for all loss mitigation options, (b) require more detail in the notices specifying the key borrower-provided inputs that served as the basis for the determination, (c) provide contact information that the borrower can use to access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination, (d) require the servicer to provide a website through which a borrower could access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination; (e) require certain disclosures regarding loss mitigation options that may remain available to the borrower, and (f) require that the servicer inform the borrower as to whether an offer will still be available if the borrower requests to be reviewed for other loss mitigation options. If the loss mitigation offer is for a forbearance, the amendments also would require that the determination notice include

information regarding the terms and duration of the forbearance. Disclosure of the terms and duration of the forbearance is not a new requirement but is being moved into the proposed determinations section to provide the borrower additional information and because of the proposed amendment of § 1024.41(c)(2)(iii), where the requirement currently resides.

i. Benefits and Costs to Consumers

The purpose of the existing loan modification denial notice provision in § 1024.41(d) is to provide borrowers with information that might help them correct an erroneous denial, and the proposed changes to determination notices would extend that benefit to any loss mitigation determination rather than to permanent loan modification denials only. Additionally, the proposed changes would require detail to be included in the notices on specific inputs used in the determination, better enabling borrowers to recognize potentially erroneous denials and fully understand the basis for the determination.

In the case of a denial, ensuring the consumer understands the reasons for the denial including any specific numerical input used in the determination is necessary to enable the consumer to recognize and respond to potential errors that may occur in determinations. Requiring this for all loss mitigation options rather than only permanent loan modifications as specified under the existing rule recognizes the increasing prevalence of alternative types of loss mitigation options, such as forbearances and deferrals. This additional information could reduce confusion for borrowers and help some borrowers understand their loss mitigation determinations better under the proposal compared to baseline.

In the case of an offer, the primary benefit to borrowers of requiring detailed determination notices is to assist the borrower with potential appeals in cases where the terms of the offer may depend on certain inputs. By providing details on the inputs used as basis for the determination, the proposed notices may enable borrowers to recognize errors in determinations that may have led to worse terms in the offer than if the correct information had been used. In such cases, if the borrower appeals an error that they would not otherwise have recognized or been able to substantiate, and accepts an offer on better terms, they will benefit by the difference in terms between the initial

and appealed offer terms.¹¹⁷ The total number of borrowers affected would depend on two things: the number of borrowers who would newly receive determination notices and the share of those borrowers who would appeal successfully due to those notices.

Due to uncertainty about trends in borrower distress, prevalence of loss mitigation options other than permanent loan modifications, and the rate of loss mitigation applications that servicers would deny, the CFPB does not have sufficient information to estimate the additional number of required notices. ICE Mortgage Technology reported that roughly 8.8 million borrowers had entered temporary forbearance between when the CARES Act was passed in Spring 2020 and the end of 2023.¹¹⁸ Although this was a period of unprecedented high volumes of forbearance plans, it serves as an upper bound on the number of borrowers who could benefit from the proposed changes to required notices. It is especially relevant given that proposal would newly require more detailed determination notices for forbearances.

The CFPB does not have data to estimate the share of those borrowers who would newly appeal a determination successfully. Based on data on loss mitigation applications and appeals from five large servicers in 2015 analyzed for the CFPB's 2019 Servicing Rule Assessment, the rate of successful appeals on loss mitigation applications was 0.1 percent.¹¹⁹ This data offers a rough estimate of the current rate of successful appeals, although we recognize uncertainty in this estimate due to potential differences between the servicers these data characterize and the population of all servicers, as well as other market changes in the last nine years. The CFPB requests data and other information that could help estimate the extent to which the proposed provisions would increase the number of consumers who newly receive determination notices and increase the likelihood of appeals that successfully result in a change to the loss mitigation decision or terms.

In addition, the proposed rule requires that the servicer inform the borrower as to what loss mitigation

¹¹⁷ CFPB is proposing to expand appeal provisions to loss mitigation offers as well as denials, as discussed in part IV.D.

¹¹⁸ ICE, *Mortgage Monitor report*, at 26 (Feb. 2024), https://www.blackknightinc.com/wp-content/uploads/2024/02/ICE_MM_FEB2024_Report.pdf; see also ICE Mortgage Technology, *First Look at December 2023 Mortgage Data* (Jan. 24, 2024), <https://www.icemortgage.com/resources/data-reports/first-look-at-december-2023-mortgage-data>.

¹¹⁹ Servicing Rule Assessment Report at 163.

options are still or will remain available. This would benefit borrowers by better informing them about their available loss mitigation options, if any, after an initial loss mitigation determination. This should reduce confusion for borrowers and ensure they understand all potential options available before making a choice about accepting an offer from the servicer. In the case of an acceptance, it may prevent borrowers from accepting an inferior option for their needs. For borrowers that receive a forbearance, this change should help reduce confusion among borrowers receiving forbearance offers that was common with forbearance offers during the COVID-19 pandemic.¹²⁰ The CFPB requests data and other information about how many and the extent to which borrowers would benefit from these changes.

ii. Benefits and Costs to Covered Persons

Requiring determination notices for all loss mitigation determinations—not only for denials of permanent loan modifications relating to complete applications—could increase costs to servicers associated with preparing and mailing a greater number of determination notices, as well as identifying and making available borrower-provided and non-borrower-provided inputs used in the determination. However, the CFPB anticipates that the costs of additional determination notices for non-loan modification options should be partially offset by the proposed removal of the required notice under existing § 1024.41(c)(2)(iii), which requires servicers to provide borrowers with a notice stating the terms of any forbearance or repayment plan they are offered.¹²¹ In other words, when the servicer offers the borrower a forbearance or repayment plan, the provision will essentially require them to send a notice with different content requirements than under the existing rule, but not increase the overall volume of notices in such cases. The CFPB expects servicers may incur one-time costs to update their processes when offering this type of loss mitigation option.

The increased detail required in determination notices may not substantially affect costs per notice given that servicers already have the required information on inputs

underlying their determinations, other loss mitigation options available, and forbearance terms and durations. However, including this information may increase questions and/or alleged errors from borrowers, particularly if numerical inputs are difficult to understand or do not align with other common usages of the same term (e.g., the servicer's definition of income might be different from the borrower's understanding of their income).

An estimate of the increased costs to servicers would depend on the costs of identifying the relevant borrower-provided and non-borrower-provided inputs, which may vary depending on the complexity of the determination process, the costs of developing and maintaining a website through which consumers can access the required information, and the additional number of required notices and the average cost of providing and mailing each notice. However, the CFPB understands that most loss mitigation determinations are relatively standardized due to servicers' obligations to follow investor requirements. Due to uncertainty about trends in the incidence of borrower distress, prevalence of loss mitigation options other than permanent loan modifications, and the rate of loss mitigation applications that servicers would deny, the CFPB does not have sufficient information to estimate the additional number of required notices. However, as discussed above regarding consumers' benefits, recent circumstances relating to COVID-19 related forbearances provide an example of extenuating circumstances when loss mitigation options other than permanent loan modifications affect very large numbers of borrowers.

5. Notice of Error and Appeals Requirements

Amendments to § 1024.35(b) make explicit that loss mitigation determinations are subject to notice of error provisions. As discussed in the preamble to § 1024.35, the CFPB has consistently viewed servicer errors related to loss mitigation determinations as errors subject to the notice of error provisions. Amendments to § 1024.41(h) also provide that that section's right of appeal applies for all loss mitigation options, not just permanent loan modifications. For example, some forbearance options may not currently be subject to appeal rights, and appeal rights would be extended to them under the proposal.

i. Benefits and Costs to Consumers

The main aim of explicitly listing loss mitigation determinations as within the

scope of the existing error resolution provision would be to provide clarity to both consumers and servicers that notice of error requirements apply to loss mitigation determinations. For consumers, the main value of this addition would be to increase servicer accountability by increasing the likelihood, timeliness, and quality of servicers' responses. For example, this clarity may help ensure that a servicer responds to a notice of error about a loss mitigation determination from a borrower by conducting a reasonable investigation and correcting any error if their investigation confirms one. This may benefit the borrower if the correction allows them to be offered an appropriate loss mitigation option. Borrowers also could save on legal costs if they can resolve the issues through error resolution instead of through outside legal action. While the CFPB does not have information to precisely estimate the expected number of borrowers this would affect, prior analysis by the CFPB indicates that loss mitigation is already a common reason for formal error assertions.¹²² Beyond this additional clarity, the CFPB anticipates this provision will have minimal impact on benefits and costs to servicers and borrowers as it does not change Regulation X's requirements.

The main benefit to borrowers of expanding the right to appeal in § 1024.41(h) such that it applies to all loss mitigation options would be an increased likelihood of successful loss mitigation.¹²³ If the borrower believes a mistake was made and that the resulting loss mitigation determination was incorrect, they may appeal that outcome and the appeal is required to be reviewed by different personnel than those responsible for the original determination. If an appeal confirms that the servicer incorrectly denied a loss mitigation option, then the borrower gains access to a new loss mitigation opportunity through the appeal. Thus, expanded appeal rights may allow more borrowers to achieve suitable loss mitigation arrangements.

ii. Benefits and Costs to Covered Persons

Newly allowing borrowers to appeal denials of loss mitigation options beyond permanent loan modifications

¹²² Servicing Rule Assessment Report at 211. Analysis of Servicer Operations Data from seven large servicers on formal written error assertions (both Qualified Written Requests asserting errors and Notices of Error) for loans serviced in 2015 indicate that "loss mitigation" was the most commonly reported reason for these assertions.

¹²³ Note that the proposed changes do not change the existing right to use the error resolution process for loss mitigation.

¹²⁰ See CFPB June 2024 Report at 18–20.

¹²¹ Note that, notwithstanding the requirements of 1024.41(c)(2)(iii), in some cases investors may require servicers to send other notices related to forbearance and repayment plan offers. See, e.g., Fannie Mae Forbearance Plan Terms.

as well as newly allowing borrowers to appeal loss mitigation offers under proposed § 1024.41(h) may increase the volume of appeals. Some servicers' costs may increase to cover any expenses associated with responding to a higher volume of appeals. The CFPB does not have data to estimate the additional volume of appeals requests resulting from these changes nor to precisely estimate the average cost to servicers of responding to an additional appeal.

The proposed amendment to § 1024.35(b) also clarifies that the CFPB has always interpreted that loss mitigation determinations are and continue to be covered by the notice of error provision. Though § 1024.35(b) is a provision that applies to small servicers, the clarification the CFPB is proposing to add to this provision is not a change to the existing rule, so the CFPB does not expect any changes in the costs and benefits to covered persons, including small servicers, from this clarification.

6. Language Access Requirements

As discussed in part IV.D, the CFPB is proposing requirements to provide borrowers with limited English proficiency greater language access to mortgage servicing communications. These include requirements to provide select written and oral mortgage servicing communications—including the early intervention notice and loss mitigation option determination notices—in a borrower's preferred language in certain cases. For the specified written communications, the proposal requires an accurate Spanish language translation of the communication to be provided to all borrowers with the English version. The proposal also requires servicers to provide, upon borrower request, accurate translations of the specified written communications to the borrower in certain servicer-selected languages (as detailed in part IV.D) and to include five brief in-language statements in the English version of the specified written communications stating the availability of translations and interpretation services for those languages and providing how the borrower can request those translations or interpretation services. For the specified oral communications, the CFPB proposes requiring servicers, upon borrower request, to make available and establish connection with interpretation services before or within a reasonable time of establishing connection with borrowers, to the extent the borrower's requested language is one of the servicer-selected languages. The proposal also would require a servicer, under certain

circumstances, to provide translations of the specified written communications and interpretations of the specified oral communications in languages that were used in marketing the mortgage product to the borrower upon the borrower's request.

i. Benefits and Costs to Consumers

The main benefit to borrowers of these proposed changes would be to increase access to and understanding of servicer communications, as well as lowered costs to borrowers with limited English proficiency to obtain that access. For example, if borrowers with limited English proficiency previously used translation services through other sources, receiving critical written materials in their preferred language from their servicer may save them time and/or expense in obtaining translations or interpretations. This increased access and understanding may in turn increase the likelihood the servicer is able to complete early intervention with a delinquent borrower and, if applicable, the borrower is able to identify available loss mitigation options and make a request for loss mitigation assistance. If borrowers with limited English proficiency were previously unable to obtain a translation or interpretation of these materials, or were deterred from doing so by cost, the complexity of the task, or privacy concerns, the new requirements could significantly increase the likelihood that a borrower may now have access to this information, increasing the likelihood the borrower completes a loss mitigation application. For example, translated materials may increase borrowers' awareness of important deadlines or necessary steps to obtain their preferred loss mitigation options. Obtaining better outcomes in this way may enable some borrowers to avoid foreclosures they would otherwise have experienced, reducing costs associated with foreclosure as discussed above in this part. Further, access to reliable translations and interpretation services may enable some borrowers to avoid harm where they would otherwise obtain inaccurate or incomplete translations or interpretations, including harm caused by predatory practices.¹²⁴ Better access and understanding of servicer communications may allow borrowers to obtain better loss mitigation options for their situation.

¹²⁴ For example, borrowers with limited English proficiency may place trust in interpreters who speak their preferred language without receiving full information on the incentives and business interests of their interpreter. See, e.g., Kleimann 2017 Report.

As discussed in part IV.D, the proposed requirements for establishing specified oral communications may reduce additional hold times some borrowers with limited English proficiency currently incur to establish a connection to translation services provided by the servicer during oral communications or may result in previously unavailable real-time interpretations. In some cases, the removal of these delays may increase the likelihood that more borrowers with limited English proficiency use existing translation services and may impact the efficacy of servicers' early intervention and loss mitigation efforts through oral communication.

The proposed language access changes may benefit a large subset of borrowers. Roughly 30 million U.S. households speak a language other than English at home and nearly 5.5 million households within that population have limited English proficiency according to estimates from the 2022 American Community Survey. Borrowers from those households might substantively benefit from increased access to key written and oral communications in a language they understand very well, although the CFPB does not have data to precisely estimate the average benefit of improved understanding to each borrower. Spanish speakers represent the second largest language group in the United States after English speakers and, thus, a large share of borrowers with limited English proficiency would benefit from the requirement to send specified written servicing communications in Spanish as well as English.¹²⁵ While the CFPB recognizes that the number of households with limited English proficiency responsive to the 2022 American Community Survey does not equate to the number of borrowers with limited English proficiency who have mortgages, let alone mortgages in distress, the CFPB has preliminarily concluded these estimates are representative of the scale of borrowers with limited English proficiency that could be impacted by the proposal.

Data from the ASMB 2020 Survey supports this preliminary conclusion. Responses to the ASMB 2020 Survey indicate a similar share of respondents experiencing financial distress who

¹²⁵ The 2022 American Community Survey 1-Year Estimates indicate that 16.9 million US households (out of 130 million total) speak Spanish at home and over 3.2 million of those are also Limited English-speaking households. See U.S. Census Bureau, *Language Spoken at Home*, <https://data.census.gov/table/ACSST1Y2022.S1601?q=language%20at%20home> (last visited July 1, 2024); see also 2022 ACS Table.

speak a language other than English at home and speak English less than “very well” to the analogous shares for the total population reported in the 2022 American Community Survey 1-year Estimates from the United States Census. Specifically, 22 percent of respondents experiencing financial distress indicated that they speak a language other than English at home and 6 percent of borrowers indicated that they speak another language at home and speak English less than “very well.”¹²⁶ Because this survey is administered only in English and Spanish, it does not address the prevalence of borrowers with limited English proficiency who speak languages other than Spanish. Thus, we expect that the ASMB 2020 Survey data likely underestimates the full share of borrowers with limited English proficiency experiencing financial distress.

ii. Benefits and Costs to Covered Persons

Requiring certain written mortgage servicing communications in specified languages other than English may impose new or additional costs on servicers. A requirement to send both English- and Spanish-language communications to all borrowers may result in updates to software systems to create the Spanish version of the communications and may increase mailing costs for communications sent by mail if these require additional pages of text. Smaller costs for software system updates may apply for some servicers when adding the in-language translation availability statements to the English version of the written communications. Servicers may incur similar software system update and mailing costs to provide translations upon borrower request in certain servicer-selected languages, as detailed in part IV.D. A requirement to provide specified written communications in languages other than English and Spanish when the servicer has or should have knowledge of in-language marketing to the borrower before

origination, and upon borrower request, could increase costs by requiring servicers to develop and maintain systems for tracking languages used in marketing and sending appropriate written communications based on that request. Servicers also may incur one-time costs to develop translations in languages they currently do not offer and may incur ongoing costs to maintain these translations or to tailor the translated templates they develop to borrower circumstances. A requirement that servicers comply with the translation and interpretation service requirements for languages used in marketing before origination for the borrower, if the servicer knows or should have known of that marketing, also could prompt servicers to develop and maintain systems for tracking this information when servicing rights are obtained, at least in cases where the servicer is not the originator of the loan. The CFPB has heard from stakeholders concern that requiring servicers that know or should have known of languages used in marketing to provide translation and interpretation services, as applicable, in those languages could create incentives for firms that originate loans to avoid marketing in languages other than English to reduce anticipated servicing costs.

The proposed requirement to ease access to interpretation services over the phone by connecting these services before or within a reasonable time of establishing connection with borrowers with limited English proficiency may require servicers to adapt processes and could require additional staff or additional staff time. Servicers who are not already following this practice may need to establish a process for connecting stored information on borrower language preference with their process for oral communications. In some cases, this may not impose meaningful ongoing costs beyond those described above for complying with the changes to written notice requirements. However, complying with this requirement may require some servicers to make interpretation services available for more time overall in order to establish connections with them before or within a reasonable time of establishing connection with borrowers with limited English proficiency. Servicers that currently do not offer or only offer a limited number of languages for interpretation may experience additional costs for increasing the languages available for interpreter services to borrowers. Estimates of total servicer costs to comply with these language access requirements would

depend on the language access methods currently offered by the servicer, the volume of borrowers with limited English proficiency, and the rate the servicer pays staff or third-party services for translations or interpretations.

The CFPB requests data and other information that could help estimate the benefits and costs of providing language access services of the types we are considering.

The CFPB expects that, if finalized as proposed, the rule would impose ongoing compliance costs on servicers. The CFPB requests comments on potential compliance costs of the proposed rule.

E. Potential Specific Impacts of the Proposed Rule on Insured Depository Institutions and Credit Unions with \$10 Billion or Less in Total Assets, As Described in CFPB Section 1026

The CFPB believes that a large majority of depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans qualify as “small servicers” for purposes of Regulation X because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. In the past, the CFPB has estimated that more than 95 percent of insured depositories and credit unions with \$10 billion or less in total assets service 5,000 mortgage loans or fewer.¹²⁷ The CFPB believes that servicers that service loans that they neither own nor originated tend to service more than 5,000 loans, given the returns to scale in servicing technology. Small servicers are exempt from the new proposed requirements and therefore would not be directly affected by them.

The CFPB believes that the consideration of benefits and costs of covered persons presented above generally describes the impacts of the rule on the minority of depository institutions and credit unions with \$10 billion or less in total assets that service more than 5,000 loans.

F. Potential Specific Impacts of the Proposed Rule on Consumer Access to Credit

Restrictions on servicers’ ability to foreclose on mortgage loans could, in theory, reduce mortgage lending profitability and cause lenders to increase interest rates or reduce access to mortgage credit, particularly for loans with a higher estimated risk of default. The CFPB cannot rule out the possibility that the rule will have the effect of increasing mortgage interest

¹²⁶ See CFPB June 2024 Report at 8. “Distressed borrower” respondents are defined as those who agreed with the question “Did you have any concerns or difficulties making your mortgage payments at any time in 2020?” Respondents who reported that they speak a language other than English at home were asked “How well do you speak English?” with possible responses of “very well”, “well”, “not well”, and “not at all.” For comparison, the 2022 American Community Survey 1-Year Estimates indicate that 23 percent of U.S. households speak a language other than English at home and 4 percent of US households speak a language other than English at home and are considered “Limited English” speaking households. See 2022 ACS Table.

¹²⁷ 81 FR 72160 (Oct. 19, 2016).

rates or restricting access to credit for some borrowers, particularly for borrowers with lower credit scores whom financial institutions may judge to have a higher likelihood of default in the first few months of the loan term. The CFPB believes it is unlikely that the rule would result in changes in mortgage interest rates or access but acknowledges these outcomes are possible if costs to servicers increase substantially as a result of the proposal.

G. Potential Specific Impacts of the Proposed Rule on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may be more likely to obtain mortgages from small local banks and credit unions that either service the loans in portfolio or sell the loans and retain the servicing rights.¹²⁸ These servicers may be small servicers that are exempt from the rule.

The CFPB will further consider the impact of the proposed rule on consumers in rural areas. The CFPB therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas.

¹²⁸ See CFPB, *Data Point: Servicer Size in the Mortgage Market*, at 18–19 (Nov. 2019), https://files.consumerfinance.gov/f/documents/cfpb_2019-servicer-size-mortgage-market_report.pdf (Servicer Size Data Point) (estimating that, as of 2018, over 23 percent of mortgages serviced by small servicers are in non-metro or completely rural counties, compared to only 13 and 9 percent of mortgages at mid-size and large servicers, respectively.)

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.¹²⁹ The CFPB also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.¹³⁰

A. Application of the Proposed Rule to Small Entities

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.¹³¹ The analysis

¹²⁹ 5 U.S.C. 601 *et seq.*

¹³⁰ 5 U.S.C. 609.

¹³¹ For purposes of assessing the impacts of the proposed rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A “small business” is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (“NAICS”) classifications and size standards. 5 U.S.C. 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” 5 U.S.C. 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5). See also Small Bus. Admin., *Table of small business size standards by industry*, <https://www.sba.gov/document/support-table-size-standards> (last visited July 1, 2024).

uses existing mortgage servicing final rules as a baseline. The CFPB has identified five categories of small entities that may be subject to the proposed rule for purposes of the RFA: Commercial banks/savings institutions¹³² (NAICS 522110 and 522180), credit unions (NAICS 522130), firms providing real estate credit (NAICS 522292), firms engaged in other activities related to credit intermediation (NAICS 522390), and small non-profit organizations.¹³³ Commercial banks, savings institutions, and credit unions are small businesses if they have \$850 million or less in assets. Firms providing real estate credit are small businesses if average annual receipts do not exceed \$47.0 million, and firms engaged in other activities related to credit intermediation are small businesses if their average annual receipts do not exceed \$28.5 million. A small non-profit organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The CFPB estimates that there are approximately 7,990 depositories (commercial banks, savings institutions, and credit unions) that engage in mortgage servicing and are therefore subject to the Mortgage Servicing Rules. Of these, the CFPB estimates that approximately 6,370 depositories are “small entities” as defined in the RFA.

¹³² Savings institutions include thrifts, savings banks, mutual banks, and similar institutions.

¹³³ These categories reference the NAICS 2022 standard.

Category	NAICS	Total entities	Small entities	Entities engaged in mortgage loan servicing	Small entities engaged in mortgage loan servicing
Commercial banks & savings institutions	522110, 522180	4,570	3,409	4,477	3,343
Credit unions	522130	4,644	4,157	3,513	3,027
Real estate credit	522292	3,311 ¹³⁴	2,372-2,608 ¹³⁵	1,637 ¹³⁶	1,305 ⁸
Other activities related to credit intermediation (includes loan servicing)	522390	3,769 ¹³⁷	*	*	*

For commercial banks, savings institutions, and credit unions, the number of entities and asset sizes were obtained from December 2023 Call Report data. Banks and savings institutions are counted as engaging in mortgage loan servicing if they hold closed-end loans secured by one to four family residential property or they are servicing mortgage loans for others. Credit unions are counted as engaging in mortgage loan servicing if they have closed-end one to four family mortgages in portfolio, or hold real estate loans that have been sold but remain serviced by the institution.^{134 135 136 137}

For firms providing real estate credit and firms engaged in other activities related to credit intermediation, the total number of entities and small

entities comes from the 2017 Economic Census. For firms engaged in other activities related to credit intermediation, the number of entities engaged in mortgage servicing also comes from the 2017 Economic Census. The CFPB has not been able to separately estimate the number of these entities and small entities that are engaged in mortgage servicing. However, with the 2013 Final Rule the CFPB published analysis showing that approximately 90 percent of the estimated total entities engaged in servicing were depository institutions (DIs), while the remainder were non-depository institutions (non-DIs). The market share of non-DIs has grown considerably, with a report by the Financial Stability Oversight Committee (FSOC) showing that the share of Agency loans serviced by non-DIs rose from roughly 35 percent in 2014 to over 60 percent in 2023. Taking the assumption that the relationship between entity size and loans serviced within servicer type has remained stable over that period, this implies that the non-DI share of servicer entities has grown from roughly 10 percent to 17 percent over that decade. Using this figure, the CFPB estimates that there are currently approximately 1,637 non-DI entities engaged in servicing and 1,320 non-DI small entities engaged in servicing. The CFPB considers these the best available approximations to the current number of non-DI servicers, but also recognizes that they are rough estimates.¹³⁸

Non-profits and small non-profits engaged in mortgage servicing would be included under real estate credit if their primary activity is originating loans and under other activities related to credit intermediation if their primary activity is servicing. The CFPB has not been able to separately estimate the number of non-profits and small non-profits engaged in mortgage loan servicing.

The large majority of small entities discussed above qualify as “small servicers” for the purposes of the Mortgage Servicing Rule, which exempts servicers that service 5,000 mortgage loans or less, all of which the servicer or an affiliate owns or originated, from all the provisions affected by the proposed rule.¹³⁹ The CFPB estimates that nearly all insured depositories or credit unions that meet the Small Business Administration (SBA) asset threshold for a small entity also qualify for the small servicer exemption (over 99 percent or all but 61). The methodology for this estimate is straightforward in the case of credit unions. The credit union Call Report presents the number of mortgages held in credit union portfolios and the amount of assets. This allows one to readily determine which credit union small servicers (as defined by the SBA asset threshold) serviced 5,000 mortgage loans or less.¹⁴⁰ In contrast, the bank and thrift Call Report does not present the number of mortgages, only the aggregate unpaid principal balance, and the amount of assets. The CFPB developed estimates of the average

¹³⁴ U.S. Census Bureau, *All Sectors: Summary Statistics for the U.S., States, and Selected Geographies 2017*, <https://data.census.gov/table/ECNBASIC2017.EC1700BASIC?q=522292:%20Real%20estate%20credit&y=2017> (last visited July 1, 2024).

¹³⁵ U.S. Census Bureau, *Selected Sectors: Sales, Value of Shipments, of Revenue Size of Firms for the U.S.: 2017*, <https://data.census.gov/table/ECNSIZE2017.EC1700SIZE.REVFIRM?q=522292:%20Real%20estate%20credit&y=2017> (last visited July 1, 2024) Range reflects number of firms with annual revenue less than \$25 million to the number of firms with annual revenue less than \$100 million.

¹³⁶ Estimate based on the share of DIs and non-DIs the CFPB estimated were engaged in servicing in the 2013 Final Rule (78 FR 10696, 10864 (Feb. 14, 2013)) extrapolated for non-DI growth in market share over the next decade. See Fin. Stability Oversight Council (FSOC), *Report on Nonbank Mortgage Servicing—2024*, <https://home.treasury.gov/system/files/261/FSOC-2024-Nonbank-Mortgage-Servicing-Report.pdf> (last visited July 1, 2024).

¹³⁷ U.S. Census Bureau, *Selected Sectors: Sales, Value of Shipments, of Revenue Size of Firms for the U.S.: 2017*, <https://data.census.gov/table/ECNSIZE2017.EC1700SIZ.EREFVIRM?q=2017&n=522390> (last visited July 2, 2024).

¹³⁸ As discussed below, the estimate of the number of small entities potentially affected by the rule is very small. As a result, even if the share of non-DI's engaged in servicing has grown significantly, it is unlikely to affect the overall conclusion.

¹³⁹ See 12 CFR 1024.30(b)(1); 12 CFR 1026.41(e)(4).

¹⁴⁰ We assume that mortgages held by banks and credit unions are also serviced by them as the CFPB does not have data on servicing rights institutions sell off.

unpaid principal balance at banks and thrifts of different sizes and used this with the information on aggregate unpaid principal balance to derive loan counts at each bank and thrift¹⁴¹ to determine which bank and thrift small servicers (as defined by the SBA asset threshold), together with affiliates, serviced 5,000 mortgage loans or less.

It is not possible to observe in the data whether the loans that servicers are servicing for others were originated by those servicers or their affiliates. However, all insured depositories and credit unions that meet both the SBA asset threshold and the loan count threshold likely qualify for the exception. In principle, these entities may not qualify for the exception because they service loans that they did not originate and do not own and that their affiliates did not originate and do not own; however, this situation is extremely unlikely. First, most entities servicing loans they did not originate and do not own most likely view servicing as a stand-alone line of business. In this case they would most likely choose to service substantially more than 5,000 loans in order to obtain a profitable return on their investment in servicing.¹⁴² Taking this into account, the CFPB determines that essentially all insured depositories and credit unions that meet the SBA threshold and the loan count condition likely qualify for the exception.

The CFPB does not have the data necessary to precisely estimate the number of small entity non-DIs that would be covered by the exemption. To obtain a rough estimate, the CFPB draws on prior CFPB analysis in the preamble to the 2013 Mortgage Servicing Final Rule estimating that all but 4 percent of non-depository servicers would service, together with affiliates, 5,000 loans or less. This estimate implies that 1,253 (all but 4 percent of 1,305, or 52) non-DI servicers would service 5,000 loans or less. The CFPB determines this to be the best available approximation to the number of non-DI servicers that would not qualify for the exemption, but also recognizes that these figures are rough.

¹⁴¹ For banks and thrifts with under \$10 billion in assets, the CFPB calculated the average unpaid principal balance of portfolio mortgages by state for credit unions with less than \$1 billion in assets and applied the state specific figures to these banks and thrifts. For banks and thrifts with over \$10 billion in assets, the CFPB applied the OCC's mortgage metrics estimate of \$233,000.

¹⁴² 86 FR 34848, 34898 (June 30, 2021). For example, one industry participant estimated that most servicers would need a portfolio of 175,000 to 200,000 loans to be profitable. Bonnie Sinnock, *Servicers Search for 'Goldilocks' Size for Max Profits*, Am. Banker (Sept. 10, 2015), <https://www.americanbanker.com/news/servicers-search-for-goldilocks-size-for-max-profits>.

The CFPB estimates that out of 7,675 small entities engaged in servicing, approximately 1 percent (or 113 entities) are not small servicers and would therefore be affected by the rule. While these estimates are somewhat uncertain, the estimate that roughly 1 percent of small entities would be affected implies that it is unlikely that a substantial number of small entities would be affected.

B. Certification

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The CFPB requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),¹⁴³ Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for data collection, disclosure, and recordkeeping requirements (collectively, information collection requirements) prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB. As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection instruments are clearly understood, and the Bureau can properly assess the impact of information collection requirements on respondents.

This proposed rule would amend 12 CFR part 1024 (Regulation X). The Bureau's OMB control number for Regulation X is 3170-0016 which currently expires on December 31, 2026. As described below, the proposed rule would revise existing information collections and create the following new information collection requirements in Regulation X:

- The proposed rule would require that a servicer provide a delinquent

borrower who is performing pursuant to the terms of a forbearance agreement with a written notice containing certain information relating to loss mitigation and the borrower's forbearance when the forbearance is nearing its scheduled end.

- The proposed rule would require that a servicer provide certain additional information to delinquent borrowers in early intervention notices, such as the name of the investor on the borrower's loan, a brief description of each type of loss mitigation option that is generally available from that owner or assignee, as well as a website and telephone number where the borrower can obtain information about all of the loss mitigation options that may be available from that investor.

- The proposed rule would require that a servicer send loss mitigation determination notices to borrowers when a servicer offers a borrower a loss mitigation option and when a servicer denies the borrower for any loss mitigation option. Currently, servicers are required to send detailed determination notices only for denials of loan modifications. The proposed rule would (a) require more detail in the notices specifying the borrower-provided inputs that served as the basis for the determination, (b) provide contact information that the borrower can use to access a list of non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination, (c) require certain disclosures regarding loss mitigation options that may remain available to the borrower, and (d) require that the servicer inform the borrower as to whether an offer will still be available if the borrower requests to be reviewed for other loss mitigation options.

- The proposed rule would expand the information that is currently required to be disclosed when a servicer denies a borrower for a loss mitigation option due to missing documents and information not in the borrower's control, to include, for example, a list of loss mitigation options that are still available to the borrower.

- The proposed rule would require that certain written early intervention and loss mitigation communications contain statements making a borrower aware of the availability of translation of the notices into non-English languages, that all such communications be made available to borrowers in both English and Spanish, and that servicers make available additional translations and oral interpretations under certain other circumstances.

The collections of information contained in this proposed rule, and

¹⁴³ 44 U.S.C. 3501 *et seq.*

identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the supporting statement accompanying the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Consumer Financial Protection Bureau. Send these comments by email to oir_submission@omb.eop.gov or by fax to 202-395-6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the **ADDRESSES** section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at www.regulations.gov as well as on OMB's public-facing docket at www.reginfo.gov.

Title of Collection: Regulation X: Real Estate Settlement Procedure Act.

OMB Control Number: 3170-0016.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 9,627.

Estimated Total Annual Burden Hours: 1,155,284.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notification will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the final rule will inform the public of OMB's approval of the new information collection requirements proposed herein and adopted in the final rule. If OMB has not approved the new information collection requirements prior to publication of the final rule in the **Federal Register**, the Bureau will publish a separate notification in the

Federal Register announcing OMB's approval prior to the effective date of the final rule.

IX. Request for Comments

The CFPB seeks comment on all aspects of this proposed rule. Additionally, the CFPB specifically requests comments or information on the following:

Are there ways in which the early intervention and loss mitigation provisions in Regulation X could be further simplified or streamlined?

Are there different or additional policy and procedure requirements that might be needed in § 1024.38 in light of the proposed changes?

What additional information or clarification, if any, should the CFPB consider for the continuity of contact provisions in § 1024.40?

X. Severability

The CFPB preliminarily intends that, if any provision of the final rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue to be in effect.

List of Subjects in 12 CFR Part 1024

Banks, banking, Condominiums, Consumer protection, Credit unions, Housing, Mortgage insurance, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For reasons set forth in the preamble, the CFPB proposes to amend Regulation X, 12 CFR part 1024, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart C—Mortgage Servicing

■ 2. Section 1024.31 is amended by removing the definitions for *COVID-19 related hardship* and *Loss mitigation application*, and adding, in alphabetical order, definitions for *Loss mitigation review cycle* and *Request for loss mitigation assistance* to read as follows:

§ 1024.31 Definitions.

Loss mitigation review cycle means a continuous period of time beginning when the borrower makes a request for loss mitigation assistance, provided the request is made more than 37 days

before a foreclosure sale, and ending when the loan is brought current or the procedural safeguards in § 1024.41(f)(2)(i) or (ii) are met. A loss mitigation review cycle continues while a borrower is in a temporary or trial loss mitigation period, such as a forbearance or modification trial payment plan, and the loan has not yet been brought current.

Request for loss mitigation assistance means any oral or written communication, occurring through any usual and customary channel for mortgage servicing communications, whereby a borrower asks a servicer for mortgage relief. A request for loss mitigation assistance should be construed broadly and includes, but is not limited to, any communication whereby:

(1) A borrower expresses an interest in pursuing a loss mitigation option;

(2) A borrower indicates that they have experienced a hardship and asks the servicer for assistance with making payments, retaining their home, or avoiding foreclosure; or

(3) In response to a servicer's unsolicited offer of a loss mitigation option, a borrower expresses an interest in pursuing either the loss mitigation option offered or any other loss mitigation option.

■ 3. Section 1024.35 is amended by revising paragraphs (b)(9) through (11) to read as follows:

§ 1024.35 Error resolution procedures.

(b) * * *

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or advancing the foreclosure process, in violation of § 1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of § 1024.41(f) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan, including failure to make an accurate loss mitigation determination on a borrower's mortgage loan.

■ 4. Section 1024.38 is amended by revising paragraph (b)(2) introductory text, and paragraphs (b)(2)(iv) through (vi), (b)(3)(iii), and (c)(1) to read as follows:

§ 1024.38 General servicing policies, procedures, and requirements.

(b) * * *

(2) *Properly evaluating requests for loss mitigation assistance.* The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:

* * * * *

(iv) Identify documents and information, if any, that a borrower is required to submit for the servicer to make a loss mitigation determination;

(v) Properly evaluate a borrower who makes a request for loss mitigation assistance for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of § 1024.41; and

(vi) Promptly identify and obtain documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, to offer the borrower.

(3) * * *

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's request for loss mitigation assistance and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in § 1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

* * * * *

(c) * * *

(1) *Record retention.* A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.

* * * * *

■ 5. Section 1024.39 is amended by revising paragraphs (a), (b)(2)(ii) through (iv), (b)(3), and (e) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

(a) *Live contact.* Except as otherwise provided in this section, a servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower no later than the 36th day of a borrower's delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent. Promptly after establishing live contact with a borrower, the servicer shall inform the

borrower about the availability of loss mitigation options, if appropriate.

(b) * * *

(2) * * *

(ii) The telephone number to access servicer personnel assigned pursuant to § 1024.40(a), the telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignees of the borrower's loan, the servicer's mailing address, and a website to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan;

(iii) The name of the owner or assignee of the borrower's mortgage loan, and a statement providing a brief description of each type of loss mitigation option that is generally available from the owner or assignee of the borrower's mortgage loan;

(iv) If applicable, a statement informing the borrower how to make a request for loss mitigation assistance; and

(v) * * *

(3) *Model clauses.* Model clause MS-4(C), in appendix MS-4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

(e) *Borrowers in a forbearance—(1) Partial exemption.* While a borrower is performing pursuant to the terms of a forbearance, a servicer is exempt from the requirements of paragraphs (a) and (b) of this section as to that mortgage loan.

(2) *Contact and notice requirements for forbearances nearing their scheduled end.* If a delinquent borrower is performing pursuant to the terms of a forbearance, the servicer shall, at least 30 days, but no more than 45 days, before the scheduled end of the forbearance:

(i) Establish or make good faith efforts to establish live contact with the borrower. During such live contact, the servicer shall inform the borrower of the following information:

(A) The date the borrower's current forbearance is scheduled to end; and

(B) The availability of loss mitigation options, if appropriate, as set forth in paragraph (a) of this section.

(ii) Shall send the borrower a written notice with the following information:

(A) The date the borrower's current forbearance is scheduled to end; and

(B) The content of the written notice as set forth in paragraphs (b)(2)(i)–(v) of this section.

(3) *Resuming compliance with early intervention requirements.* When a forbearance ends for any reason,

including, but not limited to, the borrower's successful completion of the forbearance or the borrower's nonperformance under the terms of the forbearance, a servicer that was exempt from paragraphs (a) and (b) of this section pursuant to paragraph (e)(1) of this section must resume compliance with paragraphs (a) and (b) of this section after the next payment due date following the forbearance end date. For purposes of providing written notice under paragraph (b) after resuming compliance, the 180-day period referenced in paragraph (b) begins with the date the servicer provided the last written notice to the borrower under either paragraphs (b) or (e)(2)(ii), whichever is later.

■ 6. Section 1024.40 is amended by revising paragraphs (b)(1)(ii) through (iv), and (b)(2)(ii) to read as follows:

§ 1024.40 Continuity of contact.

* * * * *

(b) * * *

(1) * * *

(ii) Any actions the borrower must take to be evaluated for such loss mitigation options, and whether the borrower has the right to appeal the loss mitigation determination as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section;

(iii) The status of the servicer's review of any request for loss mitigation assistance from the borrower to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure or advance the foreclosure process; and

* * * * *

(2) * * *

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a request for loss mitigation assistance;

* * * * *

■ 7. Revise § 1024.41 to read as follows:

§ 1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in § 1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any

such right that may exist pursuant to applicable law.

(b) [RESERVED]

(c) *Loss mitigation determination notices*—(1) *General notice and content requirements.* Except as provided in paragraphs (c)(2) and (3) of this section, if a servicer receives a request for loss mitigation assistance more than 37 days before a foreclosure sale and makes a determination to offer or deny any loss mitigation assistance, the servicer shall promptly provide the borrower with a notice in writing stating that determination. The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation option as provided for in paragraph (e) of this section, if applicable;

(ii) A notification, if applicable, that the borrower has the right to appeal the loss mitigation determination as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(iii) The specific reason or reasons for the servicer's determination to offer or deny each such loss mitigation option;

(iv) The key borrower-provided inputs, if any, that served as the basis for the determination;

(v) A telephone number, mailing address, and website, where the borrower can access a list of the non-borrower provided inputs, if any, used by the servicer in making the loss mitigation determination;

(vi) A list of all other loss mitigation options that may remain available to the borrower, if any, including a clear statement describing the next steps the borrower must take to be reviewed for those loss mitigation options or, if applicable, a statement that the servicer has reviewed the borrower for all available loss mitigation options and none remain;

(vii) A list of any loss mitigation options that the servicer previously offered to the borrower that remain available but that the borrower did not accept;

(viii) A telephone number where the borrower can obtain a list of all loss mitigation options that may be available from the owner or assignee of the borrower's loan, pursuant to § 1024.39(b)(2)(ii), and a website to access a list of all loss mitigation options that may be available from the owner or assignee of the borrower's mortgage loan, pursuant to § 1024.39(b)(2)(ii);

(ix) The name of the owner or assignee of the borrower's mortgage loan;

(x) If there is a loss mitigation offer, a statement informing the borrower whether the offered option will still be available if the borrower requests to be reviewed for other loss mitigation options prior to accepting or rejecting the offer; and

(xi) If there is a loss mitigation offer of a forbearance, a statement informing the borrower of the specific payment terms and duration of the forbearance.

(2) *Denial due to missing documents or information not in the borrower's control*—(i) If a servicer receives a request for loss mitigation assistance more than 37 days before a foreclosure sale, except as provided in paragraph (c)(2)(ii) of this section, a servicer must not deny a request for loss mitigation assistance solely because the servicer lacks required documents or information not in the borrower's control.

(ii) If the servicer has regularly taken steps to obtain required documents or information from a party other than the borrower or the servicer, but the servicer has been unable to obtain such documents or information for at least 90 days and the servicer, in accordance with applicable requirements established by the owner or assignee of the borrower's mortgage loan, is unable to determine which loss mitigation options, if any, it will offer the borrower without such documents or information, the servicer may deny the request for loss mitigation assistance and provide the borrower with a written notice in accordance with § 1024.41(c)(2)(iii).

(iii) The servicer shall provide the borrower a written notice, informing the borrower:

(1) That the servicer has not received documents or information not in the borrower's control that the servicer requires to determine which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage;

(2) Of the specific documents or information that the servicer lacks;

(3) That the servicer has requested such documents or information; and

(4) That, if the servicer receives the documents or information within 14 days of providing the written notice to the borrower, the servicer will complete its evaluation of the borrower for all available loss mitigation options promptly upon receiving the documents or information.

(5) Of the information required by paragraphs (c)(1)(vi) through (xi) of this section.

(3) *Unsolicited loss mitigation offers.*

If a servicer makes an unsolicited offer of a loss mitigation option to a borrower based solely on information in the servicer's possession, the servicer shall provide the borrower with a notice in writing stating that determination. The servicer shall include in this notice:

(i) The amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section; and

(ii) The information required by paragraphs (c)(1)(vi) and (ix).

(d) [RESERVED]

(e) *Borrower response*—(1) *In general.* Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a request for loss mitigation assistance is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a request for loss mitigation assistance is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.

(2) *Rejection*—(i) *In general.* Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.

(ii) *Trial Loan Modification Plan.* A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.

(iii) *Interaction with appeal process.* If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1) or (3) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.

(f) *Prohibition on foreclosure referral*—(1) *Pre-foreclosure review*

period. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a superior or subordinate lienholder.

(2) *Foreclosure process procedural safeguards during a loss mitigation review cycle.* A loss mitigation review cycle begins when a borrower makes a request for loss mitigation assistance more than 37 days before a foreclosure sale. Once a loss mitigation review cycle begins, the servicer must ensure that one of the following procedural safeguards is met before making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or if applicable, before advancing the foreclosure process:

(i) *No remaining loss mitigation options.* The servicer has reviewed the borrower for loss mitigation and no available loss mitigation options remain, the servicer has sent the borrower all notices required by paragraph (c) of this section, if applicable, and the borrower has not requested any appeal within the applicable time period or, if applicable, all of the borrower's appeals have been denied; or

(ii) *Unresponsive borrower.* The servicer has regularly taken steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower, and, if the servicer has made a loss mitigation determination, has regularly taken steps to reach the borrower regarding that determination, but the borrower has not communicated with the servicer for at least 90 days.

(3) *Fee protections.* During a loss mitigation review cycle, no fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract shall accrue on the borrower's account.

(g) [RESERVED]

(h) *Appeal process—(1) Appeal process required for loss mitigation determinations.* A servicer shall permit a borrower to appeal the servicer's determination regarding any loss mitigation option available to the borrower.

(2) *Deadlines.* A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides a loss

mitigation determination to the borrower pursuant to paragraph (c) of this section. An appeal that meets the procedural requirements of section 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section shall be treated as both an appeal and an error assertion for purposes of paragraph (h) of this section.

(3) *Independent evaluation.* An appeal shall be reviewed by different personnel than those responsible for making the loss mitigation determination that is the subject of the appeal.

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. If a borrower has asserted an error under § 1024.35(b)(11) that meets the procedural requirements of § 1024.35 and is submitted within 14 days after the servicer provides a loss mitigation determination to the borrower pursuant to paragraph (c) of this section, a servicer may not make this appeal determination until it has either corrected the error or conducted a reasonable investigation and determined that no error occurred, as required in § 1024.35. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

(i) *Duplicative requests.* A servicer must comply with the requirements of this section for a borrower's request for loss mitigation assistance during the same loss mitigation review cycle, unless the procedural safeguards in paragraph (f)(2)(i) and (ii) have been met.

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

(k) *Servicing transfers—(1) In general—(i) Timing of compliance.* Except as provided in paragraphs (k)(3) and (4) of this section, if a transferee servicer acquires the servicing of a mortgage loan for which a request for loss mitigation assistance is pending as of the transfer date, the transferee servicer must comply with the requirements of this section for that request within the timeframes that were applicable to the transferor servicer based on the date the transferor servicer received the request for loss mitigation assistance. All rights and protections under this section to which a borrower was entitled before a transfer continue to apply notwithstanding the transfer.

(ii) *Transfer date defined.* For purposes of this paragraph (k), the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv).

(2) [RESERVED]

(3) *Requests for loss mitigation assistance pending at transfer.* If a transferee servicer acquires the servicing of a mortgage loan for which a request for loss mitigation assistance is pending as of the transfer date, the transferee servicer must comply with the applicable requirements of this section, including the procedural safeguards referenced in paragraph (f)(2).

(4) *Determinations subject to appeal process.* If a transferee servicer acquires the servicing of a mortgage loan for which an appeal of a transferor servicer's determination pursuant to paragraph (h) of this section has not been resolved by the transferor servicer as of the transfer date or is timely filed after the transfer date, the transferee servicer must make a determination on the appeal if it is able to do so or, if it is unable to do so, must treat the appeal as a pending request for loss mitigation assistance.

(i) *Determining appeal.* If a transferee servicer is required under this paragraph (k)(4) to make a determination on an appeal, the transferee servicer must complete the determination and provide the notice required by paragraph (h)(4) of this section within 30 days of the transfer date or 30 days of the date the borrower made the appeal, whichever is later.

(ii) *Servicer unable to determine appeal.* A transferee servicer that is required to treat a borrower's appeal as a pending request for loss mitigation assistance under this paragraph (k)(4) must comply with the requirements of this section for such request.

(5) *Pending loss mitigation offers.* A transfer does not affect a borrower's ability to accept or reject a loss mitigation option offered under this section. If a transferee servicer acquires the servicing of a mortgage loan for which the borrower's time period under paragraph (e) or (h) of this section for accepting or rejecting a loss mitigation option offered by the transferor servicer has not expired as of the transfer date, the transferee servicer must allow the borrower to accept or reject the offer during the unexpired balance of the applicable time period.

Appendix MS-4 to Part 1024 [Amended]

- 8. In Appendix MS-4 to Part 1024, remove and reserve MS-4(A) and MS-4(B).
- 9. In Supplement I to part 1024:
 - a. Revise § 1024.31—Definitions;
 - b. Under Section 1024.38—General servicing policies, procedures, and requirements:
 - i. Revise Paragraph 38(b)(1)(iv) and Paragraph 38(b)(1)(vi);
 - ii. Revise the paragraph heading of 38(b)(2) *Properly evaluating loss mitigation applications*;
 - iii. Revise Paragraph 38(b)(2)(v), Paragraph 38(b)(3)(iii), 38(b)(5) *Informing borrowers of written error resolution and information request procedures*, and 38(c)(1) *Record retention*.
 - c. Under § 1024.39—*Early intervention requirements for certain borrowers*:
 - i. Revise 39(a) *Live Contact*, Paragraph 39(b)(2)(iii), and Paragraph 39(b)(2)(iv).
 - d. Revise § 1024.41—*Loss mitigation procedures*.
 - e. Under Appendix MS to Part 1024—*Mortgage Servicing Model Forms and Clauses*:
 - i. Revise Appendix MS-4—*Model Clauses for the Written Early Intervention Notice*.

The revisions read as follows:

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

1024.31—Definitions

Delinquency

1. *Length of delinquency.* A borrower's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and, if applicable, escrow becomes due and unpaid, and lasts until such time as no periodic payment is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

2. *Application of funds.* If a servicer applies payments to the oldest outstanding

periodic payment, a payment by a delinquent borrower advances the date the borrower's delinquency began. For example, assume a borrower's mortgage loan obligation provides that a periodic payment sufficient to cover principal, interest, and escrow is due on the first of each month. The borrower fails to make a payment on January 1 or on any day in January, and on January 31 the borrower is 30 days delinquent. On February 3, the borrower makes a periodic payment. The servicer applies the payment it received on February 3 to the outstanding January payment. On February 4, the borrower is three days delinquent.

3. *Payment tolerance.* For any given billing cycle for which a borrower's payment is less than the periodic payment due, if a servicer chooses not to treat a borrower as delinquent for purposes of any section of this subpart, that borrower is not delinquent as defined in § 1024.31.

4. *Creditor's contract rights.* This subpart does not prevent a creditor from exercising a right provided by a mortgage loan contract to accelerate payment for a breach of that contract. Failure to pay the amount due after the creditor accelerates the mortgage loan obligation in accordance with the mortgage loan contract would begin or continue delinquency.

Loss Mitigation Option

1. *Types of loss mitigation options.* Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.

2. *Available through the servicer.* A loss mitigation option available through the servicer refers to an option for which a borrower may request to be evaluated, even if the borrower ultimately does not qualify for such option.

Request for Loss Mitigation Assistance

1. *Borrower's representative.* A request for loss mitigation assistance is deemed to be submitted by a borrower if the request is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.

Qualified Written Request

1. A qualified written request is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service Provider

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

Successor in Interest

1. *Joint tenants and tenants by the entirety.* If a borrower who has an ownership interest as a joint tenant or tenant by the entirety in a property securing a mortgage loan subject to this subpart dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in § 1024.31.

2. *Beneficiaries of inter vivos trusts.* In the event of a transfer into an *inter vivos* trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of § 1024.31. For example, assume Borrower A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Borrower A and her spouse would be considered successors in interest and, upon confirmation, would be borrowers for purposes of certain provisions of Regulation X. If the lender has not released Borrower A from the loan obligation, Borrower A would also remain a borrower more generally for purposes of Regulation X.

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Section 1024.38—General Servicing Policies, Procedures, and Requirements.

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Paragraph 38(b)(1)(iv)

1. *Accurate and current information for owners or assignees of mortgage loans relating to loss mitigation.* The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms, and features of loss mitigation options, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

Paragraph 38(b)(1)(vi)

1. *Identification of potential successors in interest.* A servicer may be notified of the existence of a potential successor in interest in a variety of ways. For example, a person could indicate that there has been a transfer of ownership or of an ownership interest in

the property or that a borrower has been divorced, legally separated, or died, or a person other than a borrower could make a request for loss mitigation assistance. A servicer must maintain policies and procedures reasonably designed to ensure that the servicer can retain this information and promptly facilitate communication with potential successors in interest when a servicer is notified of their existence. A servicer is not required to conduct a search for potential successors in interest if the servicer has not received actual notice of their existence.

2. *Documents reasonably required.* The documents a servicer requires to confirm a potential successor in interest's identity and ownership interest in the property must be reasonable in light of the laws of the relevant jurisdiction, the specific situation of the potential successor in interest, and the documents already in the servicer's possession. The required documents may, where appropriate, include, for example, a death certificate, an executed will, or a court order. The required documents may also include documents that the servicer reasonably believes are necessary to prevent fraud or other criminal activity (for example, if a servicer has reason to believe that documents presented are forged).

3. *Examples of reasonable requirements.* Because the relevant law governing each situation may vary from State to State, the following examples are illustrative only. The examples illustrate what documents it would generally be reasonable for a servicer to require to confirm a potential successor in interest's identity and ownership interest in the property under the specific circumstances described.

i. *Tenancy by the entirety or joint tenancy.* Assume that a servicer knows that the potential successor in interest and the transferor borrower owned the property as tenants by the entirety or joint tenants and that the transferor borrower has died. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has sole interest in the property but requires only that there be a prior recorded deed listing both the potential successor in interest and the transferor borrower as tenants by the entirety (e.g., married grantees) or joint tenants. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the recorded instrument, if the servicer does not already have it, and the death certificate of the transferor borrower. Because in this situation a probate proceeding is not required under the applicable law of the relevant jurisdiction, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

ii. *Affidavits of heirship.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest upon the death of the transferor borrower through intestate succession and offers an affidavit of heirship as

confirmation. Assume further that, upon the death of the transferor borrower, the applicable law of the relevant jurisdiction does not require a probate proceeding to establish that the potential successor in interest has an interest in the property but requires only an appropriate affidavit of heirship. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the affidavit of heirship and the death certificate of the transferor borrower. Because a probate proceeding is not required under the applicable law of the relevant jurisdiction to recognize the transfer of title, it generally would not be reasonable for the servicer to require documentation of a probate proceeding.

iii. *Divorce or legal separation.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a spouse who is a borrower as a result of a property agreement incident to a divorce proceeding. Assume further that the applicable law of the relevant jurisdiction does not require a deed conveying the interest in the property but accepts a final divorce decree and accompanying separation agreement executed by both spouses to evidence transfer of title. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide documentation of the final divorce decree and an executed separation agreement. Because the applicable law of the relevant jurisdiction does not require a deed, it generally would not be reasonable for the servicer to require a deed.

iv. *Living spouses or parents.* Assume that a potential successor in interest indicates that an ownership interest in the property transferred to the potential successor in interest from a living spouse or parent who is a borrower by quitclaim deed or act of donation. Under these circumstances, it would be reasonable for the servicer to require the potential successor in interest to provide the quitclaim deed or act of donation. It generally would not be reasonable, however, for the servicer to require additional documents.

4. *Additional documentation required for confirmation determination.* Section 1024.38(b)(1)(vi)(C) requires a servicer to maintain policies and procedures reasonably designed to ensure that, upon receipt of the documents identified by the servicer, the servicer promptly notifies a potential successor in interest that, as applicable, the servicer has confirmed the potential successor in interest's status, has determined that additional documents are required, or has determined that the potential successor in interest is not a successor in interest. If a servicer reasonably determines that it cannot make a determination of the potential successor in interest's status based on the documentation provided, it must specify what additional documentation is required. For example, if there is pending litigation involving the potential successor in interest and other claimants regarding who has title to the property at issue, a servicer may specify that documentation of a court determination or other resolution of the litigation is required.

5. *Prompt confirmation and loss mitigation.* A servicer's policies and procedures must be reasonably designed to ensure that the servicer can promptly notify the potential successor in interest that the servicer has confirmed the potential successor in interest's status. Notification is not prompt for purposes of this requirement if it unreasonably interferes with a successor in interest's ability to make a request for loss mitigation assistance.

8(b)(2) Properly Evaluating Requests for Loss Mitigation Assistance.

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Paragraph 38(b)(2)(v)

1. *Owner or assignee requirements.* A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of § 1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to review a borrower who makes a request for loss mitigation assistance less than 37 days before a foreclosure sale. Further, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to § 1024.41.

38(b)(3) Facilitating Oversight of, and Compliance by, Service Providers.

Paragraph 38(b)(3)(iii)

1. *Sharing information with service provider personnel handling foreclosure proceedings.* A servicer's policies and procedures must be reasonably designed to ensure that servicer personnel promptly inform service provider personnel handling foreclosure proceedings that the servicer has received a request for loss mitigation assistance and promptly instruct foreclosure counsel to take any step required by § 1024.41(f) sufficiently timely to avoid violating the prohibition against making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, or before advancing the foreclosure process.

* * * * *

38(b)(5) Informing Borrowers of Written Error Resolution and Information Request Procedures

1. *Manner of informing borrowers.* A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in § 1024.35 and written information requests set forth in § 1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a website. For example, a servicer may comply with § 1024.38(b)(5) by including in the periodic statement required pursuant to 12

CFR 1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a website that provides a description of the procedures set forth in §§ 1024.35 and 1024.36.

Alternatively, a servicer may also comply with § 1024.38(b)(5) by including a description of the procedures set forth in §§ 1024.35 and 1024.36 in the written notice required by §§ 1024.35(c) and 1024.36(b).

2. *Oral complaints and requests.* A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in § 1024.35 and for submitting written requests for information set forth in § 1024.36.

3. *Notices of error incorrectly sent to addresses associated with submission of requests for loss mitigation assistance or the continuity of contact.* A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with a request for loss mitigation assistance, the continuity of contact pursuant to § 1024.40, or a loss mitigation determination, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in § 1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.

38(c) Standard Requirements

38(c)(1) Record Retention

1. *Methods of retaining records.* Retaining records that document actions taken with respect to a borrower's mortgage loan account, including records evidencing compliance with this part, does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity). For example, a servicer may use a computer program to create and retain records of the date a borrower makes a request for loss mitigation assistance, so long as the servicer ensures it can easily access those records.

* * * * *

1024.39—Early Intervention Requirements for Certain Borrowers

39(a) Live Contact

1. *Delinquency.* Section 1024.39 requires a servicer to establish or attempt to establish live contact no later than the 36th day of a borrower's delinquency. This provision is illustrated as follows:

i. Assume a mortgage loan obligation with a monthly billing cycle and monthly payments of \$2,000 representing principal,

interest, and escrow due on the first of each month.

A. The borrower fails to make a payment of \$2,000 on, and makes no payment during the 36-day period after, January 1. The servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—*i.e.*, on or before February 6.

B. The borrower makes no payments during the period January 1 through April 1, although payments of \$2,000 each on January 1, February 1, and March 1 are due.

Assuming it is not a leap year; the borrower is 90 days delinquent as of April 1. The servicer may time its attempts to establish live contact such that a single attempt will meet the requirements of § 1024.39(a) for two missed payments. To illustrate, the servicer complies with § 1024.39(a) if the servicer makes a good faith effort to establish live contact with the borrower, for example, on February 5 and again on March 25. The February 5 attempt meets the requirements of § 1024.39(a) for both the January 1 and February 1 missed payments. The March 25 attempt meets the requirements of § 1024.39(a) for the March 1 missed payment.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of § 1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of § 1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. See § 1024.33(c)(1) and comment 33(c)(1)–2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. *Establishing live contact.* Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes speaking on the telephone or conducting an in-person meeting with the borrower but not leaving a recorded phone message. A servicer may rely on live contact established at the borrower's initiative to satisfy the live contact requirement in § 1024.39(a). Servicers may also combine contacts made pursuant to § 1024.39(a) with contacts made with borrowers for other reasons, for instance, by telling borrowers on collection calls that loss mitigation options may be available.

3. *Good faith efforts.* Good faith efforts to establish live contact consist of reasonable steps, under the circumstances, to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication

encouraging the borrower to establish live contact with the servicer. The length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication pursuant to § 1024.39(a), are relevant circumstances to consider. For example, whereas "good faith efforts" to establish live contact with regard to a borrower with two consecutive missed payments might require a telephone call, "good faith efforts" to establish live contact with regard to an unresponsive borrower with six or more consecutive missed payments might require no more than including a sentence requesting that the borrower contact the servicer with regard to the delinquencies in the periodic statement or in an electronic communication. Comment 39(a)–6 discusses the relationship between live contact and the loss mitigation procedures set forth in § 1024.41.

4. *Promptly inform if appropriate.*

i. *Servicer's determination.* It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a hardship for which a loss mitigation option may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. *Promptly inform.* If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in § 1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by § 1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.

5. *Borrower's representative.* Section 1024.39 does not prohibit a servicer from satisfying its requirements by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower to provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.

6. *Relationship between live contact and loss mitigation procedures.* If the servicer has established and is maintaining regular contact with the borrower during a loss mitigation review cycle under § 1024.41, the servicer complies with § 1024.39(a) and need not otherwise establish or make good faith efforts to establish live contact. A servicer must resume compliance with the requirements of § 1024.39(a) for a borrower who becomes delinquent again after curing a prior delinquency.

* * * * *

Paragraph 39(b)(2)(iii)

1. *Types of loss mitigation options that are generally available.* The servicer must list each type of loss mitigation option that is generally available from the owner or assignee of the borrower's loan. The servicer may include a statement that not all borrowers will qualify for the listed options. A type of loss mitigation option may be described in one or more sentences. If the owner or assignee of the borrower's mortgage loan offers a type of loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the owner or assignee of the borrower's mortgage loan offers several loan modification programs, the servicer may provide a generic description of "loan modification."

Paragraph 39(b)(2)(iv)

1. *Explanation of how the borrower may obtain more information about how to make a request for loss mitigation assistance.* A servicer may comply with § 1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to make a request for loss mitigation assistance. For example, a general statement such as, "contact us for instructions on how to request assistance" would satisfy the requirement to inform the borrower how to obtain more information about how to make a request for loss mitigation assistance. However, to expedite the borrower's timely request for loss mitigation assistance, servicers may provide more detailed instructions, such as by listing representative documents, if any, the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate the request for loss mitigation assistance and make a decision on loss mitigation options.

* * * * *

1024.41—Loss Mitigation Procedures

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) General Notice and Content Requirements

1. *Investor requirements.* Except as pursuant to § 1024.41(c)(3), if a loss mitigation option is offered or denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the requirement that is the basis of the determination. A statement

that the offer or denial of a loss mitigation option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient.

2. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the determination.

3. *Loss mitigation options available to a borrower.* The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. Loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

4. *Offer of a non-home retention option.* A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

5. *Other notices.* A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B, 12 CFR part 1002, or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to § 1024.41(c)(1), unless otherwise prohibited by applicable law.

41(f) Prohibition on Foreclosure Referral

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first

notice or filing is determined on the basis of foreclosure procedure under the applicable State law.

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(f)(2) Foreclosure Process Procedural Safeguards During a Loss Mitigation Review Cycle

1. *Dispositive motion.* The prohibition on a servicer advancing the foreclosure process includes moving for judgment or order of sale by, for example, making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer has not moved for a foreclosure judgment or order of sale and is not advancing the foreclosure process if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.

2. *Interaction with foreclosure counsel.* The prohibitions in § 1024.41(f)(2) against advancing the foreclosure process (including moving for judgment or sale) may require a servicer to act through foreclosure counsel retained by the servicer in a foreclosure proceeding. If a servicer has received a request for loss mitigation assistance, the servicer must instruct counsel promptly not to advance the foreclosure process or make a dispositive motion for foreclosure judgment or order of sale; where such a dispositive motion is pending, to avoid a ruling on the motion or issuance of an order of sale; and, where a sale is scheduled, to prevent conduct of a foreclosure sale, unless one of the procedural safeguards in § 1024.41(f)(2) is met, if applicable. A servicer is not relieved of its obligations because foreclosure counsel's actions or inaction caused a violation.

3. *Requests for loss mitigation assistance submitted 37 days or less before foreclosure sale.* Although a servicer is not required to

comply with the requirements in § 1024.41 with respect to a borrower's request for loss mitigation assistance submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to § 1024.38(b)(2)(v) to properly evaluate a borrower who makes a request for loss mitigation assistance pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a request for loss mitigation assistance submitted by a borrower 37 days or less before a foreclosure sale.

4. *Advancing the foreclosure process prohibited.* Section 1024.41(f)(2) prohibits a servicer from advancing the foreclosure process if a borrower submits a request for loss mitigation assistance more than 37 days before a foreclosure sale unless one of the procedural safeguards in § 1024.41(f)(2) is met. For example, advancing the foreclosure process includes conducting a foreclosure sale, even if a person other than the servicer administers or conducts the foreclosure sale proceedings. Where § 1024.41(f)(2) is applicable but none of the procedural safeguards under § 1024.41(f)(2) have been met, scheduling a sale date or conducting a sale violates § 1024.41(f)(2).

5. *Short sale listing period.* An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.

6. *Short sale agreement.* If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may deny the short sale option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.

7. *Successors in interest*—i. If a servicer receives a request for loss mitigation assistance from a potential successor in interest before confirming that person's identity and ownership interest in the property, the servicer may, but need not, comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person. If a servicer complies with the requirements of § 1024.41(f)(2) before confirming a person's successor in interest status, § 1024.41(i)'s limitation on duplicative requests applies to that person, provided the servicer's evaluation of loss mitigation options available to the person would not have resulted in a different determination due to the person's confirmation as a successor in interest if it had been conducted after the servicer confirmed the person's status as a successor in interest.

ii. If a servicer receives a request for loss mitigation assistance from a potential successor in interest and elects not to comply with the foreclosure process procedural safeguards in § 1024.41(f)(2) with respect to that person before confirming that person's identity and ownership interest in the property, the servicer must comply with those foreclosure process procedural safeguards with respect to that person as soon as that person becomes a confirmed successor in interest and must treat the request for loss mitigation assistance as if it had been received on the date that the servicer confirmed the successor in interest's status.

41(f)(2)(ii) Unresponsive Borrower

1. *Communication.* For purposes of § 1024.41(f)(2)(ii), a servicer has not received a communication from the borrower if the servicer has not received any written or electronic communication from the borrower about the mortgage loan obligation, has not received a telephone call from the borrower about the mortgage loan obligation, and has not received a payment on the mortgage loan obligation.

2. *Borrower's representative.* A servicer has received a communication from the borrower if the communication is from an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the communication as having been submitted by the borrower.

3. *Regular contact.* Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation review, throughout the loss mitigation review cycle the servicer must regularly communicate the status of the loss mitigation review to the borrower, which includes requesting documentation and information that the servicer requires from the borrower and communicating available loss mitigation options.

41(h) Appeal Process

Paragraph 41(h)(3)

1. *Supervisory personnel.* The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the loss mitigation evaluation that is the subject of the appeal.

41(k) Servicing Transfers

1. *Pending request for loss mitigation assistance.* For purposes of § 1024.41(k), a request for loss mitigation assistance is pending if it was subject to § 1024.41. For example, the borrower is still in a loss mitigation review cycle, or the transferor servicer denied the request for loss mitigation pursuant to § 1024.41(c)(2)(ii) but the 14 days referenced in § 1024.41(c)(2)(iii) has not elapsed as of the transfer date.

41(k)(1) In General

41(k)(1)(i) Timing of Compliance

1. *Obtaining loss mitigation documents and information.* i. In connection with a transfer, a transferor servicer must timely transfer, and a transferee servicer must obtain from the transferor servicer, documents and information submitted by a borrower in connection with a request for loss mitigation assistance, consistent with policies and procedures adopted pursuant to § 1024.38(b)(4). A transferee servicer must comply with the applicable requirements of § 1024.41 with respect to a request for loss mitigation assistance received as a result of a transfer, even if the transferor servicer was not required to comply with § 1024.41 with respect to that request.

ii. A transferee servicer must, in accordance with § 1024.41(f)(2)(ii), regularly take steps to identify and obtain any information and documents necessary from the borrower to determine which loss mitigation options, if any, it will offer to the borrower. In the transfer context, a transferee servicer must ensure that a borrower is informed of any changes to the loss mitigation determination process, such as a change in the address to which the borrower should submit documents and information, as well as ensuring that the borrower is informed about which documents and information are needed by the transferee servicer to determine which loss mitigation options, if any, it will offer to the borrower.

iii. A borrower may provide documents and information to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, such documents and information.

2. *Determination of rights and protections.*

For purposes of § 1024.41, a transferee servicer must consider documents and information that constitute a request for loss mitigation assistance for the transferee servicer to have been received as of the date such documents and information were received by the transferor servicer, even if such documents and information were received by the transferor servicer after the transfer date. *See* comment 41(k)(1)(i)–1.iii.

3. *Duplicative notices not required.* A transferee servicer is not required to provide notices under § 1024.41 with respect to a particular loss mitigation assistance request that the transferor servicer provided prior to the transfer.

41(k)(1)(ii) Transfer Date Defined

1. *Transfer date.* Section 1024.41(k)(1)(ii) provides that the transfer date is the date on which the transferee servicer will begin accepting payments relating to the mortgage loan, as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(iv). The transfer date is the same date as that on which the transfer of the servicing responsibilities from the transferor servicer to the transferee servicer occurs. The transfer date is not necessarily the same date as either the effective date of the transfer of servicing as disclosed on the notice of transfer of loan servicing pursuant to § 1024.33(b)(4)(i) or the

sale date identified in a servicing transfer agreement.

41(k)(4) Determinations Subject to Appeal Process

1. *Obtaining appeal.* A borrower may submit an appeal of a transferor servicer's determination pursuant to § 1024.41(h) to the transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must timely transfer, and the transferee servicer must obtain, documents and information regarding such appeals.

2. *Servicer unable to determine appeal.* A transferee servicer may be unable to make a determination on an appeal when, for example, the transferor servicer denied a borrower for a loss mitigation option that the transferee servicer does not offer or when the transferee servicer receives the mortgage loan through an involuntary transfer and the transferor servicer failed to maintain proper records such that the transferee servicer lacks sufficient information to review the appeal. In that circumstance, the transferee servicer is required to treat the appeal as a pending request for loss mitigation assistance, and it must permit the borrower to accept or reject any loss mitigation options offered by the transferor servicer, even if it does not offer the loss mitigation options offered by the

transferor servicer, in addition to the loss mitigation options, if any, that the transferee servicer determines to offer the borrower based on its own review of a borrower who makes a request for loss mitigation assistance. For example, assume a transferor servicer denied a borrower for all loan modification options but offered the borrower a short sale option, and assume that the borrower's appeal of the loan modification denial was pending as of the transfer date. If the transferee servicer is unable to determine the borrower's appeal, the transferee servicer must review the borrower's request for loss mitigation assistance in accordance with § 1024.41. At the conclusion of such review, the transferee servicer must permit the borrower to accept the short sale option offered by the transferor servicer, even if the transferee servicer does not offer the short sale option, in addition to any loss mitigation options the transferee servicer determines to offer the borrower based upon its own review.

41(k)(5) Pending Loss Mitigation Offers

1. *Obtaining evidence of borrower acceptance.* A borrower may provide an acceptance or rejection of a pending loss mitigation offer to a transferor servicer after the transfer date. Consistent with policies and procedures maintained pursuant to § 1024.38(b)(4), the transferor servicer must

timely transfer, and the transferee servicer must obtain, documents and information regarding such acceptances and rejections, and the transferee servicer must provide the borrower with any timely accepted loss mitigation option, even if the borrower submitted the acceptance to the transferor servicer.

Appendix MS to Part 1024—Mortgage Servicing Model Forms and Clauses

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Appendix MS-4—Model Clauses for the Written Early Intervention Notice

- 1. [RESERVED]
- 2. [RESERVED]

3. *Model MS-4(C).* These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by § 1024.39(b)(2)(v). A servicer may, at its option, provide the website and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs § 1024.39(b)(2)(v).

Rohit Chopra,
Director, Consumer Financial Protection Bureau.

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Part V

Department of Education

34 CFR Parts 600, 643, 644, et al.

Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Parts 600, 643, 644, 645, and 668**

[Docket ED–2024–OPE–0050]

RIN 1840–AD68, 1840–AD85, and 1840–AD92**Program Integrity and Institutional Quality: Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary is proposing to amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), to promote program integrity and institutional quality. These regulations would clarify, update, and consolidate certain provisions that apply to distance education; the return of title IV, HEA funds; and the Federal TRIO programs. A brief summary of the proposed rule is available at www.regulations.gov/docket/ED-2024-OPE-0050.

DATES: We must receive your comments on or before August 23, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at regulations.gov. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department’s policy is to generally make comments received from members of the public available for public viewing at <https://www.regulations.gov>. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to

identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would facilitate readers identifying that individual. The Department reserves the right to redact at any time any information in comments that identifies other individuals, includes information that would facilitate readers identifying other individuals, or includes threats of harm to another person.

FOR FURTHER INFORMATION CONTACT: Gregory Martin, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 205–4595. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

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I. Abbreviations

CFR: Code of Federal Regulations
 CIP Code: Classification of Instructional Programs code
 EOC: Educational Opportunity Centers
 FFEL: Federal Family Education Loan program
 FSA: Federal Student Aid
 Freely Associated States: the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands
 HEA: Higher Education Act of 1965, as amended
 HHS: the United States Department of Health and Human Services
 LEA: Local educational agency
 PEP: Eligible prison education program
 PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act
 R2T4: Return of title IV funds
 RIA: Regulatory Impact Analysis
 SEA: State educational agency
 Title IV, HEA Programs: Student financial assistance programs authorized under title IV of the HEA
 TRIO: Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds
 TS: Talent Search
 UB: Upward Bound

II. Executive Summary

These proposed regulations address three substantive areas: distance education, return of title IV funds (R2T4), and the Federal TRIO programs (TRIO). The Department is addressing these areas in an effort to help ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that Federal Student Aid programs work in the best interests of students. As the three distinct topics are structured and addressed independently in this proposed rule, the Department generally intends the rule’s provisions to be severable from each other. The Department expects to provide additional detail on severability in the final rule once we consider public comments and finalize the regulatory language.

The proposed distance education regulations would help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by expanding the definition of an *additional location* to include virtual locations for programs offered entirely online or through correspondence, adding a definition of “distance education course,” requiring institutions to report their students’ distance education status, and disallowing asynchronous distance education in clock-hour programs for title IV, HEA purposes. The proposed R2T4 regulations would help withdrawn students repay outstanding Direct Loan credit balances, increase the accuracy and simplicity of performing R2T4 calculations, address unique circumstances for what constitutes a withdrawal, clarify that distance education programs are attendance taking, and codify longstanding policies into regulation. The proposed changes to TRIO would expand student eligibility and provide greater access to postsecondary education for disadvantaged students under three programs that offer student services in a pre-postsecondary education setting—the Talent Search program, the Educational Opportunity Centers program, and the Upward Bound program by expanding participant eligibility to include all students who have enrolled in or who seek to enroll in a high school in the United States, territories, or Freely Associated States.

III. Summary of the Major Provisions

As specifically set forth in each of the areas identified below, the proposed regulations would:

Distance Education (§§ 600.2, 668.3, 668.41)

- Amend § 600.2 to: (1) include in the definition of *additional location* virtual locations where 100 percent of an educational program is provided through distance education or correspondence courses; (2) revise the definition of *clock hour* to reflect that, for title IV, HEA purposes, coursework delivered via distance education cannot be asynchronous; and (3) add a definition for *distance education course*.

- Amend the academic year definition in § 668.3 to specify that, for purposes of the title IV, HEA definition of an academic year, asynchronous coursework offered through distance education could only be offered in credit-hour programs.

- Amend § 668.41 to require institutions to report student enrollment in distance education or correspondence courses, using a procedure that would be determined by the Department.

Return of Title IV Funds (§§ 668.21, 668.22)

- Amend § 668.21 to allow a student who received a loan disbursement as part of a title IV credit balance, but never began attendance in a payment period or period of enrollment, to repay loan funds they received under the terms of their promissory note.

- Amend § 668.22 to exempt institutions from performing an R2T4 calculation in the event that (1) a student is treated as never having begun attendance; (2) the institution returns all title IV aid disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institution due to the institution's return of title IV funds to the Department.

- Amend § 668.22 to codify that an institution that is required to take attendance must, within 14 days of a student's last date of attendance, document the student's withdrawal date.

- Amend § 668.22 to require an institution to take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program.

- Amend § 668.22 to allow a confined or incarcerated individual, in a term-

based setting, to not have to come back from a leave of absence to where the student left off, and instead, allow the individual to return at a different point in their prison education program (PEP).

- Amend § 668.22 to streamline and make consistent institutions' calculation of the percentage of the payment period completed for a clock-hour program.

- Amend § 668.22 to consider a module part of the payment period used in the denominator of the R2T4 calculation only when a student begins attendance in the module.

Federal TRIO Programs (§§ 643.3, 644.3, 645.3)

- Amend § 643.3 to expand who would be able to participate in a Talent Search project. Eligibility would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

- Amend § 644.3 to expand who would be able to participate in an Educational Opportunity Centers project. Eligibility would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

- Amend § 645.3 to expand who would be able to participate in a Regular or a Math and Science Upward Bound project. Eligibility (other than for direct cash stipends) would be extended to an individual who is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

Costs and Benefits

As further detailed in the *Regulatory Impact Analysis*, the Department estimates present value net benefits of \$1,434,537,761 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefits of \$159,702,107 over ten years. Additionally, we estimate annualized quantified costs of \$9,423,657 related to paperwork burden.

IV. Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Department will not accept comments submitted after the comment period closes. To ensure that we do not receive duplicate

copies, please submit your comments only once.

The following tips are meant to help you prepare your comments and provide a basis for the Department to respond to issues raised in your comments in the notice of final regulations (NFR):

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and paragraphs of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.

- Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences.

- Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.

- Do not include personally identifiable information (PII), such as Social Security numbers or loan account numbers, for yourself or for others in your submission. Should you include any PII in your comment, such information may be posted publicly.

Mass Writing Campaigns: In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all of the substantive comments included in the submissions along with the total comment count for that document or package to

Regulations.gov. A well-supported comment is often more informative to the agency than multiple form letters.

Public Comments: The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM in §§ 600.2, 643.3, 644.3, 645.3, 668.3, 668.21, 668.22, and 668.41, and in the Regulatory Impact Analysis and Paperwork Reduction Act sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that are computer-generated. Comments containing the promotion of commercial

services or products and spam will be removed.

We may not address comments outside of the scope of these proposed regulations in the NFR. Generally, comments that are outside of the scope of these proposed regulations are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations, which includes topics negotiated but not included in this NPRM.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the NFR.

Comments containing personal threats will not be posted to *Regulations.gov* and may be referred to the appropriate authorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the regulation easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.2 General definitions.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulation easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

V. Authority for This Regulatory Action

The legal basis for these proposed regulations is title IV of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal government's major student financial aid programs that are the primary source of direct Federal support to students pursuing postsecondary education. 20 U.S.C. 1070–1099d (sections 400–499 of the HEA). Institutions participating in title IV programs must satisfy certain threshold and ongoing requirements, *see id.*, and the Secretary is given broad authority to carry out program requirements. 20 U.S.C. 1070(b) (section 400(b) of the HEA). As part of its oversight responsibilities under title IV, the Department seeks to promote program integrity and institutional quality. *See generally* 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA). To this end, the Department's student assistance general provisions regulations establish threshold requirements for institutions to participate and to continue participation in student financial assistance programs. *See generally* 34 CFR parts 600–603, 642–647, 668, 673–676, 682–694. This proposed rule would update, consolidate, and revise requirements in three distinct title IV areas: the return of title IV, HEA funds; distance education; and the Federal TRIO programs, impacting 34 CFR parts 600, 643–645, and 668. The Department's specific legal authority to propose regulations in these areas is set forth below.

Distance Education. Section 103(7) of the HEA defines "distance education," and section 484(l) sets forth rules relating to courses offered through

distance education. Among other things, section 103(7) requires that distance education support regular and substantive interaction between students and the instructor, and the modifications we propose in this NPRM would give the Department the tools to ensure such programs satisfy this requirement.

Return of Title IV, HEA Funds.

Section 484B of the HEA outlines the process that an institution must follow if a title IV aid recipient withdraws from the institution during a payment period or period of enrollment (also known as R2T4). The Department proposes various clarifying changes to the R2T4 regulations that would benefit both institutions and students.

Federal TRIO Programs. Section 402A of the HEA outlines the application process, permissible services, awarding process, and grant limitations for TRIO. This proposed rule would clarify the scope of qualified individuals who are eligible to participate in certain TRIO programs.

VI. Background

Distance Education (§§ 600.2, 668.3, 668.41)

The definition of "distance education" in § 600.2 lists the technologies that allow for instruction to occur between instructors and students who are separated. It also requires that such education must include regular and substantive interaction between the two parties and explains what such interaction must entail. With the development of the technology that supports distance learning and particularly in the wake of the pandemic, the Department observed that the use of distance education at eligible institutions has increased and is likely to continue to do so. However, as the Department noted in the distance education issue paper and during the negotiated rulemaking on this issue, we have been hampered in the ability to fully understand students' participation in distance education, account for differences in outcomes and conduct oversight, accurately measure taxpayer expenditures on distance education programs, and gauge the success of such education.¹ The proposed changes will assist the Department with these issues.

The other distance education issue the Department seeks to address with this rulemaking involves clock-hour programs, which traditionally have required considerable hands-on

¹ <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/program-integrity-and-institutional-quality-session-1-issue-paper-distance-education-final.pdf>.

instruction to properly prepare students for employment in their field of study. In the September 2, 2020, final rule on distance education, the Department was persuaded that allowing for asynchronous instruction in clock-hour programs was sensible as long as it was adequately tracked through appropriate technology (85 FR 54742).² However, after additional review of the issue during its oversight and compliance activities, and based on complaints received from students, the Department believes this expansion puts students and taxpayers at risk. Consequently, the Department is proposing to eliminate asynchronous instruction for clock-hour programs.

Return of Title IV Funds (§§ 668.21, 668.22)

The R2T4 regulations govern the process institutions must conduct when a title IV recipient ceases attendance during a payment period (term) or a period of enrollment. Title IV funds are awarded to a student under the assumption that the student will attend school for the entire period for which the funds were awarded. When a student withdraws, they may no longer be eligible for the full amount of title IV funds that they were originally scheduled to receive and that the institution disbursed. After an institution completes an R2T4 calculation, funds that were awarded to the student may need to be returned to the Department.

R2T4 is consistently in the Department's top 10 compliance findings for schools and yields complex and challenging questions. The Department proposed the regulatory changes in this section to address some of the issues in the regulations that have been identified in these findings.³ Through these proposed R2T4 regulations, the Department seeks to: (1) help withdrawn students repay outstanding Direct Loan credit balances; (2) increase the accuracy and simplicity of performing R2T4 calculations; (3) address unique circumstances for what constitutes a withdrawal; and (4) codify longstanding policies into regulation.

Federal TRIO Programs (§§ 643.3, 644.3, 645.3)

The TRIO programs are Federal outreach and student services programs designed to identify and provide

services for individuals from disadvantaged backgrounds. Individuals from disadvantaged backgrounds include low-income individuals, first-generation college students, students with disabilities, students with limited English proficiency, students experiencing homelessness, and students in foster care. The TRIO programs are designed to help students from disadvantaged backgrounds progress through the academic pipeline from middle school to postbaccalaureate programs.

Current regulations limit TRIO programs to an individual that is a citizen or national of the United States, a permanent resident of the United States, a permanent resident of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or a resident of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands). See §§ 643.3(a)(1)(i) through (v), 644.3(a)(1)(i) through (v), and 645.3(a)(1) through (5). An individual is also currently eligible to participate in the TRIO programs if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

The Department's proposed changes would impact the three TRIO programs that serve students in a pre-postsecondary education context: the Upward Bound program, the Talent Search program, and the Educational Opportunity Centers program. The Upward Bound program prepares high school students for college while the Talent Search program encourages participants to complete secondary and postsecondary education. The Educational Opportunity Centers program provides financial and academic counseling to qualified individuals, generally over the age of 19, though individuals under 19 are eligible to receive program services if they meet the requirements of current 34 CFR 644.3(a)(2)(ii), who want to enter or continue a postsecondary education program. The Department proposes to broaden participation in these three programs by expanding eligibility to all disadvantaged individuals who have enrolled in or who seek to enroll in a

high school in the United States, territories, or Freely Associated States, which are the geographic areas served by the TRIO programs. This proposal would allow the three TRIO programs that serve students in the pre-postsecondary education context to serve students who are already receiving or seek to receive public educational services from middle and high schools.

The McNair Scholars program, the Student Support Services program and the Training Program for Federal TRIO Programs would not be impacted by these proposed changes. The Department proposes to limit this eligibility expansion to the three TRIO programs that serve students in the pre-postsecondary context, because the Department believes that all who attend high school in the United States should have the same access to TRIO services. The TRIO provisions would additionally eliminate the operational burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule, enabling a greater focus on delivering educational services to all students. The proposed rule change would assist students on their path to and attainment of postsecondary education.

VII. Public Participation

The Department has significantly engaged the public in developing this NPRM, as described here and below in the *Negotiated Rulemaking* section.

On March 24, 2023, The Department announced public hearings at which interested parties could comment on the topics suggested by the Department or suggest additional topics for consideration.⁴ The Department conducted virtual public hearings on April 11 and 12, 2023. The Department considered the advice and recommendations submitted by individuals and organizations in these public hearings in developing initial proposed regulatory provisions for consideration by the Program Integrity and Institutional Quality Committee (Committee). You may view transcripts of the public hearings at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

The Department also accepted written comments on possible regulatory provisions that were submitted to the Department by interested parties and organizations as part of the public hearing process. You may view the written comments submitted in response to the March 23, 2023, **Federal Register** notice on the Federal

² <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

³ Program Reviews—<https://studentaid.gov/data-center/school/fines-and-findings>; Annual Top Ten School Findings—<https://studentaid.gov/data-center/school/program-reviews>.

⁴ 88 FR 17777.

eRulemaking Portal at www.regulations.gov, within docket ID ED–2023–OPE–0039. Instructions for finding comments are also available on the site under “FAQ.”

On November 29, 2023, the Department published a notice in the **Federal Register** (88 FR 83365) announcing the intent to establish a negotiated rulemaking committee to prepare proposed regulations on: (1) The Secretary’s recognition of accrediting agencies under 34 CFR part 602 and related parts; (2) Institutional eligibility under 34 CFR 600.2, including State authorization as a component of such eligibility under 34 CFR 600.9; (3) The requirements for distance education under 34 CFR 600.2 that pertain to clock-hour programs and reporting for students who enroll primarily online; (4) Return of Title IV funds, to address requirements for participating institutions to return unearned title IV funds in a manner that protects students and taxpayers while easing the administrative burden for institutions of higher education under 34 CFR 668.22; (5) Cash management, to address timely student access to disbursements of title IV, HEA Federal student financial assistance and provisions related to credit balances, escheatment, and loss of such funds under 34 CFR part 668, subpart K; and (6) The eligibility requirements for participants in TRIO.

VIII. Negotiated Rulemaking

Section 492 of the HEA requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Department, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of proposed regulations on which the negotiators reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. You can find further information on the negotiated rulemaking process at: www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

On November 29, 2023, the Department published a notice in the **Federal Register** (88 FR 83365) announcing its intention to establish a Committee, the Program Integrity and Institutional Quality Committee, to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee meetings, requested nominations for individual negotiators to serve on the negotiating Committee, and announced the topics that Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Business Officers from Institutions of Higher Education*: Joe Weglarz, Marist College, and Dom Chase (alternate), Ivy Tech Community College of Indiana.
- *Civil Rights Organizations and Consumer Advocates*: Carolyn Fast, The Century Foundation, and Magin Misael Sanchez (alternate), UnidosUS.
- *Financial Aid Administrators*: JoEllen Price, San Jacinto College, and Zack Goodwin (alternate), University of Nevada, Las Vegas.
- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA)*: Charles B. W. Prince, Dillard University, and D’Angelo Sands (alternate), Texas A&M University-Corpus Christi.
- *Institutional Accrediting Agencies Recognized by the Secretary*: Jamiene S. Studley, WASC Senior College and University Commission, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges.
- *Legal Assistance Organizations*: Robyn Smith, Legal Aid Foundation of Los Angeles and National Consumer Law Center, and Sophie Laing (alternate), Pine Tree Legal Assistance.
- *Private Nonprofit Institutions of Higher Education*: Erika Linden, Des Moines University, and Scott Dolan (alternate), Excelsior University.
- *Programmatic accrediting agencies recognized by the Secretary, to include State agencies recognized for the approval of nurse education*: Laura Rasar King, Council on Education for Public Health, and Amy Ackerson (alternate), Missouri State Board of Nursing.
- *Proprietary Institutions of Higher Education*: Jillian Klein, Strategic Education, Inc., and David Cohen (alternate), Five Towns College and APC Board of Directors.

- *Public Four-Year Institutions of Higher Education*: Jason Lorgan, University of California, Davis, and Alyssa Dobson (alternate), Slippery Rock University.

- *Public Two-Year Institutions of Higher Education*: Jo Alice Blondin, Clark State College, and Michael Cioce (alternate), Rowan College at Burlington County.

- *State Attorneys General*: Diana Hooley, Massachusetts Attorney General’s Office.

- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education*: John Ware, Ohio State Board of Career Colleges and Schools, and Robert Anderson (alternate), State Higher Education Executive Officers Association.

- *Students or borrowers, including currently enrolled borrowers, or groups representing them*: Jessica Morales, American University—Washington School of Law, and Emmett Blaney (alternate), Young Invincibles.

- *U.S. military service members, veterans, or groups representing them*: Barmak Nassirian, Veterans Education Success, and Ashlynn Haycock-Lohmann (alternate), Tragedy Assistance Program for Survivors.

- *Federal Negotiator*: Gregory Martin, U.S. Department of Education.

The Department also invited nominations for a Federal TRIO Programs Subcommittee (Subcommittee). The Subcommittee members were not voting members of the Committee unless otherwise designated to represent a constituency; however, they provided a recommendation for TRIO and served as a resource to the Committee. The Subcommittee members were:

- *Current or former participants in a Federal TRIO Program*: Wade Williams, Crowder College Foundations.

- *Institutions of Higher Education*: D’Angelo Sands, Texas A&M University-Corpus Christi.

- *Public or private agencies or organizations, including community-based organizations with experience in serving disadvantaged youth*: Emalyn Lapus, Japanese Community Youth Council.

- *Secondary schools, including local educational agencies with secondary schools*: Geof Garner, Multnomah Education Service District.

- *State Officials, including State Higher Education Executive Officers, State Authorizing Agencies, and State Regulators of Institutions of Higher Education*: Michael P. Meotti,

Washington Student Achievement Council.

- *U.S. Department of Education:* Aaron Washington, Office of Postsecondary Education, and Hannah Hodel, Office of General Counsel.

The Committee met for three rounds of negotiations, each of which was held over four days between January and March 2024. The Subcommittee met on January 12 and February 9. At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any member of the Committee and noted that consensus checks would be taken issue by issue.

The Committee reviewed and discussed the Department's drafts of regulatory language, as well as alternative language and suggestions proposed by Committee members. During each negotiated rulemaking session, provided opportunities for public comment at the end of each day. Additionally, during and between each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

At the meeting on March 4, 2024, the Committee reached consensus on the Department's proposed regulations on TRIO. The Department has published the proposed TRIO amendatory language in this NPRM without substantive alteration to the agreed-upon proposed regulations. The Committee did not reach consensus on the other issues considered.

For more information on the negotiated rulemaking sessions please visit www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

IX. Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

A. Distance Education

Definitions (§ 600.2)

Current Regulations: The current definition of *additional location* in § 600.2 includes two categories: the traditional physical facilities that are geographically separate from the main campus of the institution and correctional institutions where students receive postsecondary educational instruction.

Proposed Regulations: The Department proposes to add a third

category to this definition: virtual locations, through which institutions offer 100 percent of an educational program by distance education or correspondence courses, notwithstanding mandatory on-campus or residential periods of 90 days or less.

Reasons: Under the current regulations and Department processes, there is no distinction between an institution's on-campus programs and programs offered entirely online or in a hybrid format. For example, institutions may have online programs related to on-campus programs with the same Classification of Instructional Programs (CIP) code, sometimes with a different curriculum. If they have the same CIP code, however, the Department is unable to distinguish between the two programs for many purposes including program oversight, audits, looking at outcome metrics, and College Scorecard program-level data, including debt, earnings, and completion. The Department is also unable to determine the precise amount of title IV funds being expended in distance education programs or determine the State where the student is located while enrolled.

Establishing a virtual location as a type of *additional location* would distinguish programs offered entirely through distance education from those that occur fully or partially at a physical facility of the school or at a correctional institution. The proposed changes would help the Department measure and better understand student outcomes and the amount of title IV program funds being expended in each setting and conduct more accurate program oversight including through better tailored program reviews. The proposed changes would also improve the Department's ability to determine the States where title IV, HEA recipients are located and allow the Department to provide this information to State oversight entities and the public. This additional information would improve the ability of State oversight entities to oversee distance education programs and better assess the risk that such programs may pose to individuals residing in their States.

In addition, having distinct virtual locations would allow the Department to account for situations in which an institution ends its online offerings irrespective of what is occurring at a school's brick-and-mortar campus or if an institution ended its brick-and-mortar offerings but continued its online offerings. This would allow the Department to monitor an institution's compliance with close-out requirements, consistent with the monitoring done for closures of brick-

and-mortar institutions and locations. Separately identifying virtual locations would also provide greater protection for students if an institution offering both distance education and in-person instruction suspends coursework in one modality but maintains the other. Students whose modality has been discontinued and who may not wish to, or may not be able to, continue in the alternative modality, would be eligible for closed school discharges. For example, students that enrolled in an on-campus program may have done so with the expectation that they would be instructed in person, and they may not have otherwise chosen an online program. Similarly, a student who enrolled in an online program may not be inclined or able to move into an on-campus program for a number of reasons, such as preference for a flexible schedule, not living near the physical campus, or a preference for online instruction. This regulatory change will provide a clear mechanism for providing relief.

Although the definition of a virtual location refers primarily to programs offered entirely through distance education, the Department proposes to include in the definition an exception for programs that have limited requirements for students to attend on campus activities, including preparation activities and residential periods of instruction of 90 days or less. These exceptions are intended to prevent institutions from circumventing the requirement to report an additional location by requiring a minimal amount of on-campus or residential activities.

The Department notes that the proposed concept of a virtual *additional location* would not require additional oversight by States or accrediting agencies; instead, the Department would approve an institution's virtual locations if its oversight entities approved or authorized the institution to offer distance education.

Current Regulations: The current definition of *clock hour* in § 600.2 allows for distance education in which a synchronous or asynchronous class, recitation, or lecture provides direct interaction between students and instructors and for asynchronous learning activities in which students interact with technology that can monitor and document the time that they participate in the activity.

Proposed Regulations: The Department proposes removing these asynchronous options using distance education under the definition of a clock-hour.

Reasons: The definition of a "clock hour" describes the types of coursework

and the conditions under which the coursework is offered that may apply to a student's eligibility for title IV, HEA funds. Coursework that does not meet this definition may still be conducted in a clock-hour program but cannot be counted toward a student's eligibility for title IV, HEA funds, in particular the ability to receive a second or subsequent disbursement of such funds. Since the very first time that the Department defined "clock hour" for the Basic Educational Opportunity Grant (BEOG) program, which later became the Pell Grant program, the Department has defined a "clock hour" as a period of time in which a student is either in a class, lecture, or recitation with an instructor, or engaged with other types of coursework that are supervised by an instructor (45 FR 48494). Although the Department defines a "clock hour" differently for correspondence coursework, such coursework is associated with other significant limitations and requirements that limit waste, fraud, and abuse.

The Department has long had concerns about allowing clock hours offered through distance education to count toward a student's eligibility for title IV, HEA funds, particularly regarding an institution's ability to adequately identify true engagement with academic coursework and monitor how long that engagement took place. However, in the September 2, 2020, final rule on distance education, the Department was persuaded that clock hours completed through asynchronous instruction could be permitted to count toward a student's title IV eligibility as long as each clock hour offered asynchronously was adequately tracked through appropriate technology (85 FR 54742).⁵ Since that time, the Department's experiences with asynchronous coursework through interactions with institutions and students during program reviews and other oversight activities have frequently demonstrated that its original concerns were well-founded: such coursework often consists of limited or no engagement between instructors and students, and even when engagement does happen, institutions have difficulty adequately monitoring the amount of time that students spend on asynchronous activities.

Asynchronous learning activities often require a level of technology that schools lack or fail to meet, resulting in substandard education consisting of students having to learn material on

their own. For example, the Department has found during program reviews and from speaking to students that asynchronous learning in clock-hour programs has often consisted of playing videos, reading assignments or scrolling through pages, without the meaningful interaction with the coursework or instructors that is necessary for mastery in hands-on job training programs and the development of important skills such as critical thinking and effective communication. The National Accrediting Commission of Career Arts and Sciences (NACCAS), a Department-recognized accreditor of cosmetology schools, shows another example in its definition of asynchronous learning, which includes "scrolls through reading material" and "works on assignments" as a learning activity.⁶ The Department is concerned that these kinds of learning activities, while helpful for students, would not meet the definition of a "clock hour" because scrolling through materials and working on assignments are activities that are more comparable to homework than 50 to 60 minutes of in-class or faculty-supervised instruction or training.

Asynchronous instruction in clock-hour programs also does not foster direct interaction between students and instructors, which can make it difficult for students to receive the training necessary for the types of occupations for which clock-hour programs train students. Students have repeatedly informed the Department during program reviews and oversight activities that the lack of direct engagement with instructors hampered their ability to obtain the skills necessary to pass certification exams or obtain a job in their field. The Department's observations during its compliance work are consistent with studies performed on the issue. As explained in the Regulatory Impact Analysis, surveys and evaluations of job training programs that are typically offered in clock hours have shown general concerns that distance education is not sufficient to provide learners with the type of "hands-on" experience that they need and expect in those kinds of programs.⁷ One recent study of a technical program found that students had greater clarity in understanding and confidence to

solve exam questions after synchronous, rather than asynchronous, instruction.⁸ The same study found that students had significantly higher exam scores in topics taught through synchronous instruction compared to asynchronous instruction.⁹ Eliminating the asynchronous option for clock-hour programs would provide a more effective education, which would better prepare students for the kinds of occupations that have traditionally required more hands-on instruction and training, and which, in many cases, require passing a licensure or certification exam in order to obtain employment. The Department notes that this does not prevent institutions from using asynchronous activities to supplement a student's program of study, but those activities cannot be counted toward clock hours used for title IV purposes, just as assigned reading outside of classroom hours does not count for that purpose.

Current Regulations: None.

Proposed Regulations: We propose to add a definition of *distance education course* that would include courses that are offered exclusively through distance education, notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.

Reasons: As with the addition of virtual location as a type of additional location, the proposed addition of a definition for *distance education course* would enable the Department to better assess the effectiveness of distance education and compare its outcomes with those of traditional in-person instruction. The proposed definition also would help clarify a term about which there has been some confusion between institutions and students, as pointed out by negotiators, and would facilitate determinations of whether institutions are in compliance with the requirement to acquire additional accreditor approval when they pass the 50 percent threshold for the number of classes they offer via distance education, as explained in Dear Colleague Letter GEN-23-09.¹⁰

The Department proposes to define a "distance education course" as comprising only distance education as

⁶ See the 2024 NACCAS handbook here (as of June 13, 2024): <https://naccas.org/naccas-handbook>.

⁷ https://www.heldrich.rutgers.edu/sites/default/files/2022-06/Process_Evaluation_of_the_Integration_of_Title_I_and_Title_II.pdf; <https://www.newamerica.org/education-policy/reports/five-things-policy-makers-should-know-about-short-term-credentials/5-students-think-hands-on-training-is-useful-but-few-adults-with-short-term-certificates-receive-this-training>.

⁸ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

⁹ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

¹⁰ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

⁵ <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

defined under 34 CFR 600.2 for several reasons. First, we intend for the definition to be as consistent as possible with the definition of “distance education” currently used for the Integrated Postsecondary Education Data System (IPEDS). We also wish to provide clarity regarding an institution’s calculation of the 50 percent threshold for distance education courses described above as well as proposed requirements for institutions to provide student-specific reporting of distance education coursework described below under § 668.41. It is not the Department’s intent to capture in this definition coursework that is offered primarily on campus but that includes online components such as a learning management system where assignments or homework are maintained or submitted.

Academic Year (§ 668.3)

Current Regulations: Current § 668.3(b) sets forth certain definitions applicable to the title IV programs, and within the definition of a week of instructional time in § 668.3(b)(2)(ii), there are two sub-paragraphs stating that institutions offering asynchronous coursework through distance education must make available to students the resources necessary for academic engagement, and they must expect students to perform educational activities demonstrating academic engagement during the week.

Proposed Regulations: We propose to amend § 668.3(b)(2)(ii)(A) and (B) to limit asynchronous coursework that can count toward an institution’s definition of an academic year to coursework offered in credit-hour programs.

Reasons: These edits are necessary to conform the regulations in § 668.3 with the Department’s proposal regarding asynchronous education in clock-hour programs in § 600.2.

Reporting and Disclosure of Information (§ 668.41)

Current Regulations: Current § 668.41 lists institutional reporting and disclosure requirements.

Proposed Regulations: We propose, in new paragraph (h), to require institutions to report their enrollment in distance education or correspondence courses.

Reasons: As requested by many of the negotiators, the Department proposes to add a requirement in § 668.41 to report each recipient of title IV, HEA assistance by enrollment status in distance education or correspondence courses. We believe this will provide the Department with expanded information to better answer questions

about college access, persistence, completion, and success, and to better inform student-centered policies for distance education. This reporting requirement would also improve the Department’s ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.¹¹ When institutions enroll at least 50 percent of their students in distance education, offer at least 50 percent of their courses or 50 percent of a program via distance education, they must obtain further accreditor approval beyond the initial approval to deliver distance education programs.

During negotiations, non-Federal negotiators proposed collecting student-level distance education information. While the Department did not take the proposal as written, this change would effectuate the intent of the proposal, and we would explain the details of this reporting in guidance pertaining to the operation of the Department’s systems.

The Department proposes to implement this provision no earlier than July 1, 2026, given the significant amount of change that would be required in Federal Student Aid (FSA)’s systems. This will also provide institutions with sufficient time to make any necessary changes to their own systems and prepare to report the additional information to the Department. Institutions already report information regarding distance education enrollment at the aggregate level for IPEDS, however the Department understands that this requirement may require institutions to update their systems for reporting distance education enrollment on a student-by-student basis.

B. Return of Title IV Funds

Treatment of Title IV Grant and Loan Funds if the Recipient Does Not Begin Attendance at the Institution (§ 668.21)

Current Regulations: Currently, under section § 668.21(a)(2)(ii), when a disbursement of title IV aid is made to a student, but the student does not begin attendance in the payment period or period of enrollment, the loan servicer issues a final demand letter, in accordance with 34 CFR 685.211, requiring the student to immediately return all Direct Loan funds directly received that are associated with the payment period or period of enrollment.

¹¹ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

Proposed Regulations: The Department proposes to amend § 668.21(a)(2)(ii) by removing “will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate” and replacing it with “will initiate borrower repayment under the terms of their promissory note.”

Reasons: The Department believes the proposed change would help students repay loan amounts that were provided to them as credit balances. Because loan disbursement regulations permit a school to credit a student’s account 10 days before the start of classes, students who do not actually begin attendance can receive a loan disbursement. While the part of the disbursement credited to the school gets returned, the student must repay the funds they received directly. Currently, students who receive a loan disbursement but never start attendance receive a final demand letter from the servicer for any funds not credited to the school. That amount must be repaid in full immediately. If the student does not or cannot repay the loan funds, the loan will go into default. If students have spent those funds already on other necessary expenses, such as housing, they could be forced to turn to private lenders to repay their loans or end up in default. To help students repay these credit balances, the Department proposes, allowing students to repay the loan funds they received under the terms of their promissory note, rather than requiring immediate repayment in full. This would provide the student with a formal grace period and allow the student to repay over time pursuant to a repayment plan that best meets their needs.

Treatment of Title IV Funds When a Student Withdraws (§ 668.22)

Current Regulations: Current § 668.22 addresses treatment of title IV, HEA funds when a student withdraws.

Proposed Regulations: The Department proposes to add a new § 668.22(a)(2)(ii)(A)(6) that would establish that a student is not considered to have withdrawn if: (1) the institution’s records treat a student as having never attended courses for that payment period or period of enrollment; (2) the institution returns all the title IV aid disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for the payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institution due to the institution’s

returning of title IV, HEA funds to the Department.

Reasons: Current R2T4 regulations under 34 CFR 668.22(a)(1) state that if a student begins attendance in the payment period, even if only for one day, an institution must determine the amount of title IV aid that the student earned as of their withdrawal date. If a student has not earned all disbursed aid, the unearned portion must be returned to the Department. This requires an institution to complete an R2T4 calculation for a student even if it has refunded 100 percent of that student's tuition and fees.

The Department proposes to change these requirements to allow a school to treat a student as having never attended during a payment period or period of enrollment if the institution: (1) Treats the student as never having begun attendance; (2) Returns all of a student's title IV, HEA funds for that period; (3) Refunds all the student's institutional charges for that period; and (4) Writes off or cancels any current year balance owed to the institution that results from the return of title IV funds. This would permit institutions that wish to maintain generous tuition refund policies to be exempt from performing an R2T4 calculation in cases where students are made financially whole after withdrawing. This would also result in these withdrawn students having greater Pell Grant lifetime eligibility and reduce the likelihood of these students owing a debt to the Department or the institution because the institution would be required to write off or cancel any current year balance owed to the institution that resulted from the return of title IV funds.

The proposed changes would address unique circumstances that currently constitute a withdrawal and may trigger return of funds by the school or student. While the Department does not have the authority to prohibit an institution from collecting a debt owed by a student, the Department seeks to incentivize institutions to not collect debts resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department is aware that some institutions maintain policies that allow students to receive full tuition and fee refunds in certain circumstances, for example, if the student attended only a few days during a payment period or withdrew for medical reasons. These policies allow students who withdraw to avoid institutional debts and make it easier for those students to eventually re-enroll and complete their programs,

whether at the same institution or elsewhere.

Use of these generous tuition refund policies would be at the discretion of the institution. The Department, however, intends for the reduced burden resulting from this exemption from the R2T4 process to serve as encouragement for institutions to develop and maintain these generous refund policies for their students.

Current Regulations: Currently, under § 668.22(b)(2), an institution that is required to take attendance must document a student's withdrawal date and maintain the documentation as of the date of the institution's determination that the student withdrew.

Proposed Regulations: The Department proposes to amend § 668.22(b)(2) to require an institution to document a withdrawal date within 14 days of the student's last date of attendance. The Department also proposes to remove the cross-reference to paragraph (l)(3) at the end of the paragraph.

Reasons: The Department proposes to codify in regulation its longstanding sub-regulatory guidance requiring schools that are required to take attendance to determine the date that a student withdrew within 14 days from the student's last day of attendance. The Department believes that 14 days is an ample amount of time to document a student's withdrawal date when taking attendance, and therefore, we propose to codify the time frame in regulation.

Current paragraph (l)(3) defines the "date of the institution's determination that the student withdrew" for an institution that is not required to take attendance. Because the proposed provision in § 668.22 applies only to institutions that are required to take attendance, the Department proposes to remove the inapplicable cross-reference.

Current Regulations: Current § 668.22 treats some institutions as required to take attendance if certain conditions are met but does not specifically mandate that distance education courses be attendance-taking for purposes of the title IV return requirements.

Proposed Regulations: The Department proposes to add a new § 668.22(b)(3)(ii) that would require an institution to take attendance, for purposes of the title IV return calculation, for each course offered entirely through "distance education" as defined in the proposed changes to § 600.2, except for doctoral dissertation research courses.

Reasons: Accurate withdrawal dates are critical to the title IV return calculations to ensure that unearned

funds are returned. In the Department's experience, students in distance education courses generally do not formally withdraw, so it is critical that an institution establish an accurate withdrawal date. Under current regulations, when students withdraw without notification, a school that is not required to take attendance may use as a withdrawal date either the last date of a student's academically related activity that it has on record or the midpoint of the payment period. This can lead to institutions failing to report an accurate date, or using the date that allows the institution to keep the most money.

From its compliance work on reviewing distance education, the Department has determined that institutions can often easily determine when students stop attending a distance education course, because institutional systems are already monitoring when students submit assignments or interact with instructors and students during lectures and course discussions. In fact, this monitoring is necessary for an institution to establish that it is meeting the distance education requirement of regular and substantive interaction. In addition, some institutions with online courses are already required to take attendance in certain situations described under 34 CFR 668.22(b)(3).

The Department believes it is illogical to not require an institution to use a student's actual last date of attendance as a withdrawal date when the institution already has the mechanism in place for making that determination. Consequently, to increase the accuracy of return calculations in distance education courses, the Department proposes to require institutions to take attendance in such courses for R2T4 purposes. Schools would be required to use actual attendance data to determine a withdrawal date for students enrolled entirely in online courses for a particular payment period or period of enrollment. Institutions will be able to document the withdrawal date by documenting "academic attendance" as required under § 668.22(b)(1). Under § 668.22(l)(7)(i), academic attendance must include academic engagement as defined in § 600.2. This would increase the accuracy of R2T4 calculations for such students, limit instances of inaccurate calculations and the potential for gaming R2T4 provisions by schools, and better protect student and taxpayer funds.

During negotiations the Department heard that dissertation research courses for doctoral candidates have a unique format and are structured in such a way that it would be difficult for an institution to meet an attendance-taking

requirement in an online setting. While we note that all distance education courses are still required to provide regular and substantive interaction, we believe that dissertation research courses are unique and are not as likely as other distance education courses to frequently produce data on academic engagement. For this reason, the Department proposes to distinguish any academic coursework offered entirely through distance education that occurs *prior* to the dissertation research portion of a doctoral program, where attendance-taking would be required, from the dissertation research coursework of such program, where attendance taking would not be required.

Current Regulations: Under § 668.22(d)(1)(vii), an institution does not have to treat an approved leave of absence as a withdrawal. A leave of absence is approved if several requirements are met, including if upon return from leave the student is permitted to complete the coursework he or she began prior to the leave of absence, but clock-hour, non-term credit hour program, and subscription-based programs are exempt from this requirement.

Proposed Regulations: We propose to add an “eligible prison education program” to the list of exceptions in § 668.22(d)(1)(vii) that includes clock-hour, non-term, and subscription-based programs.

Reasons: On July 1, 2023, the Department published final regulations that detailed Pell eligibility for confined or incarcerated individuals in PEPs.¹² These regulations did not address incarcerated students who face involuntary interruptions to their academic programs. For example, an entire correctional facility may be locked down due to a security issue, interrupting a student’s progress in their PEP. In § 668.22(d), we propose to provide that an incarcerated student does not have to return from a leave of absence to where the student left off and, instead, may return to a different point in their PEP. This would apply to programs of any structure, including term-based programs. This change would increase flexibility for institutions and would help boost student retention in PEPs.

Current Regulations: Currently, under § 668.22(f)(1)(ii)(A), for clock-hour programs, the percentage of the payment period or period of enrollment

completed is determined by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student’s withdrawal date.

Proposed Regulations: In § 668.22(f)(1)(ii)(A), we propose to add that, for clock-hour programs, the institution would divide the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed “since the student began attendance in the payment period or period of enrollment” as of the student’s withdrawal date.

Reasons: The Department believes this change would increase accuracy and simplicity in performing R2T4 calculations. Currently, because the regulations are silent on a specific procedure, for an R2T4 calculation in a clock-hour program performed for a student who has withdrawn after successfully completing the first payment period of the program, an institution may use two methods to determine the percentage of the payment period completed: cumulative and by payment period. Both methods are based on “scheduled hours,” which are the hours a student was scheduled to complete within a payment period or period of enrollment as of their withdrawal date. This means an institution returns funds based on the amount of training that would have been completed, not necessarily how many hours the student actually attended. These methods differ significantly when a program contains two or more payment periods, which leads to widely varying calculations. The cumulative method considers the scheduled hours a student would have completed cumulatively across multiple payment periods, while the payment period method only considers the scheduled hours that have elapsed during a payment period since the student began attendance in that payment period.

The Department has observed that, when an institution uses the cumulative method, many times the percentage of funds earned by the institution is much larger than the time actually attended, because the institution is permitted to carry the student into the next payment period and use those additional scheduled hours. This results in a much smaller return of title IV funds, which ultimately hurts a student who had to withdraw from a program. The Department does not believe this is a desirable result. In addition, in its compliance efforts, the Department has seen this as an area of abuse in which

some institutions carry students who are not attending into a subsequent payment period to lower the amount of title IV aid they have to return.

To promote consistency across all calculations, the Department proposes to change how institutions determine the percentage of the payment period completed for a clock-hour program by using only the payment period method. Providing one consistent way to calculate the percentage of the payment period completed would simplify R2T4 policy, reduce complexity and confusion, ensure that students are treated consistently, and eliminate an area of potential abuse.

Current Regulations: Under § 668.22(l)(9), a student in a program offered in modules is scheduled to complete the days in a module if the student’s coursework in that module was used to determine the amount of the student’s eligibility for title IV, HEA funds from the payment period or period of enrollment.

Proposed Regulations: The Department proposes to revise § 668.22(l)(9) to provide that a student in a program offered in modules is scheduled to complete the days in a module only when a student begins attendance in the module.

Reasons: In 2021 final regulations, the Department made several changes to R2T4 and modules.¹³ In response, the Department was asked how an institution determines whether the days in a module are included in the R2T4 calculation. The Department’s response was complex, and depended on whether the institution uses an R2T4 freeze date and the types of title IV, HEA aid the student was eligible for during the payment period or period of enrollment. An R2T4 freeze date is an optional policy that uses the student’s enrollment schedule at a fixed point to determine the number of days the student is scheduled to attend during the period for R2T4 purposes. The R2T4 freeze date can coincide with other dates—for example census dates or Pell recalculation dates—or the R2T4 freeze date can be a separate date. Currently, institutions may use multiple R2T4 freeze dates for multiple modules.

The “freeze date” concept is important under current requirements because without this date, schools would find it very difficult to determine the denominator of the R2T4 calculation using the exact coursework a student was scheduled to attend at the time of their withdrawal. Currently, regulations

¹² <https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance>.

¹³ <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

do not describe this concept; but sub-regulatory guidance outlines what schools should consider when determining the number of days in a period when R2T4 is required for a program offered in modules. Audit and program review findings show that schools often make errors in R2T4 calculations involving modules.

The Department proposes in § 668.22(l)(9) to simplify the determination by only including the days in a module in the denominator of the calculation if the student actually attends the module. The Department believes this will reduce complexity and errors. Institutions would no longer need to use a freeze date or differentiate between Pell and Direct loan recipients.

The change would provide consistency across title IV programs, simplify when and how to count scheduled days in a modular setting, and reduce burden for institutions and the Department by eliminating the need for a “freeze date” concept.

C. Federal TRIO Programs

Who is eligible to participate in a Talent Search project? (§ 643.3)

Current Regulations: Current § 643.3(a)(1)(i) through (v) allow individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in a Talent Search project. An individual is also currently eligible to participate in a Talent Search project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: The Department proposes to add a new paragraph § 643.3(a)(1)(vi) that would allow individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States to participate in a Talent Search project, if they do not

satisfy any of the other eligibility categories in this section.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist their pathway into postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as State educational agencies (SEAs) and local educational agencies (LEAs)) to spend funds on K–12 students without regard to immigration status, such as the Title I and Title IV programs under the Elementary and Secondary Education Act. Providing TRIO services to students without immigration status (students without status) previously ineligible will additionally eliminate the operational burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule, enabling a greater focus on delivering educational services to all students.

The Talent Search program focuses on completing high school and increasing postsecondary education attainment. The Department’s proposal to expand eligibility to all individuals who are enrolled in or seek to enroll in high school would align with the statutory goal of TRIO serving individuals from disadvantaged backgrounds in order to “prepare them for a program of postsecondary education.” This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally underrepresented in postsecondary education, such as students from low-income backgrounds who would be first-generation college students, which is among the statutory goals of the Talent Search program (section 402B of the HEA). In addition, the Committee reached consensus on this provision.

Who is eligible to participate in an Educational Opportunity Centers project? (§ 644.3)

Current Regulations: Current § 644.3(a)(1)(i) through (v) allows individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in an

Educational Opportunity Centers project. An individual is also currently eligible to participate in an Educational Opportunity Centers project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: The Department proposes to add a new paragraph § 644.3(a)(1)(vi) that would allow individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States to participate in an Educational Opportunity Centers project, if they do not satisfy any of the other eligibility categories in this section.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist in their achievement toward the path of postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status. This provision, much like with the other two TRIO provisions addressed in this NPRM, would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

Although the Educational Opportunity Centers program is primarily focused on increasing the number of adult participants who enroll in postsecondary education institutions, the program also supports high school seniors who are transitioning into college. The Department’s proposal to expand eligibility to individuals who are enrolled in or seek to enroll in high school would align with the statutory goal of TRIO serving individuals from disadvantaged backgrounds on the path toward postsecondary education. This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally

underrepresented in postsecondary education such as students from low-income backgrounds who would be first generation college students, which is among the statutory goals of the Educational Opportunity Centers program (section 402F of the HEA). In addition, the Committee reached consensus on this provision.

Who is eligible to participate in an Upward Bound project? (§ 645.3)

Current Regulations: Section 645.3(a)(1) through (5) allows individuals who are citizens or nationals of the United States, permanent residents of the United States, permanent residents of Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands (Palau), or residents of the Freely Associated States (the Federated States of Micronesia or the Republic of the Marshall Islands) to participate in an Upward Bound project. An individual is also currently eligible to participate in an Upward Bound project if they are in the United States for other than a temporary purpose and provide evidence from the Immigration and Naturalization Service (currently Department of Homeland Security) of his or her intent to become a permanent resident (*i.e.*, conditional resident aliens, conditional entrants, self-petitioners under the Violence Against Women Act (battered immigrants), refugees, asylees, victims of human trafficking, Cuban-Haitian entrants, persons paroled into the U.S. for at least one year and Jay Treaty students).

Proposed Regulations: In new paragraph § 645.3(a)(6), the Department proposes to provide that individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States may participate in an Upward Bound project, if they do not satisfy any of the other eligibility categories in this section, but that such individuals are not eligible for a direct cash stipend.

Reasons: K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist in their path towards postsecondary education. This change would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status.

Although the Upward Bound program is primarily focused on preparing

participants for college, a precursor to enter college is obtaining a high school diploma. The Department proposes to expand eligibility to individuals who are enrolled in or seek to enroll in high school, without regard to their citizenship status, to align the eligibility requirements with the statutory goal of TRIO serving individuals from disadvantaged backgrounds on the path toward postsecondary education. This expansion of eligibility would also better enable grantees to serve students from groups that are traditionally underrepresented in postsecondary education such as students from low-income backgrounds and who would be first-generation college students, which is among the statutory goals of the Upward Bound program (section 402C of the HEA). In addition, the Committee reached consensus on this provision.

The Department's proposed expansion of student services for the Upward Bound program would not include providing direct cash stipends to individuals who do not meet the requirements of § 645.3(a)(1) through (5) because that would be contrary to Federal statute. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) prohibits "Federal public benefits" from being awarded to persons who are not able to demonstrate certain types of eligible noncitizen statuses as a "qualified alien" under 8 U.S.C. 1641(b). PRWORA defines a "Federal public benefit" to include "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." 8 U.S.C. 1611(c)(1)(B). As stated within the Department of Health and Human Services (HHS) Interpretation of "Federal Public Benefit," 63 FR 41658 (Aug. 4, 1998), these enumerated benefits exclude "non-postsecondary education programs, such as Head Start and elementary and secondary education." The 1998 HHS interpretation also contemplates that not all benefits or services provided under certain programs would be considered "Federal public benefits." *Id.* Therefore, the Department believes that TRIO grant programs providing student support services in the secondary context constitute the type of "incentive for illegal immigration provided by the availability of public benefits" that

PRWORA was enacted to discourage. 8 U.S.C. 1601(6).

However, in the context of Upward Bound, the Department has determined that direct cash stipends provided to program participants under § 645.42 represent a "similar benefit" to those enumerated benefits under 8 U.S.C. 1611(c)(1)(B) for which, where payment is provided to an "individual, household, or family eligibility unit[.]" falls under the restrictions of PRWORA. Because an individual who fails to meet the requirements of current § 645.3(a)(1) through (5) would generally not be a "qualified alien," the Department proposes to clarify in § 645.3(a)(6) that individuals who qualify for program participation solely as a result of high school enrollment are not eligible for a direct cash stipend under this program.

X. Regulatory Impact Analysis

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every three years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866, as amended by

Executive Order 14094. The Department estimates present value net benefits of \$1,434,537,761 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefits of \$159,702,107 over ten years.

Additionally, we estimate annualized quantified costs of \$9,423,657 related to paperwork burden. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), the Department has determined that the benefits of this proposed regulatory action would justify the costs.

The Department has also reviewed the regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

The Department issues these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among

alternative regulatory approaches, the Department selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

The Department has also determined that this regulatory action does not unduly interfere with State, local, territorial, or Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, the Department compared the proposed regulations to the current regulations. In this regulatory impact analysis, the Department discusses the need for regulatory action, potential costs and benefits, and the regulatory alternatives we considered.

Elsewhere in this section under *Paperwork Reduction Act of 1995*, the Department identifies and explains burdens specifically associated with information collection requirements.

1. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address inequities and inadequate protections for students and taxpayers in the current regulations.

Distance Education

The HEA and the Department’s regulations provide that institutions of higher education may offer programs through distance education. Currently, however, the Department has only very limited data about students enrolled in distance education, which limits the Department’s ability to answer important questions about student pathways and outcomes through in-person, distance, and hybrid education. For example, an institution may offer a program that is provided on campus and a related program of the same CIP code that is provided online. The Department is currently unable to distinguish between those two programs in the data it currently receives, which limits its capacity to provide helpful and reliable information—such as College Scorecard program-level data, including debt, earnings, and completion—to students, families, institutions, and the public. This reporting requirement would also improve the Department’s ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment announced in Dear Colleague Letter GEN–23–09.¹⁴ When institutions enroll

at least 50 percent of their students in distance education, offer at least 50 percent of their courses, or 50 percent of a program via distance education, they must obtain further accreditor approval beyond the initial approval to deliver distance education programs.

Additionally, because of these limitations, students may be denied relief in the form of closed school discharges that they should be entitled to under the HEA in instances in which an institution ends either on-campus or online learning generally. In such cases, when an institution closes a program, it closes the entire modality through which it has provided students instruction. While some students may be satisfied learning under a different modality, others may have enrolled, at least in part, specifically to access learning through that particular modality. If an institution abruptly closes, under certain conditions, borrowers become eligible for discharges under the HEA. However, the Department is currently unable to provide relief to students whose institution remains open even though the modality of instruction they agreed to when they enrolled has ended.

The proposed regulations would create a “virtual location” for institutions that includes all students who are being instructed primarily through distance education. The proposed regulations also would change institutional reporting requirements to specify a student’s distance education status. These changes would enable the Department to obtain better data and more meaningfully compare the outcomes of students, particularly for those who are enrolled in similar programs that are delivered using different modalities. These provisions would also allow borrowers to receive closed school discharge if schools end either their online or on-campus operations. Finally, the additional reporting would allow the Department to better monitor and oversee the aid programs and institutional accrediting agencies by ensuring institutions are receiving appropriate review and approval of distance education offerings.¹⁵

We further propose, with respect to distance education, revisions to the definition of a clock hour that would improve the integrity of the title IV, HEA programs and better align how programs award clock hours with the requirement in the HEA that distance

¹⁴ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

¹⁵ <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-05-18/accreditation-and-eligibility-requirements-distance-education>.

education support regular and substantive interaction between students and instructors. Under current regulations the definition of a clock hour includes asynchronous learning. Specifically, changes to the definition of a “clock hour” in § 600.2 that went into effect in 2020 provide that asynchronous learning may be offered in clock-hour programs if it involves “academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity.” Though at the time the Department believed this change was appropriate because of a perceived need for greater institutional and student flexibility with regard to the time and place that coursework is completed, the Department’s enforcement experience since that time has shown that unintended consequences outweighed any benefits. First, the Department has found that the level of engagement necessary to meet the definition of a clock hour is difficult to monitor because it requires technical expertise that many clock-hour institutions are unable or unwilling to obtain. Through program reviews, the Department is also aware of instances in which clock-hour programs offered through distance education have not complied with the requirement to ensure that the technology used documents 50–60 minutes of instruction for each clock hour in a student’s program of study. Lack of such safeguards can contribute to an overall academic environment in which students do not receive the quality training necessary for obtaining a job post-completion.

Further, as a result of its enforcement efforts, the Department is concerned that asynchronous learning does not sufficiently meet the requirements of a clock-hour program. Through its program reviews, the Department has come to better understand that asynchronous instruction time that has been occurring in clock-hour programs is more similar to preparation in a correspondence course, where students essentially have to learn on their own, than time spent with an instructor in a class, lecture, recitation or in faculty-supervised laboratory, shop training, or internship. The Department is also concerned that asynchronous instruction may not provide the appropriate training for the types of occupations and fields for which clock-hour programs are designed to train students. Surveys and evaluations of job training programs that are typically offered in clock hours show that there are concerns generally that distance

education is not sufficient for these types of programs to provide learners with the type of “hands-on” experience that they need and expect.¹⁶ This survey data is consistent with information obtained from student interviews conducted during program reviews. While some students may prefer asynchronous instruction due to the need for flexible schedules, studies of technical programs have shown that students had greater clarity in understanding and confidence to solve exam questions after synchronous instruction.¹⁷ Students also had significantly higher exam scores in topics covered through synchronous instruction than those taught through asynchronous instruction.¹⁸

Finally, the use of asynchronous clock hours allows a student to receive credit for clock hours that do not involve regular and substantive interaction between the student and an instructor, which is a fundamental requirement in the HEA for all distance education programs. The Department remains concerned that as clock-hour programs increasingly shift toward the use of asynchronous clock hours, the likelihood that distance education programs offered using clock hours will not meet the statutory requirements for regular and substantive interaction. Eliminating the use of asynchronous clock hours for title IV, HEA purposes, while continuing to allow synchronous clock hours involving direct instruction provides greater assurance that the statutory requirements for distance education in clock hour programs are met.

R2T4

The R2T4 regulations govern the process institutions must conduct when a title IV, HEA recipient ceases attendance during a payment period or a period of enrollment. An R2T4 calculation determines, based on the proportion of a payment period or period of enrollment a student completed, whether funds must be returned by the school and/or student, or whether the student is eligible for a post-withdrawal disbursement. R2T4 calculations differ based on academic calendars and program format,

including the use of clock hours or credit hours and the use of module courses within terms. R2T4 consistently ranks among the top ten compliance findings for institutions, is the subject of an entire volume of sub-regulatory guidance in the FSA Handbook and yields complex and challenging questions; therefore, the Department believes that there is a need to take regulatory action immediately to update and clarify the regulations.

Final Demand Letter

Currently, when a disbursement of Direct Loan funds is made to a student, but the student does not begin attendance in the payment period or period of enrollment, the loan servicer issues a final demand letter requiring the student to immediately return all Direct Loan funds directly received associated with the payment period or period of enrollment. Some students may not be able to return all Direct Loan funds because they have already used those funds to pay for various noninstitutional educationally related expenses, such as housing. The Department believes there is a need to provide an alternative solution to the final demand letter. Therefore, the Department proposes that a student be able to repay their loans under the terms of their promissory note (e.g., through an income-driven repayment plan).

Withdrawal Exemption

For some institutions, the R2T4 process is filled with errors, including issues such as incorrectly determining the withdrawal date or the number of days in a payment period. To simplify the process for institutions, the Department is proposing a withdrawal exemption in which an institution would not need to conduct an R2T4 calculation if the following conditions are met: (1) the student is treated as never having begun attendance; (2) the institution returns all title IV, HEA aid disbursed to the student for that payment period or period of enrollment; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institution due to the institution’s return of title IV funds to the Department.

The proposed withdrawal exemption would reduce the likelihood that a student owes money back to the school, allow the student to not exhaust annual and aggregate subsidized aid, including Pell Grants, and reduce the likelihood the student will have a loan balance

¹⁶ https://www.heldrich.rutgers.edu/sites/default/files/2022/06/Process_Evaluation_of_the_Integration_of_Title_I_and_Title_II.pdf; <https://www.newamerica.org/education-policy/reports/five-things-policy-makers-should-know-about-short-term-credentials/>.

¹⁷ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

¹⁸ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media__223.aspx.

associated with a program they may not finish.

Last Date of Attendance

The Department's longstanding guidance has been that institutions required to take attendance must, within 14 days of a student's last date of attendance, document the student's withdrawal date. The Department believes that fourteen days is an ample amount of time to document a student's withdrawal date when taking attendance. Enforcement by the Department is hampered because it is not currently codified in regulation. Therefore, to support the Department's enforcement efforts, it is necessary to codify the time frame in regulation.

Attendance Taking and Distance Education

Accurate withdrawal dates are key to understanding if and how much aid needs to be repaid in the event of a student withdrawal. But students in distance education programs might not formally withdraw since they are not on campus. Currently, courses offered entirely through distance education are not required to take attendance unless the institution is required to do so under § 668.22(b)(2). However, the very nature of distance education requires regular and substantive interaction between the student and instructor, and for title IV, HEA purposes, institutions are required to monitor a student's academic engagement when a student is learning through distance education. To determine actual withdrawal dates and produce the most accurate R2T4 calculations, the Department believes it is necessary to require courses offered entirely through distance education to take attendance.

Leave of Absence

On July 1, 2023, the Department published final regulations that detailed Pell Grant eligibility for confined or incarcerated individuals in PEPs.¹⁹ These regulations did not address students who are incarcerated and who face involuntary interruptions to their academic programs. For example, an

entire correctional facility may be locked down due to a security issue, interrupting a student's progress in their PEP.

The Department proposes to make changes to the regulations governing leave of absence to allow a student who is incarcerated to not have to return from the leave of absence where the student left off, and instead, the individual could return to a different point in their PEP. This would apply to programs of any structure, including term-based programs. This change would increase flexibility for institutions, and would help boost student retention in PEPs.

Clock-Hour Programs

As a part of the R2T4 calculation, institutions must determine the percentage of the payment period or period of enrollment the student completed based on scheduled clock hours if enrolled in a clock-hour program. There are currently two ways that institutions can make this determination: the payment period method and the cumulative method. The cumulative method (as described in the Significant Proposed Regulations section) usually results in a significant amount of aid earned by the student compared to the actual time the student attended during the payment period. The Department believes it is necessary to streamline this calculation so that the payment period method is standardized across all clock-hour programs.

R2T4 and Modules

In 2021, the Department published final regulations outlining several changes to R2T4 and modules.²⁰ The regulations immediately raised a question about how an institution determines whether the days in a module are included in the R2T4 calculation. The answer is complex and depends on several variables, including whether the institution uses an R2T4 freeze date and the type(s) of title IV, HEA aid for which the student was eligible during the payment period or period of enrollment.

The Department believes it is necessary to simplify the determination by only including days in the module if the student actually attends the module. This change would reduce complexity and errors and institutions would no longer need to use a freeze date or differentiate between Pell Grant and Direct loan recipients.

Federal TRIO Programs

The TRIO programs are Federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds. TRIO programs serve and assist low-income individuals, first-generation college students, students with disabilities, students with limited English proficiency, students experiencing homelessness, and students in foster care to progress through the academic pipeline from middle school to postbaccalaureate programs. Limitations in the current regulations do not allow TRIO programs to reach all students in the geographic areas that the programs were meant to serve.

The Department proposes to expand participation in three TRIO programs that serve students in pre-postsecondary education to all disadvantaged individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States. K–12 public schools must be open to all students regardless of their immigration status. As such, the Department believes that all disadvantaged children who attend high school in the United States should have the same access to TRIO services to assist in their achievement toward the path of postsecondary education. This proposal would also align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and LEAs) to spend funds on K–12 students without regard to immigration status. The provisions in §§ 643.3, 644.3, and 645.3 would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

2. Summary

¹⁹ <https://www.federalregister.gov/documents/2022/10/28/2022-23078/pell-grants-for-prison-education-programs-determining-the-amount-of-federal-education-assistance>.

²⁰ Distance Education and Innovation—final regulations: <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>.

Provision	Regulatory section	Description of proposed provision
Distance Education		
Definitions	§ 600.2	Would add virtual locations to the definition of “additional location”; remove from the definition of “clock hour” asynchronous distance education options; and add a definition of “distance education course.”
Academic year	§ 668.3	Would make conforming changes to reflect that asynchronous coursework via distance education can only occur in credit-hour programs.
Reporting information	§ 668.41	Would establish a requirement for institutions to report to the Department students’ enrollment in distance education and correspondence coursework.
R2T4		
Treatment of title IV grant and loan funds if the recipient does not begin attendance.	§ 668.21	Would allow a student who received a loan disbursement but never began attendance in a payment period or period of enrollment to repay loans funds they received under the terms of a promissory note.
Withdrawal Exemption	§ 668.22	Would exempt institutions from performing a return of title IV funds (R2T4) calculation in the event that (1) a student is treated as never having begun attendance; (2) the institution returns all title IV aid disbursed to the student for that payment period or period of enrollments; (3) the institution refunds all institutional charges to the student for that payment period or period of enrollment; and (4) the institution writes off or cancels any current year balance owed by the student to the institutions due to the institution’s return of title IV funds to the Department.
Last Date of Attendance	§ 668.22	Would codify that an institution that is required to take attendance must, within 14 days of a student’s last date of attendance, document the student’s withdrawal date.
Attendance Taking for Distance Education.	§ 668.22	Would require that an institution is required to take attendance for each course offered entirely through distance education, except for doctoral dissertation research courses.
Leave of Absence for Confined or Incarcerated Individuals.	§ 668.22	Would allow a confined or incarcerated individual, in a term-based setting, to not have to return from the leave of absence to where the student left off, and instead, the individual could return to a different point in their PEP.
Percentage of Payment Period Completed for Clock-Hour Programs.	§ 668.22	Would streamline how institutions determine the percentage of the payment period completed for a clock-hour program.
R2T4 and Modules	§ 668.22	Would modify the regulations to consider a module part of the payment period (the denominator of the R2T4 calculation) so long as a student attends the module.
Federal TRIO programs		
Talent Search program	§ 643.3(vi)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States.
Educational Opportunity Centers program	§ 644.3(vi)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States.
Upward Bound program	§ 645.3(6)	Would extend program eligibility to individuals who are enrolled in or seek to enroll in a high school in the United States, territories, or Freely Associated States. These individuals would not be eligible for direct cash stipends.

3. Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs and benefits of complying with the proposed regulations. Although many of the associated costs and benefits are not easily quantifiable, the Department currently believes that the benefits derived from the proposed regulations outweigh the associated costs, as discussed in sections 3.B. and 3.C. below.

The proposed regulations, which would apply to over 6,000 postsecondary institutions, would help ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that the Federal Student Aid programs work in the best interests of students.

Due to the large number of affected recipients (6,003, as discussed more fully in the discussion of Establishing the Baseline (Section 3.A)), the variation in likely responses to any regulatory change, and the limited information available about current practices, the Department is not able to precisely estimate the likely costs, benefits, and other effects of the proposed regulations. Despite these limitations and based on the best available evidence as explained in the discussion of Establishing a Baseline (Section 3.A), the Department estimates present value net benefits of \$148,421,308 over ten years at a 2 percent discount rate. This is equivalent to an annualized net benefit of \$16,523,227 over ten years. The proposed regulations are expected to result in estimated costs of \$128,216,509 in the first year following publication of the proposed regulations

and yield significant benefits beginning in year five as set forth in the below table.²¹

Year	Net annual costs
Year 1	\$128,216,509
Year 2	109,169,616
Year 3	55,133,908
Year 4	55,133,908
Year 5	(26,004,836)
Year 6	(52,009,672)
Year 7	(78,014,508)
Year 8	(104,019,344)
Year 9	(130,024,180)
Year 10	(156,029,016)
Total Net Present Value (NPV), 2 percent	(148,421,308)
Annualized, 2 percent ...	(16,523,227)

²¹ For this ten-year table, a positive figure indicates a cost while a negative figure indicates net benefits.

As discussed in the Cost Estimates section (Section 3.B), the Year 1 costs include one-time costs associated with reviewing and making necessary changes to policies, procedures, and training to implement the proposed regulations. In addition to these estimated costs, the Department estimates benefits, which arise from the expanded eligibility for TRIO programs and ensuing long-term benefits to TRIO participants that would result from the proposed rule.

The assumptions, data, methodology, and other relevant materials, as applicable, on which the Department relied in developing its estimates are described throughout this Regulatory Impact Analysis (RIA).

3.A. Establishing a Baseline

3.A.1. Number of Affected Entities

Institutions of higher education would be subject to the proposed regulations. For purposes of establishing a baseline, this includes the number of institutions of higher education participating in programs under title IV of the HEA (such as Direct Loans, Federal Work Study, and Pell grants).

For purposes of this analysis, the Department bases its analysis of “postsecondary entities” on “institutions of higher education” as defined in section 102 of the HEA. It is assumed that 6,003 postsecondary institutions would be impacted by the proposed regulations. Among postsecondary institutions, institutions range from small, private, professional schools with fewer than 5 students enrolled in the fall of 2022 to large, public research universities with enrollments of more than 71,000 students and institutions operating mostly virtually with enrollments in excess of 156,000 students.

It is important to note that, across postsecondary institutions, there is wide variation in the number of students served, the number of employees, administrative structure, and annual revenue. This wide variation makes estimating the effects of the proposed regulations challenging, and the Department notes that the estimates provided are intended to reflect the average burden across the full spectrum of affected entities. As a result, estimates may be lower than the actual burden realized by, for example, larger institutions or institutions with more complex administrative structures, and larger than those actually realized by smaller institutions with less complex administrative structures.

3.A.2. Wage Rates

Unless otherwise specified, the Department’s model uses mean hourly wages for personnel employed in the education sector as reported by the Bureau of Labor Statistics (BLS)²² and a loading factor of 2.0 to account for the employer cost of employee compensation and benefits and indirect costs (e.g., physical space, equipment, technology costs). When appropriate, the Department identifies the specific occupation used by the BLS in its tables to support the reader’s analysis. The Department assumes that inflation-adjusted wage rates remain constant for the duration of the time horizon.

3.A.3. Other Information

In addition, throughout this RIA, some described calculations have results that are fractions. To improve readability, the Department presents these results as rounded totals in the text (e.g., 1.95 or 3,450 instead of 1.9478 or 3,449.6786), but retains the unrounded value for purposes of its underlying calculations.

The Department invites comment on all estimates provided herein to ensure that they accurately reflect realistic assumptions about average burdens the proposed regulations would impose on the full range of affected entities.

3.B. Costs of the Proposed Regulations

In this section, the Department estimates monetized cost burdens associated with the proposed regulations. To assist the public in reviewing these estimates, the Department has subdivided this analysis, when appropriate, into the relevant subparts. As described below, the Department estimates a first-year cost of \$19,046,893, with no estimated costs in subsequent years. The Department estimates proposed changes would result in a total annualized cost of \$2,078,849.

The Department estimates that, upon promulgation of the proposed regulations, all affected entities would need time to read and understand the rule. Based on the Department’s administrative experience, we assume this would require, on average, six hours from an education administrator (educational administrator (postsecondary), loaded wage rate of \$117.32/hour) and six hours from a lawyer (postsecondary, loaded wage rate of \$172.76/hour) for each of the 6,003

IHEs. For loan servicers, we assume this would require, on average, six hours from an education administrator (business administrator (Business Operations Specialists loaded wage rate of \$85.70/hour)) and six hours from a lawyer (finance sector, loaded wage rate of \$197.84/hour) for each of the seven loan servicers. In total, the Department estimates that reading and understanding the proposed rule will have a one-time cumulative cost of approximately \$10,458,957 across all institutions of higher education.

Distance Education—Reporting and Disclosure of Information

As a result of proposed changes to § 668.41 to require institutions to report the enrollment status of students in distance education or correspondence courses, the Department estimates that each IHE will need to review and revise reporting policies and procedures. At the IHE level, we assume this would require half an hour from the education administrator and 1 hour from an administrative assistant (loaded wage rate of \$43.58/hour) for each of the 3,732 IHEs that reported offering at least one distance education course. In total, the Department estimates reviewing and revising these procedures will cost approximately \$381,560 in the first year across all impacted IHEs.

Distance Education—Definition of Clock-Hour Program

The proposed changes to the definitions in § 600.2 would remove asynchronous learning from clock-hour programs offered through distance education. The Department believes that there are very few institutions with clock-hour programs that use distance learning to provide portions of the program, because there are few State or professional licensing boards that permit distance learning for clock-hour programs. Based on data available to the Department, there are approximately 8,000 clock-hour programs operating at approximately 1,700 institutions. The Department does not have data available on how many of these institutions or programs are offered through asynchronous learning to estimate costs, and requests comment on these effects.

Return of Title IV Funds When Student Does not Begin Attendance

Proposed changes to § 668.21 would allow students that do not begin attendance at an institution to repay any disbursed loan funds directly received according to the terms of their master promissory note. Under current regulations, borrowers in this situation would receive a demand letter from the

²² U.S. Bureau of Labor Statistics, *May 2023 National Industry-Specific Occupational Employment and Wage Estimates, Sector 61-Educational Services*, https://www.bls.gov/oes/current/oes_nat.htm (last modified Apr. 3, 2024).

Department and be required to immediately repay the loan balance in full. The Department would require the Department's seven loan servicers to update their policies and procedures to align with the proposed requirements. The Department estimates that the proposed change would require two hours from a lawyer and half an hour from a business administrator (Business Operations Specialists \$85.70/hour) for each loan servicer for a total first year cost of approximately \$2,719 across all loan servicers. The Department would ultimately realize these additional costs through increased contractual costs.

Return of Title IV Funds When Student Withdraws

The proposed addition of § 668.22(a)(2)(ii)(A)(6) would potentially incentivize institutions to not collect debts resulting from a student withdrawal by providing flexibility in conducting R2T4 calculations when certain conditions are met. The Department assumes that IHEs would need to review and revise their R2T4 policies and procedures. The Department estimates that the proposed change would require eight hours from an education administrators and two hours from a lawyer for each IHE for a total first year cost of approximately \$7,708,332 across all institutions.

Any institution that used the cumulative method to determine the percentage of the payment period completed for a clock-hour program would be required to update their procedures and policies to only use the payment period method. The Department does not believe that many institutions use the cumulative method, however, for those that do, the Department believes costs would be negligible because institutions would have until July 1, 2025, to update policies. For more information on both methods, please see the applicable "reasons" discussion in the Significant Proposed Regulations section.

Institutions that offer programs with modules would need to update their policies and procedures to account for adjustments in how to determine the denominator in R2T4 calculations. The Department believes this would result in overall cost savings because institutions would no longer need to navigate a complex set of Department rules to determine whether or not the days in a module should be included in an R2T4 calculation. However, the Department does not maintain comprehensive information on the use of modules at eligible postsecondary institutions and therefore cannot estimate the scope of these effects.

Institutions that currently participate in the Second Chance Pell experimental site and that offer eligible PEPs in a term-based setting would need to update policies and procedures to allow more flexibility when students return from a leave of absence. The Department believes the cost would be negligible.

Federal TRIO Programs—Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB) Participant eligibility

Proposed changes to §§ 643.3, 643.4, and 643.5 would expand eligibility for TS, EOC, and UB to any individual who is enrolled in or seeks to enroll in a high school located in the United States, territories, or Freely Associated States. The Department believes that these proposed changes would require current TS, EOC, and UB grantees to review and revise their participant recruitment and enrollment policies and procedures. At the grantee level, the Department assumes this would require two hours from an education administrator for each of the 2,111 grantees administering TS, EOC, or UB TRIO projects. In total, the Department estimates that revising project procedures would cost approximately \$495,325.

The proposed regulations would impose minimal additional costs to TRIO grant recipients under TS, EOC, and UB. While it would increase the number of students who are eligible to participate, the effect is only distributional as the funds provided from Congress and to grantees would be distributed across grantees. This could mean different or additional participants receive the benefits of TRIO services, but it would not affect the overall appropriations.

Eligible grantees that offer the Talent Search program, the Educational Opportunity Centers program, and the Upward Bound program would be required to update their applications to account for students who have enrolled in or who seek to enroll in a high school in the United States, territories, or Freely Associated States. The Department believe costs would be negligible because grantees already have an application process for students to participate in these programs, and we request comment on any costs in this area.

3.C. Benefits of the Proposed Regulations

The Department believes that these proposed regulations would likely have a wide range of benefits both for students, parents and caregivers, and the public at large. The discussion that follows discusses the benefits the

Department has attempted to quantify and monetize.

3.C.1. Monetized Benefits

In this section, the Department discusses monetizable benefits likely to result from the proposed regulations. In total, the Department estimates, after accounting for anticipated costs resulting from enrolling in postsecondary education, annualized benefits from the proposed regulations of \$17,664,756 over the next ten years.

Year	Annual costs and benefits ²³
Year 1 Cost	\$109,696,616
Year 2 Cost	109,696,616
Year 3 Cost	55,133,908
Year 4 Cost	55,133,908
Year 5 Benefit	(26,004,836)
Year 6 Benefit	(52,009,672)
Year 7 Benefit	(78,014,508)
Year 8 Benefit	(104,019,344)
Year 9 Benefit	(130,024,180)
Year 10 Benefit	(156,029,016)
Annualized, 2%	(17,664,756)
Total NPV, 2%	(158,675,187)

Federal TRIO Programs (TS, EOC, UB) Expanded Eligibility

Benefits arise from increased earnings from improved educational attainment of students without status previously ineligible to receive TRIO program services higher levels of educational attainment and associated higher wages. The Department believes expanding TS, EOC, and UB eligibility to students previously ineligible to receive TRIO program services would result in a net benefit to the public due to the capacity within TS, EOC, and UB projects to enroll additional participants.

The Department assumes that the approximately 500,000 elementary and secondary students without status previously ineligible to receive TRIO program services are evenly distributed across each high school grade level (*i.e.*, $\frac{1}{4}$ of the population is currently in each of the 9th through 12th grades). According to data from the Migration Policy Institute,²⁴ only 78 percent of students without status graduate from high school within four years, compared with 87 percent of all public high school students. As a result, the Department estimates that, in the absence of the proposed regulations, approximately 98,000 students without status previously ineligible to receive TRIO

²³ For this ten-year table, a positive figure indicates a cost while a negative figure indicates net benefits.

²⁴ How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually? (migrationpolicy.org).

program services would graduate from high school each year.
For the 2021–2022 reporting period, TS, UB, and EOC projects that did not meet their enrollment targets had the capacity to serve an additional 104,111

participants. According to data from the Migration Policy Institute, fifteen States (See Table 1 footnote) account for 81 percent of all high school graduates without status.²⁵ For the purpose of this analysis and to ensure that we do not

overstate the capacity of these TRIO programs to enroll students without status, the Department limits the pool of potential enrollees to TRIO projects operating in these fifteen States.

TABLE 1—2021–22 TS, UB, AND EOC PARTICIPATION RATES

Program	Funded to serve	Actual served	Capacity to serve additional students ²⁶	Capacity to serve additional students in 15 states ²⁷
TS	338,427	287,019	54,416	36,628
UB ²⁸	82,391	79,590	5,175	2,652
EOC	209,735	167,576	44,520	16,473
Total	630,553	534,185	104,111	55,753

For the purposes of this analysis, the Department assumes that TS, UB, and EOC projects could enroll a maximum

of 55,753 participants without status as a result of this proposed rule and

utilizes this figure as the universe of potential participants.

TABLE 2—SENSITIVITY ANALYSIS OF POTENTIAL NUMBER OF TRIO ENROLLMENTS RESULTING FROM PROPOSED RULE USING 2021–22 TS, UB, AND EOC PARTICIPATION RATES

Program	Capacity to serve additional students	Sensitivity analysis—potential number of TRIO enrollments resulting from proposed rule		
		1%	5%	10%
TS	36,628	366	1,831	3,663
UB	2,652	27	133	265
EOC	16,473	165	824	1,647
Total	55,753	558	2,788	5,575

The Department conducted a sensitivity analysis of the possible impact of the proposed rule on TS, UB, or EOC enrollment. We assume that 55,753 is the maximum number of students without status that could potentially enroll in TS, UB, or EOC as a result of the proposed rule. The Department assumes that there are a variety of reasons that a student that would be otherwise eligible as a result of the proposed rule would ultimately not enroll in TS, UB, or EOC. Therefore, the Department conducted a sensitivity analysis that analyzed program

enrollment rates of 1, 5, or 10 percent of the universe of eligible participants. As described below, the benefits of the rule grow as the size of the TRIO enrollment effect increases. For the purposes of this RIA we estimate that 5 percent, or 2,788 students without status, would enroll in TS, UB, or EOC as a result of this rule.
The Department therefore estimates that of the 55,753 estimated capacity of TS, UB, and EOC projects in States likely to serve students without status, 1,831 would enroll in TS, 133 would enroll in UB (including UBMS), and 824

would enroll in EOC. In total, the Department estimates that this proposed rule would result in 2,788 additional high school students without status previously ineligible to receive TRIO services enrolling in TS, UB, or EOC. For the purposes of this analysis the Department assumes that the 2,788 included as part of this analysis are students that would not have otherwise graduated from postsecondary education. The Department invites comments on this assumption.

TABLE 3—ESTIMATED ADDITIONAL TRIO PROGRAM PARTICIPANTS BASED ON PROPOSED RULE

Program	TRIO program participants	Postsecondary enrollment rate	Postsecondary enrollees
TS	1831	68	1245
UB	133	75	99
EOC	824	57	469

²⁵ How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually? (*migrationpolicy.org*)

²⁶ This calculation of additional capacity excludes projects that met or exceeded their enrollment goals (“funded to serve” column figures).
²⁷ California, Texas, Florida, New York, New Jersey, Illinois, Georgia, North Carolina, Virginia,

Arizona, Maryland, Washington, Colorado, Nevada, and Massachusetts.
²⁸ Includes Upward Bound Math & Science.

TABLE 3—ESTIMATED ADDITIONAL TRIO PROGRAM PARTICIPANTS BASED ON PROPOSED RULE—Continued

Program	TRIO program participants	Postsecondary enrollment rate	Postsecondary enrollees
Total	2,788	.....	1,813

According to data from NCES,²⁹ in 2020, approximately 43 percent of high school completers immediately enrolled in a 4-year college or university and an additional 20 percent immediately enrolled in a 2-year program. In comparison, according to data from TRIO performance reports for 2022, 68 percent of TS participants enrolled in college, 75 percent of UB (including UBMS and VUB) participants enrolled in college, and 57 percent of EOC participants enrolled in college. EOC enrollment rates are typically lower than TS and UB as EOC participants include adults who are not connected to formal education systems.³⁰ Therefore, the Department estimates that a total of 1,813 students without status would enroll in postsecondary education as a result of their participation in TS, UB, or EOC.

For those 1,813 additional students that would enroll in postsecondary education, the Department assumes that

these students would earn at least some college credit from a 2- or 4-year institution. Among the 2012 UB cohort, 35 percent of UB participants that enrolled in postsecondary education earned a degree at a 4-year IHE while 7 percent of UB participants earned a degree at a 2-year IHE. For the purposes of this analysis, and due to lack of data, the Department assumes that postsecondary graduation rates are comparable between TS, UB, and EOC. We request comment on this assumption. Therefore, we assume that 58 percent of UB participants did not complete a bachelor's degree, associate's degree, or certificate within six years of initial enrollment. For our analysis we identify those that did not complete a degree or certificate as earning some college credit.

TABLE 4—ESTIMATED ADDITIONAL POSTSECONDARY COMPLETERS BASED ON PROPOSED RULE

Postsecondary completers	Estimated completers
Some College	1,052
Certificate/Associate's Degree	126
Bachelor's Degree	635
Total	1,813

For several analyses, the Department relies on estimated wages by educational attainment. For these analyses, the Department relies on data from BLS³¹ regarding earnings differences across individuals with different educational attainment. The relevant data are reproduced in Table 5. Estimated Weekly Earnings of Postsecondary Enrollees by Highest Level of Attainment, below for easier reference.

TABLE 5—ESTIMATED WEEKLY EARNINGS OF POSTSECONDARY ENROLLEES BY HIGHEST LEVEL OF EDUCATIONAL ATTAINMENT

Highest education attainment	Individuals	Median usual weekly earnings	Unemployment rate (%)	Total estimated weekly earnings ³²
HS Diploma	0	899	3.9	n/a
Some College	1,052	992	3.3	1,008,864
Certificate/Associate's Degree	126	1,058	2.7	130,134
Bachelor's Degree	635	1,493	2.2	927,153
Total	1,813	n/a	n/a	2,066,151

The Department estimates that these proposed regulations would directly result in an additional 1,813 students enrolling in and completing at least some postsecondary education. In addition, the Department assumes that affected individuals would have average earnings and employment rates equal to those at high school diploma level in the baseline, and average earnings and employment rates equal to their new educational attainment level following

implementation of the rule. The Department estimates that the total weekly earnings of these students if they had only earned a high school diploma would be \$1,566,058. These students' enrollment in postsecondary education would result in total weekly earnings of \$2,066,151, an increase of \$500,093 per week.

Based on the earnings and unemployment information described in Earnings and unemployment rates by

educational attainment from the U.S. Bureau of Labor Statistics,³³ the Department estimates that the additional 1,813 students enrolled in postsecondary education could annually earn, in total, \$26,004,836 more than they would have had they not enrolled in postsecondary education. We request comment on the assumptions leading to this result. The Department assumes that these benefits would not accrue until Year 5 and then would annually

²⁹ Instit. of Educ. Sci., Nat'l Ctr. for Educ. Statistics, *Postsecondary Education, Immediate College Enrollment Rate*, <https://nces.ed.gov/programs/coe/indicator/cpa> (last updated May 2023).

³⁰ According 2018–2019 data, 36% of EOC participants were between the age of 19 and 27 and 37% of EOC participants were 28 years or older.

³¹ Earnings and unemployment rates by educational attainment, 2023. "Education pays": U.S. Bureau of Labor Statistics (*bls.gov*).

³² This total is calculated by subtracting the unemployment rate from the number of individuals and multiplying that figure by the median weekly earnings. IE. (1052–35) * \$992 = 1,008,864.

³³ Earnings and unemployment rates by educational attainment, 2023. "Education pays": U.S. Bureau of Labor Statistics (*bls.gov*).

compound in future years as additional cohorts of students without status previously ineligible to receive TRIO services graduate at higher rates. To the extent that additional individuals complete postsecondary education before Year 5, this assumption will underestimate actual benefits from the proposed regulations.

The Department estimates that the benefits of the proposed rule described above would outweigh costs resulting from lost wages from delaying entry into the workforce and tuition costs.

Under the proposed changes to §§ 643.3, 643.4, and 643.5, the Department estimates that newly eligible recipients that enroll postsecondary education would realize an opportunity cost from the loss of wages they would otherwise receive as a high school graduate immediately entering into the workforce. The Department estimates that an additional

1,813 students without status would enroll in postsecondary education each year as a result of the proposed rule. The Department assumes that of these students, 1,742 would find employment and earn a median wage of \$899 per week as a high school graduate for total weekly earnings of \$1,566,058. The Department estimates that annual costs of \$81,435,016 during the first two years after the implementation of the proposed rule to account for students enrolled in both four-year and two-year postsecondary education. The Department assumes for the purposes of this analysis that 50 percent of these students are enrolled at a four-year IHE and therefore will realize an opportunity cost of \$40,717,508 in years three and four. The Department requests comment on these assumptions.

In addition, under the proposed changes to §§ 643.3, 643.4, and 643.5,

the Department estimates that newly eligible recipients that enroll postsecondary education would realize postsecondary tuition costs. Due to a lack of available data, the Department assumes that the 1,813 students without status estimated to enroll in postsecondary education each year as a result of the proposed rule will be equally divided across four-year public IHEs, four-year private nonprofit IHEs, two-year public IHEs, and two-year private nonprofit IHEs. The Department requests comment on these assumptions. Based on NCES data,³⁴ the Department assumes that the average net price to enrolled students of \$11,000 for students at four-year public IHEs, \$20,800 for students at four-year private nonprofit IHEs,³⁵ \$8,300 for students at two-year public IHEs, and 21,100 for students at two-year private IHEs.

Type of IHE	Students	Net price to student	Total
Four-year public IHE	454	11,000	4,994,000
Four-year private nonprofit IHE	453	20,800	9,422,400
Two-year public IHE	453	8,300	3,759,900
Two-year private IHE	453	21,100	9,558,300
Total	1,813	.....	27,734,600

The Department estimates that annual costs of \$27,734,600 during the first two years after the implementation of the proposed rule to account for students enrolled in both four-year and two-year postsecondary education. The Department assumes for the purposes of this analysis that 50 percent of these students are enrolled at a four-year IHE and therefore will realize tuition costs of \$14,416,400 in years three and four. The Department requests comment on these assumptions.

3.C.2 Non-Monetized Benefits
Distance Education

Changes proposed to provide better data on student outcomes for students enrolled in distance education would provide benefits for students in allowing reporting and evaluations of outcomes for students depending on their enrollment in distance education, traditional on-site instruction, or a combination of the two. Such analysis is increasingly advantageous to determine the educational and cost effectiveness of postsecondary instruction as it becomes more available at a distance.

Students can also benefit from the change to only allow synchronous instruction in clock-hour programs offered through distance education. Because studies have shown better student outcomes when comparing synchronous and asynchronous instruction, students would likely have greater persistence and completion, and would also likely benefit from improved labor market outcomes.³⁶

R2T4
Benefits to Students

Students would benefit from these regulations under several of the proposed regulations. If institutions choose to implement the optional withdrawal exemption, students who withdraw would not owe any balance related to any returned title IV, HEA aid to the Department or the institution. This would alleviate students from the burden of having to repay title IV, HEA dollars or owing an institutional debt related to a payment period or period of enrollment that they did not complete.

If a school chooses not to implement the optional withdrawal exemption, students that received a Direct Loan but

did not begin attendance in their program would be able to repay their loans under the terms of a promissory note as opposed to the current practice of receiving a demand letter for the full payment. Students would be able to benefit from an income-driven repayment plan, or standard payment plans with payments that could potentially be paid over 30 years.

Students who are incarcerated at times may need to (or be forced to) take a break in their PEP, including activities out of their control such as prison-wide lockdowns or involuntary transfers to other facilities. The proposed regulations would benefit incarcerated students allowing them to not have to come back from the leave of absence where they left off (as current regulations require), and instead, the student could come back at a different point in their eligible prison education program, affording greater flexibility in their academic progression.

Benefits to Institutions

Institutions would benefit under several of these proposed regulations. Currently, an institution offering clock-

³⁴ Price of Attending an Undergraduate Institution (ed.gov).

³⁵ Average net price of attendance is calculated as the average total cost of attendance minus average grant and scholarship aid.

³⁶ https://journals.lww.com/jehp/fulltext/2021/10000/why_people_are_becoming_addicted_to_social_media_.223.aspx.

hour programs may use two methods to determine the percentage of the payment period completed: cumulative, and by payment period. The proposed regulations would require institutions to use the payment period method when calculating the number of scheduled hours completed in clock-hour programs. This change would reduce the complexity of the R2T4 calculations and the inconsistency in the manner in which the calculation is done for clock-hour programs at different institutions.

Currently institutions implement complex sub-regulatory guidance to determine the number of days in the payment period for a program offered in modules, even if the student did not attend the module. The proposed regulations would benefit institutions through the requirement that the student actually attend the module for the days in the module to be included in the payment period. It would also eliminate the need for a “freeze date” (explained in the discussion section), further reducing complexity.

Benefits to the Taxpayer

Overall, we believe that the more accurate calculations and reductions in complexity would benefit the taxpayer by reducing errors in R2T4 calculations, resulting in more accurate amounts being returned to the Department and further supporting the integrity of the title IV, HEA programs. R2T4 consistently ranks in the Top 10 compliance findings,³⁷ costing the Federal government time and money to provide assistance through training and conducting program reviews in an effort to identify and correct R2T4 errors committed by institutions. We believe the proposed changes would also help alleviate some compliance issues related to R2T4.

For example, we have proposed a requirement that schools that offer distance education courses entirely online begin taking attendance for those courses. As a result, we anticipate more accurate calculations through the use of actual withdrawal dates from attendance records, thus providing taxpayers a more accurate accounting of title IV, HEA funds returned.

TRIO

As discussed above, the proposed changes to TRIO would align TRIO programs that serve students in the elementary or secondary context with other Federal K–12 spending programs that allow recipients (such as SEAs and

LEAs) to spend funds on K–12 students without regard to immigration status. This would eliminate the administrative burden of separating out students who are enrolled in public schools but not eligible for TRIO services under the current rule.

4. Accounting Statement

As required by OMB Circular A–4, the Department has prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides the best estimate of the changes in annual monetized benefits and costs of these proposed regulations.

Provision	Annualized benefits
	2% discount rate
TRIO Expanded eligibility—Postsecondary earnings	\$17,664,756
	Annualized costs
	2% discount rate
Reading and Understanding the New Rule	\$1,141,529
Distance Education—Reporting and disclosure of information	41,645
R2T4—Student does not begin attendance	297
R2T4—Student withdrawal	841,316
TRIO Expanded Eligibility	35,105,062

5. Alternatives Considered

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html.

5.1 Distance Education

During negotiations there was no disagreement with the Department’s proposal to amend the definition of “additional location” to separately identify virtual locations and to define “distance education course” (which was based on a negotiator suggestion), so there was little discussion on these topics.

The negotiators also did not disagree with the general idea of requiring

institutions to report students’ enrollment in distance education. There were suggestions about what that reporting should entail, including more detailed data about the extent of students’ enrollment in distance education and not just whether they are in-person or distance education students. The discussion settled on reporting students as having one of three statuses: fully in-person, fully at a distance, or a hybrid of the two. This would be a simple determination for schools that would also provide sufficient information for the Department. Because specific details about this reporting are yet to be determined, the proposed regulation establishes the general requirement and notes that reporting will be in accordance with procedures to be established by the Secretary.

Some negotiators disagreed with the proposed elimination of asynchronous distance education in the definition of clock-hour programs in § 600.2. Negotiators representing various institutional sectors contended that instruction in clock-hour programs need not be entirely hands-on, that there is a didactic component that lends itself to asynchronous instruction, and that schools have been able to master the technology necessary for close accounting of student academic engagement. These negotiators suggested limiting the amount of a clock-hour program that can occur asynchronously to 50 percent. Based on our review of clock-hour programs that delivered substandard education with little direct instructor interaction, we disagree that schools have the technology and resources to adequately monitor student academic engagement, as discussed in the section above on the proposed revisions to distance education. Allowing 50 percent of instruction to be asynchronous would still permit substandard education to occur. We thus reaffirmed that elimination of asynchronous distance education in clock-hour programs would be appropriate.

5.2 R2T4

Confined or Incarcerated Individuals and R2T4

The Department initially proposed to exempt confined or incarcerated individuals from R2T4 if the students withdrew from a program due to circumstances outside of their control, such as a correctional facility-wide lockdown or an involuntary transfer to a different facility. Upon further review, we determined that we do not have the legal authority to waive R2T4

³⁷ Annual Top Ten School Findings and School Fine Reports: <https://studentaid.gov/data-center/school/fines-and-findings>.

requirements for a targeted group of students. In addition, the Department heard concerns from several negotiators that confined or incarcerated individuals may reach their Pell grant lifetime eligibility used (LEU) faster under this proposal without obtaining an academic credential. And finally, the Department heard from some additional negotiators that some postsecondary institutions have already established policies that account for involuntary breaks in PEPs, such as waiving all charges related to the affected payment period, and our initial proposal might have caused institutions to revise or remove beneficial student policies already in place.

To address the negotiators' concerns, the Department instead proposed a new condition under the leave of absence provisions (§ 668.22(d)), targeted at confined or incarcerated individuals that take a break from their PEP due to events at their correctional facility, which would give students and institutions, especially in term-based settings, more flexibility when students return from a leave of absence. In term-based settings, the proposal would allow a confined or incarcerated individual to not have to come back from the leave of absence resuming where the student left off, and instead, the individual could resume at a different point in their PEP. The postsecondary institution would still have to adhere to all other requirements of a leave of absence as we propose they remain unchanged.

Direct Assessment Programs and R2T4

The Department considered exempting direct assessment programs offered through distance education from the proposed requirement under § 668.22(b)(3)(i)(D) that would require an institution to take attendance for each course offered entirely through distance education. A negotiator stated three concerns: (1) requiring an R2T4 calculation that is artificially based on dates of attendance, in a program structure that is not designed around seat time, would disincentivize progression and punish students who complete program requirements more quickly than anticipated; (2) requiring attendance in direct assessment programs would not increase the accuracy of R2T4 calculations, because the amount of funds earned by these students is not correlated to time and an attendance-based calculation does not accurately reflect the actual amount of coursework completion for students who take advantage of self-paced instruction; and (3) to offset these negative effects, institutions may feel

compelled to add pedagogically unnecessary content or participation requirements to courses in order to increase the frequency of attendance-taking opportunities. The negotiator argued that doing so would undermine the advantages of self-paced direct assessment programs and could unnecessarily increase program length and cost.

The Department is not persuaded by these arguments, because all distance education courses are still required to provide regular and substantive interaction. Direct assessment programs offered through distance education do not pose unique attendance-based challenges that justify exemption from the requirement. Direct assessment programs, like all other programs, are required to determine a withdrawal date, which is the last date of academic attendance as determined by the institution's academic records. The Department believes that institutions that offer direct assessment programs through distance education already have systems in place that sufficiently monitor academic engagement and thus can easily determine attendance and, by extension, a student's withdrawal date.

Withdrawal Exemptions and R2T4

As part of our 2019 negotiated rulemaking, the Department adopted a withdrawal exemption for programs offered in modules that treat a student as not withdrawn if the student successfully completes one or more modules that make up 49 percent or more of the number of days in the payment period. The Department's initial proposal with negotiators suggested removing the 49 percent withdrawal exemption, which, for students that do not qualify for another withdrawal exemption, would mean that more money would be returned to the Department and students would not exhaust their aid eligibility as quickly. The Department also believed that removing the 49 percent withdrawal exemption would eliminate observed confusion between this figure and the 60 percent completion requirement under the R2T4 calculation, and eliminate the continued need for significant guidance and training on how to determine whether a student qualifies for the exemption.

Many negotiators disagreed with the elimination of the 49 percent withdrawal exemption. Negotiators stated that their institutions had already updated systems and policies to account for the exemption and that it was serving students well. Negotiators also pointed out that the exemption has only been in regulation since 2021 and,

instead of eliminating the exemption, the Department should provide more guidance and training to assist those institutions that may be having some difficulty implementing this regulatory requirement. In light of these negotiator concerns and suggestions, the Department decided to retain this exemption.

5.3 TRIO

Expanding the Eligibility Proposal to All TRIO Programs

The current proposal for the Upward Bound Program, the Educational Opportunity Centers, and the Talent Search program would allow an individual to participate in these programs if they are enrolled in, or seek to enroll in, high school in the United States. All of these three TRIO programs serve students at the secondary school level. The Department also considered, at the suggestion of a negotiator, expanding the eligibility proposal to Student Support Services and the McNair Scholars Program, which are postsecondary level TRIO programs.

The Department determined to limit eligibility expansion to the three identified secondary school programs based on our belief that all children who attend high school in the United States should have the same access to public TRIO services to assist in their path toward postsecondary education. This proposal also aligns TRIO with the treatment of students in other Federal K–12 spending programs, which allow recipients (such as State education agencies and local education agencies) to spend funds on K–12 students without regard to immigration status.

The TRIO programs have limited resources, with the TRIO programs currently serving less than 10 percent of the eligible population. The Department is proposing to expand eligible participants to focus on the most vulnerable population: children who do not yet have the basic education that comes from high school completion, which is a necessary step toward postsecondary education.

Not Regulating TRIO

The Department considered not regulating, but as noted in the previous section, K–12 public schools are open to students regardless of their immigration status. As such, the Department believes that all children who attend high school in the United States should have the same access to TRIO services to assist their pathway into postsecondary education.

6. Regulatory Flexibility Act

This section considers the effects that the proposed regulations may have on small entities in the educational sector as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The purpose of the RFA is to establish as a principle of regulation that agencies should tailor regulatory and informational requirements to the size of entities, consistent with the objectives of a particular regulation and applicable statutes. The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a “significant impact on a substantial number of small entities.” As noted in the RIA, the Department does not expect that the regulatory action will have a significant budgetary impact, but there are some costs to small institutions that are described in this Initial Regulatory Flexibility Analysis.

Description of the Reasons for Agency Action

The Secretary is proposing new regulations to ensure students are well served by the institutions of higher education they attend, increase access to postsecondary education for disadvantaged students, and ensure that Federal Student Aid programs work in the best interests of students. Proposed regulations for distance education would help the Department better measure and account for student outcomes, improve oversight over distance education, and ensure students are receiving effective education by requiring additional reporting of programs offered entirely through online education, requiring students’ distance education enrollment status, and disallowing asynchronous distance education in clock-hour programs for title IV, HEA purposes. The proposed R2T4 regulations would help withdrawn students repay outstanding Direct Loan credit balances, increase the accuracy and simplicity of performing R2TV calculations, add additional clarity to institutions on reporting, and codify longstanding policies. The proposed TRIO regulations would expand student eligibility and provide greater access to postsecondary education for disadvantaged students who have enrolled or seek to enroll in a high school in the United States, territories, or Freely Associated States.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Through the proposed regulations, the Department aims to address inequities and inadequate protections for students to ensure the Federal Student Aid programs work to accomplish postsecondary access and completion. This includes ensure the Department, students, and families have the information needed to answer important questions about enrollment in and success with distance education, the ability provide closed school discharges where a program closes, that students that withdraw are able to repay their debt, and that disadvantaged students have the opportunity to access and succeed in postsecondary education.

The Department’s authority to the proposed regulations stems primarily from multiple statutory enactments: first, 20 U.S.C. 1070–1099d (sections 400–499 of the HEA) which authorizes the Federal government’s major student financial aid programs; second, 20 U.S.C. 1070(b) (section 400(b) of the HEA) which outline the Secretary’s broad authority to carry out program requirements; and third, the sections that govern the Department’s oversight responsibility under title IV 20 U.S.C. 1099c, 1099c–1, 1099c–2 (sections 498, 498A, and 498B of the HEA). The specific statutory sources of this authority are detailed in the Authority for This Regulatory Action section above.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply as noted above, SBA defines small proprietary institutions of higher education (IHEs) based on revenue. These regulations apply, however, to all IHEs, which cannot be compared across institutions and sectors using the SBA revenue size standard because the RFA does not measure non-profit and public sector IHEs based on revenue. As a result, for purposes of the proposed regulations, the Department defines “small entities” by reference to enrollment, as it has done in other rulemakings, to allow meaningful comparison of regulatory impact across all types of IHEs in the for-profit, non-profit, and public sectors.³⁸ The

³⁸ For additional background on the Department’s justification for using an enrollment-based size standard, see “Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program” proposed rule, published in the **Federal Register** on July 31, 2018, 83 FR 37242, and final rule, published in the **Federal Register** on September 23, 2019, 84 FR 49788; and “Gainful Employment” final rule published in the **Federal Register** on July 1, 2019,

Department notes that enrollment and revenue are correlated for all IHEs and that IHEs with higher enrollment tend to have the resources and infrastructure in place to more easily comply with the Department’s regulations in general and the proposed regulations in particular. Since enrollment data is more readily available to the Department for all IHEs, the Department has used enrollment as the basis to identify small IHEs in prior rulemakings and continues to use enrollment to identify small IHEs in the proposed regulations. This approach also allows the Department to use the same metric to identify small IHEs across the for-profit, non-profit, and public sectors, and it treats public IHEs operated at the behest of jurisdictions with a population of more than 50,000 but with low enrollment as small, which the SBA’s standard would not treat as small. Lastly, the North American Industry Classification System (NAICS), under which SBA’s revenue standards in 13 CFR 121.201 are generally established, set different revenue thresholds for IHEs that provide different areas of instruction (*e.g.*, cosmetology, computer training, and similar programs) and there is no existing data that aligns those different revenue standards to the different types of regulated IHEs. Similarly, where an institution provides instruction in several of these areas, it is unclear which revenue threshold to apply for purposes of the Department’s RFA analysis.

As explained above, the enrollment-based size standard remains the most relevant standard for identifying all IHEs subject to the proposed regulations. Therefore, instead of the SBA’s revenue-based size standard, which applies only to proprietary IHEs, the Department has defined “small IHE” as (1) a less-than-two-year institution with an enrollment of fewer than 750 students, or (2) an at-least two-year but less-than-four-year institution, or a four-year institution, with enrollment of fewer than 1,000 students.³⁹ As a result

³⁸ 84 FR 31392. The Department notes that the alternative size standards that are used in this NPRM are identical to the alternative size standards used in the GE regulations published in the **Federal Register** on October 10, 2023. See 88 FR 70175.

³⁹ In regulations prior to 2016, the Department categorized small businesses based on tax status. Those regulations defined “nonprofit organizations” as “small organizations” if they were independently owned and operated and not dominant in their field of operation, or as “small entities” if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations as small and no public institutions as small. Under the previous definition, proprietary institutions

of discussions with the SBA Office of Advocacy, this is an update from the standard used in some prior rules, such as the “Financial Value Transparency and Gainful Employment (GE), Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB),” published in the **Federal Register** on May 19, 2023, 88 FR 32300, “Improving Income Driven Repayment for the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan (FFEL) Program, published in the **Federal Register** on July 10, 2023, 88 FR 43820, and the proposed regulations, “Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received

by Institutions of Higher Education (90/10); Change in Ownership and Change in Control,” published in the **Federal Register** on October 28, 2022. 87 FR 65426. Those prior regulations applied an enrollment standard for a small two-year institution of less than 500 full-time-equivalent (FTE) students and for a small 4-year institution, less than 1,000 FTE students.⁴⁰ The Department consulted with the SBA Office of Advocacy on the alternative standard for this rulemaking. The Department continues to believe this approach most accurately reflects a common basis for determining size categories that is linked to the provision of educational services and that it captures a similar universe of small entities as the SBA’s revenue standard. In accordance with

section 601 of the RFA, the Department seeks comment on the appropriateness of this alternative size standard as it relates to this rule.

We note that the Department’s revised alternative size standard and the SBA’s revenue standard identify a similar number of total proprietary IHEs, with greater than 93 percent agreement between the two standards. Using the Department’s revised alternative size standard, approximately 61 percent of all IHEs would be classified as small for these purposes. Based on data from NCES, in 2022, small IHEs had an average enrollment of approximately 289 students. In contrast, all other IHEs had an average enrollment of approximately 5,509 students.

TABLE 1—NUMBER OF SMALL IHEs UNDER ENROLLMENT-BASED DEFINITION

	4-year	2-year	Less than 2-year	Total
Not Small	1,548	639	84	2,271
Small	1,219	936	1,577	3,732
Total	2,767	1,575	1,661	6,003

Source: 2022 IPEDS data reported to the Department.

In addition, the following tables show the breakdown of this 93 percent agreement, using institutional-level data relating to the 2,334 private for-profit IHEs that were identified using 2022 IPEDS data.⁴¹ The enrollment size standard identifies 2,073 for-profit IHEs as small, and the revenue size standard identifies 2,044 for-profit IHEs as small, with a core of the same 1,917 for-profit

IHEs identified as small under both standards. There are 156 IHEs that are only identified as small under the enrollment standard and 127 IHEs that are only identified as small under the revenue standard. Below are descriptive statistics of those for-profit IHEs identified as small by only one of the measures.

Table 2 shows the distribution of revenues and the average enrollments of the 156 for-profit IHEs identified as small under only the enrollment size standard. A large majority of these for-profit IHEs do not have revenue data available in IPEDS. The average enrollment for this group with no revenue data available is 210 students.

TABLE 2—SMALL IHEs UNDER ENROLLMENT SIZE STANDARD ONLY

Revenue category	Number of IHEs	Average enrollment
No Data	149	210
\$35–40 million	4	580
\$41–55 million	2	696
Above \$55 million	1	320
Total	156	226

Table 3 shows the distribution of enrollments and the average revenues of the 127 for-profit IHEs identified as small under only the revenue size standard. Six of these 127 IHEs do not

have enrollment data available through IPEDS. There are 57 IHEs in the bin of “1,000–1,249 students”, which is closest to the enrollment threshold for for-profits, and average revenue for

these IHEs is \$13.3 million. To the extent that the proposed alternative size standard covers for-profit IHEs that would not otherwise be covered (and the revenue standard covers for-profit

were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric

to all types of institutions, allowing consistent comparison across all types.

⁴⁰In those prior rules, at least two-year but less-than-four-years institutions were considered in the broader two-year category. In this proposed rule, after consulting with the SBA Office of Advocacy, we separate this group into its own category. Based on this consultation, we have also increased the

enrollment threshold for less-than-two-year institutions from 500 to 750 in order to treat a similar number of institutions as small under the alternative enrollment standard as would be captured under a revenue standard.

⁴¹ 2022 IPEDS downloaded from <https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx>.

IHEs that would not be covered by the enrollment standard), the Department proposes to treat certain for-profit IHEs

as small and others as not small because of the reasons for proposing an

alternative size standard explained in this section above.

TABLE 3—SMALL IHEs UNDER REVENUE SIZE STANDARD ONLY

Enrollment category	Number of IHEs	Average revenue
No Data	6	\$1,206,508
1,000–1,249 students	57	13,269,753
1,250–1,499 students	23	19,122,831
1,500–1,749 students	13	19,247,730
1,750–1,999 students	14	23,287,464
Above 2,000 students	14	23,527,952
Total	127	16,606,901

Tables 4 and 5 show the distribution of institution levels for for-profit IHEs identified as small by the enrollment size standard only and by the revenue size standard only, respectively.

TABLE 4—LEVEL OF FOR-PROFIT IHEs IDENTIFIED AS SMALL UNDER THE ENROLLMENT SIZE STANDARD ONLY

Level	Number of IHEs
Less than 2 years (below associate)	73
At least 2 but less than 4 years	45
Four or more years	38
Total	156

TABLE 5—LEVEL OF FOR-PROFIT IHEs IDENTIFIED AS SMALL UNDER THE REVENUE SIZE STANDARD ONLY

Level	Number of IHEs
Less than 2 years (below associate)	50
At least 2 but less than 4 years	50
Four or more years	27
Total	127

Notably, the five states with the most IHEs that are identified as small under only the enrollment standard are California (34), Texas (15), Florida (13), New Jersey (7), and Puerto Rico (7). The five states with the most IHEs that are identified as small under only the

revenue standard are California (28), Florida (18), Texas (11), Arizona (8), and Illinois (6).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Based on the model described in the discussion of RIA, an IHE would see a minimum net increase in costs of approximately \$3,361 in year 1 for all IHEs, as explained in more detail in the 3.B. COSTS OF THE PROPOSED REGULATIONS section of this Regulatory Impact Analysis and included in the table below:

TABLE 6—ESTIMATED NET INCREASE IN COSTS

Category	Year 1	
Reading and Understanding the New Rule	\$1,740	Total cost of \$10,458,957 divided by the total institutions effected
Distance Education—Reporting and Disclosure of Information	102	Total cost of \$381,560 divided by the total institutions offering distance education
Return of Title IV Funds When Student Withdraws	1,284	Total cost of \$7,708,332 divided by the total institutions effected
TRIO Expanded Eligibility	235	Total cost of \$495,325 divided by total grantees impacted
Total	3,361	

For purposes of assessing the impacts on small entities, the Department defines a “small IHE” as a less than two-year IHE with an enrollment of less than 750 FTE and two-year or four-year IHEs

with an enrollment of less than 1,000 FTE, based on official 2022 FTE enrollment. According to data from the IPEDS, in FY 2022, small IHEs had, on average, total revenues of approximately

\$8,691,634.⁴² Therefore, the Department estimates that the proposed regulations could generate a net cost for small IHEs equal to approximately 0.04 of annual revenue.

⁴² Based on data reported for FY 2022 for “total revenue and other additions” for public institutions

and “total revenues and investment return” for

private not-for-profit and private for-profit institutions.

TABLE 7—ESTIMATED NET INCREASE IN COSTS

Entities by sector	Number of institutions	Average total revenue	Net cost percentage %
Private for-profit, 2-year	431	\$4,282,808	0.08
Private for-profit, 4-year or above	238	9,747,215	0.03
Private for-profit, less-than 2-year	1,304	1,751,544	0.19
Private not-for-profit, 2-year	121	3,980,612	0.08
Private not-for-profit, 4-year or above	821	14,778,833	0.02
Private not-for-profit, less-than 2-year	55	1,907,257	0.18
Public, 2-year	365	23,541,752	0.01
Public, 4-year or above	109	33,836,210	0.01
Public, less-than 2-year	218	4,215,979	0.08
Grand Total	3,662	8,691,634	0.04

According to data from IPEDS, approximately 458 small IHEs had total reported annual revenues of less than \$597,100 for which the costs estimated above will potentially exceed 1 percent of total revenues. The average enrollment across these 458 small IHEs was 48 students.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The regulations will not conflict with or duplicate existing Federal regulations.

Alternatives Considered

As described in section 5 in the Regulatory Impact Analysis above, “Alternatives Considered”, the Department considered several alternative provisions and approaches but rejected those alternatives for the reasons considered above. Most relevant to small entities were the alternatives to limit proposed changes. For example, under distance education, the Department considered exempting direct assessment programs offered through distance education from the proposed requirement under § 668.22(b)(3)(i)(D) that would require an institution to take attendance for each course offered entirely through distance education. However, the Department rejected this consideration in part because it ultimately would not reduce burden including to small entities since all distance education courses are still required to provide regular and substantive interaction and believes that institutions that offer direct assessment programs through distance education already have systems in place to monitor academic engagement.

Similarly, under R2T4, the Department proposed removing the 49 percent withdrawal exemption, which would in part eliminate observed

confusion between this figure and the 60 percent completion requirement under the R2T4 calculation and eliminate the continued need for significant guidance and training on how to determine whether a student qualifies for the exemption, thereby reducing institutional burden. Negotiators, however, disagreed stating that institutions had already updated systems and policies to account for the exemption and that it was serving students well. As a result, the Department eliminated the proposal.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed §§ 668.22 and 668.41 contain information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of these sections and Information Collection requests to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the

collection instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 668.22 Treatment of title IV funds when a student withdraws.

Requirements: Proposed § 668.22(b)(3)(ii) would require institutions to take attendance in distance education courses, which would require schools to use actual attendance data to determine a student’s withdrawal date for students enrolled entirely in online courses for a particular payment period or period of enrollment. The requirement would not apply to dissertation research courses that are part of a doctoral program. The Department believes that this change would improve Return of title IV funds (R2T4) calculations, limit instances of inaccurate calculations by schools, and better protect student and taxpayer funds. Regarding distance education courses, institutions can often easily determine when students stop attending because a school’s systems can often identify when students submit assignments or interact with instructors and students during lectures and course discussions, and students are often continuously monitored to track academic engagement. Also, some institutions with online courses are already required to take attendance in certain situations as described under 34 CFR 668.22(b)(3).

Burden Calculation: The proposed regulatory change would add a burden for institutions. The Award Year 2022 IPEDS reporting has 3,732 institutions offering one or more distance education courses. The Department estimates that each of the institutions would be required to do an initial review of their distance education system to ensure that attendance is being collected and potentially develop or add attendance

taking to the system. The Department expects that this would require an average of 10 hours per institution as a one-time burden. The Department estimates it would take 684 Proprietary institutions 6,840 hours to perform this review function (684 institutions $\times$ 10 hours = 6,840 hours). The Department estimates it would take 1,414 Private institutions 14,140 hours to perform this review function (1,414 $\times$ 10 hours = 14,140). The Department estimates it would take 1,634 Public institutions 16,340 hours to perform this review function (1,634 $\times$ 10 hours = 16,340).

Due to the highly automated delivery of these types of courses, and the availability of such coursework on a daily basis, the Department estimates half of the institutions offering distance education courses would already be performing this task. Therefore, the Department estimates it would take the remaining fifty percent of institutions offering distance education about 10 minutes on a daily basis to capture attendance information for their records. The Department estimates it would take 342 Proprietary institutions 21,221 hours annually to perform this

recordkeeping function (684/2 institutions $\times$ 365 days $\times$.17 (10 minutes) = 21,221 hours). The Department estimates it would take 707 Private institutions 43,869 hours annually to perform this recordkeeping function (1,414/2 $\times$ 365 $\times$.17 (10 minutes) = 43,869). The Department estimates it would take 817 Public institutions 50,695 hours annually to perform this recordkeeping function (1,634/2 $\times$ 365 $\times$.17 (10 minutes) = 50,695). The total estimated burden to be added to OMB Control Number 1845–0022 is 153,105 hours.

STUDENT ASSISTANCE GENERAL PROVISIONS—1845–0022

Affected entity	Respondent	Responses	Burden hours	Cost \$49.33 per entity
Proprietary	684	125,514	28,061	\$1,384,249
Private non-profit	1,414	259,469	58,009	2,861,584
Public	1,634	299,839	67,035	3,306,836
Total	3,732	684,822	153,105	7,552,669

Section 668.41 Reporting and disclosure of information.

Requirements: The Department proposes adding a new paragraph § 668.41(h) that would require institutions to report their enrollment in distance education or correspondence courses. The Department expects that this provision would be implemented no earlier than July 1, 2026. This change would provide the Department with expanded information to better answer questions about college access, persistence, and success, and to better inform student-centered policies. This reporting requirement also would improve the Department's ability to determine whether institutions have reached the 50 percent threshold for distance education enrollment. When institutions enroll at least 50 percent of

their students in distance education, offer at least 50 percent of their courses, or 50 percent of a program via distance education, they must obtain further accreditor approval beyond the initial approval to deliver distance education programs.

Burden Hours: The proposed regulatory change would add a burden for institutions. Because we expect to delay implementation of this new requirement until at least July 1, 2026, we are not estimating the implementation burden at this time. As development of the reporting mechanism progresses, a separate information collection will be submitted for full public comment closer to implementation of the data collection, incorporating more useful and specific information.

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department would submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For institutions the Department is using the median hourly wage for Education Administrators, Postsecondary, \$49.33 per hour according to BLS. <https://www.bls.gov/oes/current/oes119033.htm>.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost \$49.33 per entity
§ 668.22	Proposed § 668.22(b)(3)(ii) would require institutions with distance education courses to take attendance for each course offered entirely through distance education, except for dissertation research courses that are part of a doctoral program.	1845–0022; 153,105 hours	\$7,552,669
§ 668.41	The Department proposes adding a new paragraph (h) that would require institutions to report their enrollment in distance education or correspondence courses. The Department plans to implement this provision no earlier than July 1, 2026.	None—will develop closer to implementation.	.....

TOTAL BURDEN HOURS AND CHANGE IN BURDEN HOURS ASSOCIATED WITH EACH OMB CONTROL NUMBER AFFECTED BY THE PROPOSED REGULATIONS IN 1845–0022

Control No.	Total burden hours	Change in burden hours
1845–0022	2,738,785	+153,105
Total	2,738,785	+153,105

The Department has prepared the Information Collection Request for the information collection requirement. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification.

In preparing your comments, you may want to review the Information Collection Request, including the supporting materials, in www.regulations.gov by using the Docket ID number specified in this notification Docket ED–2024–OPE–0050. This proposed collection is identified as proposed collection, 1845–0022.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at www.regulations.gov.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. “Federalism implications” means 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. The proposed regulations do not have Federalism implications.

Accessible Format: On request to one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Parts 643 and 644

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 645

Colleges and universities, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Veterans.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Miguel A. Cardona,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600, 643, 644, 645, and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:

■ a. In the definition of *Additional location*, adding paragraph (3).

■ b. In the definition of *Clock hour*, revising paragraph (1)(iv).

■ c. Adding, in alphabetical order, a definition of *Distance education course*.

The revision and additions read as follows:

§ 600.2 Definitions.

* * * * *

Additional location:

* * * * *

(3) A virtual location through which the institution offers 100 percent of an educational program through distance education or correspondence courses, notwithstanding requirements for students to complete on-campus or residential periods of 90 days or less.

* * * * *

Clock hour:

(1) * * *

(iv) In distance education, 50 to 60 minutes in a 60-minute period of attendance in a synchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students.

* * * * *

Distance education course: A course in which instruction takes place exclusively as described in the definition of *distance education* in this section notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences.

* * * * *

PART 643—TALENT SEARCH

■ 3. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 4. Section 643.3 is amended by:

■ a. Removing the word “or” at the end of paragraph (a)(1)(iv).

■ b. Removing the period at the end of paragraph (a)(1)(v) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§ 643.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(vi) If an individual does not meet the requirements of paragraph (a)(1)(i) through (v) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 5. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 6. Section 644.3 is amended by:

■ a. Removing the word “or” at the end of paragraph (a)(1)(iv).

■ b. Removing the period at the end of paragraph (a)(1)(v) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(1)(vi).

The addition reads as follows:

§ 644.3 Who is eligible to participate in a project?

(a) * * *

(1) * * *

(vi) If an individual does not meet the requirements of paragraph (a)(1)(i)

through (v) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States.

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 7. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 8. Section 645.3 is amended by:

■ a. Removing the periods at the end of paragraphs (a)(1) through (4) and adding semicolons in their place.

■ b. Removing the period at the end of paragraph (a)(5) and adding, in its place, “; or”.

■ c. Adding paragraph (a)(6).

The addition reads as follows:

§ 645.3 Who is eligible to participate in an Upward Bound project?

* * * * *

(a) * * *

(6) If an individual does not meet the requirements of paragraph (a)(1) through (5) of this section, then the individual is enrolled in or seeks to enroll in a high school in the United States, territories, or Freely Associated States, and provided that such individual is not eligible for a direct cash stipend.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 9. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 1231a, unless otherwise noted.

§ 668.3 [Amended]

■ 10. Section 668.3 is amended by:

■ a. Adding “credit-hour” before “program” in paragraph (b)(2)(ii)(A).

■ b. Removing “program” and adding, in its place, “credit-hour program offered” in paragraph (b)(2)(ii)(B).

■ 11. Section 668.21 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

(a) * * *

(2) * * *

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study-abroad

program in accordance with § 682.207(b)(1)(v)(C)(1) or for a student enrolled in a foreign school in accordance with § 682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will initiate borrower repayment under the terms of their promissory note; and

* * * * *

■ 12. Section 668.22 is amended by:

■ a. Removing “and” at the end of paragraph (a)(2)(ii)(A)(4).

■ b. Removing the period at the end of paragraph (a)(2)(ii)(A)(5) and adding, in its place, “; and”.

■ c. Adding new paragraph (a)(2)(ii)(A)(6).

■ d. Revising paragraph (b)(2).

■ e. Redesignating paragraphs (b)(3)(ii) through (iv) as paragraphs (b)(3)(iii) through (v).

■ f. Adding a new paragraph (b)(3)(ii).

■ g. Revising paragraphs (d)(1)(vii), (f)(1)(ii)(A), and (l)(9).

The revisions and addition read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(6) A student is not considered to have withdrawn if—

(i) The institution’s records treat a student as having never attended courses for that payment period or period of enrollment;

(ii) The institution returns all the title IV grant or loan assistance disbursed to the student for that payment period or period of enrollment;

(iii) The institution refunds all institutional charges to the student for the payment period or period of enrollment; and

(iv) The institution writes off or cancels any current year balance owed by the student to the institution due to the institution’s returning of title IV funds to the Department.

* * * * *

(b) * * *

(2) An institution must, within 14 days of a student’s last date of attendance, document a student’s withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution’s determination that the student withdrew.

(3) * * *

(ii) An institution must take attendance for each course offered entirely through distance education as defined in 34 CFR 600.2, except for dissertation research courses that are part of a doctoral program.

* * * *

(d) * * *

(1) * * *

(vii) Except for a clock-hour or non-term credit hour program, a subscription-based program, or an eligible prison education program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * * *

(f) * * *

(1) * * *

(ii) (A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed since the student began attendance in the payment period or period of enrollment as of the student's withdrawal date.

* * * *

(l) * * *

(9) A student in a program offered in modules is scheduled to complete the days in a module only when a student begins attendance in the module.

■ 13. Amend § 668.41 by adding paragraph (h) to read as follows:

§ 668.41 Reporting and disclosure of information.

* * * *

(h) *Reporting of student enrollment in distance education or correspondence courses.* For each recipient of title IV, HEA assistance at the institution, the institution must report to the Secretary, in accordance with procedures established by the Secretary, the recipient's enrollment in distance education or correspondence courses.

[FR Doc. 2024–16102 Filed 7–23–24; 8:45 am]

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